

TWO
CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 961 of 1995

New Delhi, dated the 26th Oct. 1995

(11)

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE MRS. LAKSHMI SUAMINATHAN, MEMBER (J)

Shri M.D. Jaiswal,
R/o J & K 35, Laxminagar,
Delhi-110092.

... APPLICANT

(By advocate: Shri Jog Singh)

VERSUS

1. Ministry of Welfare through
the Secretary, Government of India
Ministry of Welfare, 6th Floor,
Shastri Bhawan, New Delhi.
2. The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
3. The Chairman-cum-Managing Director,
National Scheduled Castes & Scheduled Tribes
Finance and Development Corporation,
8, Balaji Estate, Guru Ravi Das Marg,
Kalkaji, New Delhi-110019.
4. The Secretary,
Minorities Commission, ,
5th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110003.
5. The Commissioner for Linguistic
Minorities in India,
40, Amarnath Jha Marg,
Allahabad-211002. ... RESPONDENTS

(By Advocates: Shri K.C.D. Gangwani
for Respondent No.1
Shri Samir Prakash for Resp. No.3
Shri M.M. Sudan for Resp. No.4
and None for other Respondents)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Shri M.D. Jaiswal has prayed for quashing of the order dated 4.4.94 issued by the National Scheduled Castes & Scheduled Tribes Finance & Dev. Corporation (Ann. A.2), direct the Ministry of Welfare (Respondent No.1) to take a decision on the applicant's request for voluntary retirement and convey it to the NSC & STFDC.

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so that he may be reposted as Deputy Manager there with continuity of service and other consequential benefits, or alternatively to post the applicant in the Ministry of Welfare, together with payment of salary with interest, and costs.

2. His case is that he was initially appointed as a Stenographer (English) in the office of the Station Director, All India Radio, Allahabad on 3.2.66. He joined the office of the Commissioner for Linguistic Minorities in India (CLM) an attached office of the Home Ministry (MHA) as Stenographer on 22.2.72 and was declared permanent against the post of Stenographer w.e.f. 10.5.76 vide order dated 29.5.78 (Ann. A.3). On 16.10.78 he was transferred to the newly formed Minorities Commission which also falls within MHA, who abolished the permanent post of Stenographer held by the applicant w.e.f. the date of terminating the applicant's lien in his parent organisation. He represented against it vide representation dated 27.3.85, but there are no materials to show he received any reply. Meanwhile on 1.7.82 the applicant was promoted to the post of Sr. P.A. and subsequently on 2.7.84 as P.S. to the Secretary, Minorities Commission. On selection to the post of 1st PA to Minister of State for Welfare he was relieved by the Minorities Commission on 4.10.85 and joined the MOS, Welfare's staff the same day (Ann. A). The order made it clear that the applicant's term of appointment was

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co-terminus with the term of the Minister of State or till further orders whichever was earlier. Thereafter he was promoted as Addl. P.S. to MOS Welfare w.e.f. 27.5.86 vide order dated 11.6.86 (Ann. A.6). On 8.2.89 he was relieved of his duties in the Welfare Ministry vide order of even dated (Ann. A.7) and was granted leave by that Ministry from 6.2.89 to 31.3.89 vide orders dated 14.8.89 (Ann. A.8). Thereafter by d.o. letter dated 28.3.89 the Jt. Secretary, Ministry of Welfare forwarded the applicant's application to the Managing Director, National Sch. Castes & Sch. Tribes Finance & Dev. Corp., recommending him for an equivalent post in that Corporation. In the forwarding letter the applicant was mentioned as being "formerly Addl. P.S. to Welfare Minister". By order dated 31.3.89 the Board of Directors of NSC & ST Finance & Dev. Corp. in exercise of the powers conferred under Resolution dated 16.2.89 appointed the applicant as a Deputy Manager on adhoc basis w.e.f. 31.3.89. On 28.11.89 the applicant sent a letter to the Ministry of Welfare seeking voluntary retirement from that Ministry (Ann. A.11), but there are no materials to indicate he received any reply. Meanwhile in response to his application for the post of Deputy Manager in the NSC & ST Fin. & Dev. Corp. he was informed by letter dated 15.1.90 to appear for an interview on 29.1.90 and in case he was employed in any Govt. Office/PSU and his application had not been forwarded through proper channel, to bring a N.O.C. from his employer

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at the time of interview (Ann. A.12). It is not denied by that Corp. who are Respondents No.3 before us that the applicant was interviewed and was appointed as a Deputy Manager on regular basis in that Corporation. All of a sudden on 5.4.94 the applicant received the Corporation Order dated 4.4.94 stating that he stood relieved from the Corporation with immediate effect and he should report to the Under Secretary, Ministry of Welfare. No reasons were contained in this order. The applicant complied with the order and reported to the Welfare Ministry on 11.4.94, but no posting order was issued to him despite several representations and personal meetings compelling him to file this O.A. and in the meanwhile he has not received any salary putting him to acute financial distress.

3. The stand of the Welfare Ministry (Respondent No.1) as contained in their reply is that the applicant's appointment on MOS Welfare's Staff was purely temporary and with co-terminus of the term of the Minister or till further orders whichever was earlier and during his tenure with them he was governed by usual terms of deputation except as to tenure. Upon being relieved of his duties he was granted leave, and during his leave period he applied for a post in the NSC & STFDC (Respondent No.3) which was merely forwarded by them as requested by the applicant. They state that the applicant's services were not placed at the disposal of the NSC & STFDC by them as is usually done in cases of transfer or deputation

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and the Corporation appointed the applicant as Deputy Manager on ad hoc basis w.e.f. 31.3.89 without consulting them in Nov. 89 when the applicant requested the Welfare Ministry for acceding to his request for voluntary retirement w.e.d. 31.3.89 his request was forwarded to the Minorities Commission (Respondent No.4) as he did hold any lien on any post in the Welfare Ministry. Again, when the NSC & STFDC relieved the applicant and placed his services with the Welfare Ministry w.e.f. 4.4.94, without prior consultation/concurrence, he could not be taken on their strength as he held no lien against any post there. The stand of the Welfare Ministry is that as the applicant does not hold a lien against any post in the Welfare Ministry and they are not the applicant's parent Ministry, he has no right to claim any benefit from them.

3. None has appeared for the Home
Ministry (Respondent No.2) and no reply has
been filed by them either, despite service of /
notice.

4. The stand of the NSC & STFDC (Resp.No.3) is that the applicant has not approached the Tribunal with clean hands, in as much as he suppressed material facts and presented a false and misleading picture. He suppressed the material fact that he was not a permanent employee of the Welfare Ministry but that his employment of therein was co-terminus with the term of the MOS Welfare and he also concealed the fact that his employment in that Ministry

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had already come to an end before he sought employment in the Corporation. It is contended that the applicant obtained his appointment in the Corporation fraudulently by giving it the impression that he was an employee of the Welfare Ministry and that he would either be formally relieved on deputation by that Ministry or he would resign from there. He concealed the fact that his employment in the Welfare Ministry had come to an end. Rather he represented that he was a permanent employee of that Ministry in the scale of Rs.3000-4500 and thus secured appointment as Dy. Manager (Rs.3000-4500) which was much higher than what he would have been entitled to had he correctly declared that his appointment in the Ministry having come to an end, he was reverted to his parent organisation the Minorities Commission in the scale of Rs.2000-3500. Had he done so he would have at best been pitted in as Ass'tt. Manager (Rs.2200-4000). It is also contended that the applicant has become over-aged and does not possess the requisite academic qualifications as required under the Corporation Recruitment, Promotion & Seniority Rules for the post of Dy. Manager or even as Ass'tt. Manager, and he cannot therefore be given appointment with them, and furthermore they do not require his services any longer.

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The stand of the Respondents No.4 (National Commission for Minorities i.e. erstwhile Minorities Commission) is that the NCM was constituted on 17.5.1993 under the NCM Act and the Minorities Commission ceased to exist. Respondents No.4 denies any obligation to issue any order of posting, and denies the Tribunal's jurisdiction over it as it is a statutory body and no notification under Section 14 CAT Act has been issued in respect of it. It is stated on transfer from the office of the Commissioner for Linguistic Minorities, the applicant was appointed in the erstwhile Minorities Commission as a Stenographer w.e.f. 3.11.78 and as all the posts in the Minorities Commission were temporary and sanctioned on year to year basis he could not be appointed in the Commission on a permanent basis. On his appointment as 1st PA to MOS (Welfare) the applicant was relieved from the Minorities Commission on 4.10.85 and thereafter was appointed as Addl. P.S. to MOS (Welfare) on 27.5.86 on co-terminus basis where he worked from 27.5.86 to 6.2.89 and thereafter was sanctioned PL/ Commuted leave from 6.2.89 to 31.3.89 by Welfare Ministry without any consultation with the erstwhile Minorities Commission. Furthermore his application was forwarded by the Welfare Ministry to the MD, NSC & STFDC for a equivalent post without any consultation with Minorities Commission. As the applicant was not holding

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any permanent post in the Minorities Commission no lien was kept on any post there. Furthermore, a copy of the issued by the NSC & STFDC regarding the appointment of the applicant as a Deputy Manager was not endorsed to the Minorities Commission either.

5. We have heard Shri Jog Singh for the applicant, Shri KCD Gangwani for the respondent No.1, Shri Samir Prakssh for Respondent No.3 and Shri M.M.Sudan for Respondent No.4. We have also perused the materials on record and considered the matter carefully. In so far as the prayer for quashing of the order dated 4.4.94 issued by the NSC & STFDC is concerned, this Tribunal has no jurisdiction to do so because that Organisation is a PSU and is not covered by the notification issued under Section 14 of the CAT Act. It is not enough for the applicant's counsel to contend that this PSU is a part and parcel of the Welfare Ministry and it therefore comes within the Tribunal's jurisdiction. The NSC & STFDC, as stated above, is a P.S.U with a separate and distinct entity and the Tribunal's jurisdiction would extend over it only if it was covered by the notification under Section 14 CAT Act. As that has not been done, that Corporation does not come within our jurisdiction and under the circumstances its order dated 4.4.94 cannot be interfered with by us.

6. In so far as the question of directing the Ministry of Welfare to take a decision on the

applicant's request for voluntary retirement, Shri KCD Gangwani is correct when he states that the applicant has no lien on any post in that Ministry, and hence they are not required to take any decision on the applicant's request for voluntary retirement. Flowing from that, no direction can be issued by the Tribunal to post the applicant in the Welfare Ministry either. Hence the relief prayed for by the applicant, in the manner in which it has been framed, cannot be acceded to.

7. However, we note that the applicant joined the Office of the Commissioner for Linguistic Minorities, an attached Office of the Home Ministry as Stenographer on 22.2.72 and was declared permanent against the post of Stenographer w.e.f. 10.5.76 vide order dated 29.5.78. The applicant was subsequently transferred to the newly formed Minorities Commission which also fell within MHA, who abolished the permanent post of Stenographer held by the applicant and thereafter terminated the applicant's lien in his parent Organisation.

8. As the applicant was made permanent on a post in an office under Respondent No.2 which post was subsequently abolished, we direct Respondent No.2 to examine within 3 months from the date of receipt of a copy of this judgment, the question of recommending the applicant's name to the DPAR for placement in the Surplus Cell maintained in that Department with a view to absorption against a suitable vacancy commensurate with the applicant's academic qualification and work experience and in accordance with law. In case Respondent No.2

holds that the applicant is not entitled even to be recommended for placement in the Surplus Cell, detailed reasons must be recorded for coming to such a finding, under intimation to the applicant.

9. This O.A. is disposed of accordingly.
No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)

MEMBER (J)

S. R. Adige
(S. R. ADIGE)

MEMBER (A)

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