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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 2571/1994

New Delhi, this 12th day of May, 1995.

Hon'ble Shri P.T.Thiruvengadam, Member(A)

Shri Om Prakash Sood
s/o Shri Pooran Chand Sood
D-874, Mandir Marg, New Delhi .. . Applicant
(By Shri B.B. Raval, Advocate)

Versus

Union of India, through

1. Secretary
M/Urban Development
Nirman Bhawan, New Delhi .. . Respondents
2. Manager
Government of India Press
Minto Road, New Delhi .. . Respondents

(By Shri V.S.R.Krishna, Advocate)

ORDER

The applicant was functioning as Technical Assistant in the Government of India Press. On his passing the Trade Test for the post of Photo Typesetting Key Board Operator (PTSKBO), he was issued Memorandum dated 27.12.93 appointing him as PTSKBO. One of the terms and conditions that are included in the memorandum stipulates that the applicant shall not be allowed to revert back to his erstwhile post once appointed as PTSKBO. He was advised that he would be governed by other relevant rules and orders in force and issued by the Government from time to time. It is the case of the applicant that he accepted the "Offer" by letter dated 28.12.93, in which he reserved his right for reversion to his substantive post of Technical Assistant. It is admitted that the age of retirement applicable to the post of PTSKBO is 58 years, whereas the age of retirement for the post of Technical Assistant is 60 years. Since the reservation of right was claimed by the applicant, subsequently he gave a representation to the respondents on 15.11.94 stating that he

would be attaining the age of 58 years on 7.12.94 and requesting that he may be reverted to his erstwhile permanent post of Technical Assistant. His representation was rejected by the Office Memorandum dated 2.1.95 stating that the request can not be agreed to. Even prior to the issue of this office memorandum dated 2.1.95, the applicant filed this OA on 28.12.94 seeking quashing of his retirement from 31.12.94 and for a direction to the respondents to permit the applicant to function as Technical Assistant till he reaches the age of 60 years.

2. For a proper appreciation of the case, brief details of the earlier litigation may be mentioned. The respondents have stated in the brief facts of the case that due to change in technology, Government decided to replace the obsolete technology of IBM Machines with new computer technology. With this change, the IBM Operator/Technical Assistant became surplus and it was decided to absorb the surplus staff on the new technology in a higher scale of pay after imparting the requisite training and by making them qualify in the Trade Test, after they had achieved the required level of proficiency in the trade. The applicant was given training during 1988-90 but he could not qualify the trade test. He filed an OA 1239/90 before this Tribunal for a direction for absorption in the post of PTSKBO without observing the provisions of the Recruitment Rules. However, this Tribunal in its order dated 24.7.92, held that the applicant was not entitled to the relief sought. Directions were given to the respondents to provide two more chances to the applicant for appearing and qualifying in the test. On successfully qualifying the Test, the applicant and others similarly situated were to be appointed as PTSKBO in the available

vacancies. Subsequently, the applicant passed the requisite Trade Test on 10.8.93 and was accordingly appointed to the post of PTSKBO with effect from 27.12.93.

3. On receipt of retirement notice dated 26.8.94, by which intimation was given that the applicant would be attaining the age of 58 years in December, 1994 and was to accordingly retire on 31.12.94, the applicant approached the Assistant Labour Commissioner (ALC) seeking continuation in service upto 60 years of age. Later he informed the ALC that he had requested for reversion as Technical Assistant by representation dated 15.11.94. The proceedings before the ALC were closed on the request of the applicant. It has been recorded in the proceedings at the time of closing the case on 16.12.94, as under:

"The Directorate of Printing have been requested by the ALC to take up the matter with Ministry for Urban Development and Ministry of Urban Development be convinced to take up the matter with Deptt. of Personnel, to examine the proposal and consider the age of retirement for the post of KBO(PTS) to be enhanced from 58 years to 60 years and they be specifically requested to expedite the matter as Shri Sood is due to retire on 31.12.94. The representation of Shri Sood be also disposed off by the Directorate of Printing - ALC made a specific request to D/Printing officials.

The case is accordingly closed on the request of the workman".

4. At the time of argument, the learned counsel for the respondents raised preliminary objection that the proceedings before the ALC having been closed should act as resjudicata in the OA. Much stress was laid on the alleged suppression of material with regard to the proceedings before the ALC, since no such reference has been made in the application. This objection can not be sustained as the ALC had closed the case on the request of the applicant and had suggested expeditious disposal of the pending representation of the

applicant. Such a representation not having been disposed of at the time of filing of the OA and having been rejected immediately after the filing of the OA, I find there can be no bar in entertaining this application.

5. On his part, the learned counsel for the applicant raised objection with regard to the manner in which the reply has been filed without showing the cause title at top of the reply and without giving details of the person who has filed the reply. It was argued that the detailed procedure laid down in the code of civil procedure for this purpose has not been followed. This objection can not be sustained since the Administrative Tribunal has to ensure that principals of natural justice are followed, rather than getting bogged down by the technicalities. The spirit behind Section 22 of the Administrative Tribunals Act is relevant. Even otherwise, the learned counsel for the respondents made oral submission at the time of hearing, covering various points raised in the counter affidavit.

6. The learned counsel for the applicant advanced a number of arguments in support of his case. These are discussed as under:

6.1) On receipt of the offer of promotion vide the Respondents' memorandum dated 27.12.93, the applicant gave reply on 28.12.93 conveying his acceptance and stating that he was accepting the offer without prejudice to his right for seeking reversion to his substantive post of Technical Assistant. Such a right was invoked by his representation dated 15.11.94. This representation was rejected only after the applicant was forced to retire on 31.12.94. It is argued

that such reversion as sought by the applicant was being allowed by the respondents in other cases but the applicant had been discriminated against.

12

6.2) This argument was countered by the other side stating that the applicant was clearly advised in the memorandum of promotion that he shall not be allowed to revert back to his erstwhile post once appointed as PTSKBO. There is no case for the applicant to accept the appointment conditionally. The only option left with him was for refusing the promotion in an outright way. The applicant had taken over the higher post and had even signed as PTSKBO while accepting the offer of appointment, by his letter dated 28.12.93. It is for the Government to specify the terms and conditions of appointment/promotion. The employee has to accept or refuse the promotion but can not lay down any counter-condition.

6.3) I note from records that it can not be denied that the applicant had taken over the higher post and had also opted in January, 1994 for pay fixation in the post of PTSKBO. He had also filed a case before the ALC which was disposed of with a request that the concerned authority may consider advancing the age of retirement of PTSKBO to 60 years. In view of this and the submission made by the respondents, there is no case with regard to the right for reversion.

discrimination in

6.4) As regards the issue of reversion, it is the case of the respondents that the practice of allowing reversion to the erstwhile post had been in vogue where the feeder category has not been earmarked for abolition or in case where promotion had been made on ad hoc basis. This is the submission made by the respondents in their reply filed

1

before the ALC. A copy of this reply was handed over by the learned counsel for the applicant across the bar at the time of hearing.

6.5) I observe that the memorandum of promotion clearly stipulated that the applicant shall not be allowed to seek reversion. Background to the few cases where such reversion had been allowed had been brought out in the reply filed by the respondents before the ALC. Such a background is not applicable to the case of the applicant. Accordingly, the ground of discrimination has to be rejected.

7.1) It was then argued that there are vacancies of Technical Assistant in spite of the claimed modernisation. Hence denying the benefit of reversion would be unfair to the applicant. The stand of the respondents is however that the post of Technical Assistant stands abolished as and when the incumbent gets promoted as Key Board Operator.

7.2) In the notification dated 14.9.93 relating to the recruitment Rules to Group C and Group D posts in the Government of India Press the schedule shows there are no posts of Technical Assistant in the relevant Government press. The learned counsel for the applicant referred at this stage to the reply filed before the ALC to the effect that two posts of Technical Assistant are still being continued. This reply was filed subsequent to the date of notification referred earlier. It was explained by the respondents that two Technical Assistants who could not be absorbed as Key Board Operators have been allowed to continue. As such their cases are not comparable to that of the applicant, who had been promoted. It was mentioned that

these two posts are being maintained on provisional basis. In the circumstances, the action of the respondents can not be faulted.

8.1) It was finally argued that the applicant had been signing as Technical Assistant in the attendance roll and that he was still being paid only the pay scale of Technical Assistant, even as late as in the month of October, 1994. The respondents have explained that mere signing of attendance register by the applicant does not mean that he is holding the post of Technical Assistant. As regards pay fixation, the matter has been taken up and the bills have already been raised for payment of arrears to the applicant.

8.2) I observe that mere mentioning of a particular designation in attendance roll for the month of December, 1994 can not establish that the applicant had been allowed to get reverted. As regards the delay in pay fixation, though such a delay has not been convincingly explained, I do not propose to go into this aspect since no relief has been claimed for expeditious payment of salary as Key Board Operator.

9. In the circumstances, the OA is dismissed. No costs.

P. J. Thiru
12/5/95
(P.T.Thiruvenkadam
Member(A))

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