

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

Dated 13-11-2001

O.A. NO. 518/2000

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri Surendar Singh,
Roneo Operator/Daftry FICC
Ministry of Chemicals and Fertilizers,
8th Floor Seva Bhawan, New Delhi

R/o Sector No. 2,
Q No. 1125,
R K Puram, New Delhi

.....Applicant.

(By Sh. K. P. Dohare, Advocate)

VERSUS

1. Union of India through
Secretary/Chairman,
FICC Department of Fertilizers,
Ministry of Chemicals and Fertilizers,
Shastri Bhawan, New Delhi
2. Executive Director,
FICC, 8th Floor,
Sewa Bhawan, New Delhi
3. Sh. S N Mehto,
Peon, FICC, 8th Floor,
Sewa Bhawan, New Delhi

.....Respondents
(By Sh. N K Aggarwal, Advocate)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member (A)

Sh. Surendar Singh has come up before the Tribunal seeking to set at nought the decision of the Respondents to revert him from the post of Roneo Operator cum - Daftri to that of a peon and to promote Respondent No.3.

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2. Heard Sh. K P Dohare learned counsel for the applicant and Sh. N K Aggarwal learned Sr. Counsel for the Respondents and also perused the relevant record brought on record. Sh. D S Mahendru learned counsel appeared for respondent No.3.

3. The applicant who joined as a messenger in the Respondents organisation on 10.7.78 was subsequently posted as a peon. In 1989 he applied in response to a circular inviting candidates for promotion to the post of Roneo Operator- cum- Daftri and was selected for the said post on 31.5.1989 ^{on} with probation for a period of two years. On 30.3.2000 he was informed that he would be reverted and S. N. Mehto would be promoted in his place. Hence this application. While Sh. Mehto was senior to the applicant as peon, he had gone away as LDC in 1987 and was reverted as peon in 1995. From 1995 to 1999 he did not make any representation for becoming Roneo Operator - cum - Daftri. In fact he had not applied for the post way back in 1989 when the said post was circulated. In the circumstances, reverting the applicant to accommodate Mehto was improper and malafide. According to the applicant, as he was holding the post of Roneo Operator - cum - Daftri on a regular basis from 1989, a post for which he was selected for and appointed after interview, it was wrong on the part of Respondents to revert him to accommodate Mehto, more so as the post of Roneo Operator - cum- Daftri was not a promotion post but a selection post which was not filled automatically on seniority basis. The applicant in the circumstances seeks the immediate intervention of the Tribunal to render him justice. These pleas were forcefully reiterated by Sh. Dohare learned counsel during oral submissions.

4. On behalf of the Respondents, it is pointed out in their counter affidavit that during the April 1989,

when the post of Roneo Operator - cum - Daftri fell vacant, S N Mehto, the seniormost peon was away as ad hoc LDC in the Department of Fertilizers and was therefore, by mistake, not informed about the said post. In his absence the applicant was given temporary appointment w.e.f. 28.4.1989. After his reversion to the parent organisation Mehto represented that his junior (applicant in this O.A.) was holding the post of Roneo Operator-cum-Daftri and drawing higher pay. Following reminder from Mehto, the matter was re-examined when it was found that Mehto was denied his due by the promotion of the present applicant, who was admittedly his junior. Thus on realising that injustice has been done to a senior member of the staff the respondents took a decision to rectify the mistake and informed the applicant orally on 30.2.2000. The said order could not however, be served on the applicant as he had immediately proceeded on leave which he extended by a few more days, during which time he approached this Tribunal.

5. Respondents aver that the applicant was not selected in 1989 as Roneo Operator - cum- Daftri on the basis of any interview, but was given the post since the seniormost peon Mehto was away as LDC and therefore, left out of consideration. This arose out of a bonafide mistake in the respondents organisation. The applicant's appointment was only on the basis of seniority and not by way of any selection, and that too on account of the seniormost person being wrongly excluded. The present decision of the respondents is to only rectify the mistake committed by the Department, though inadvertently, and

render justice to him. At the same time respondents did not take corrective action in January 1995 when Mehto returned to the organisation, as peon, as they did not want to cause inconvenience to the applicant. The post of Roneo Operator-cum-Daftri is filled generally by seniority and therefore the applicant cannot have any right over Mehto for becoming Roneo Operator-cum-Daftri and therefore, his filing this OA was to secure for himself a benefit which he was not correctly entitled to. In response to a specific query from the court with regard to OA dated 14.4.1999 it was shown by the learned senior counsel for the respondents that while Mehto and Surendar Singh (applicant) were regularised as Messengers on 21.3.1979, the former had joined on 13.2.1978, therefore the applicant was junior to respondent No. 3 and his attempt to challenge the promotion to the latter was mainly mischievous and inadmissible and should be dismissed, prays Sh. Aggarwal learned senior counsel.

6. In the reply filed on behalf of respondent-3, it is pointed out that as he was away from the parent organisation in April 1989, when the disputed post was circulated he did not know about the same and therefore, could not offer his candidature. This had led to the appointment of the applicant to the said post. Only on his reversion did he become aware of the fact and represented for protection of his seniority and grant of the promotion to the above post. What he is claiming and what the applicant is seeking to deny him is the promotion he is entitled to get as of right. The Tribunal, therefore, ^{should} come to his rescue and dismiss the misconceived and unjustified application, according to Mehto, respondent-3.

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7. We have carefully deliberated on the rival contention. In this OA, the applicant seeks to prevent his reversion from a post to which he was appointed and in which he performed his duties for over eleven years while the respondents justify their action by stating that the reversion is only intended to facilitate the rectification of an error committed bonafide. Facts are not disputed. At the time when the disputed post of Roneo Operator-cum-Daftry fell vacant in April 1989, when the previous occupant left it to become a Driver, respondent No. 3 - Shiv Nandan Mehto - the seniormost peon from which category selection to the above post is made, was away as LDC in the Ministry and was therefore not informed. With the result on the circulation of the vacancy, all other eligible peon applied and the applicant, who was seniormost peon barring Respondent 3 was selected and appointed as Roneo Operator -cum - Daftry. Following his reversion in 1995 to the parent organisation as Peon, respondent No. 3 found that a junior was holding the post and drawing a higher salary, which should have gone to him. He therefore, represented to the organisation, though belatedly in 1998 and reminded them on 1999. Respondents on examination, realised their mistake and found that Mehto was not informed when the vacancy arose in 1989, which led to the applicant's selection being the next senior peon in the line. Hence their decision to have the applicant reverted and the respondent placed in the said post. As the respondents action is aimed at rectifying a mistake, which they stated had occurred bonafide, the same cannot be assailed in law. Applicant's plea that respondent no.-3, had not opted for the post of Roneo Operator-cum-Daftry in April 1989 or thereafter is not acceptable, as the latter

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was not informed of the vacancy, a fact brought out on records. He came to know of it only after returning when he represented staking his claim. Applicant's claim that the post was not a promotion post but a selection post which he held on merit is also not borne out by evidence, as the post had been given to the seniormost Peon, as was done in 1980 to Ved Pal Singh, seniormost peon, on whose relinquishing the same in 1989, it was given to the applicant in the absence of the seniormost peon - Mehto - being next in line. In fact being the seniormost respondent - 3 could have been given the post as soon as he was reverted to the organisation 1995, but the official respondents permitted the applicant to continue in the post and draw higher salary till respondent-3, represented, in 1998 and his request was found to be justified and acted upon by the organisation. The applicant cannot in law have a case against his own reversion and the appointment of respondent - 3 in his place. The fact however, remains that this peculiar situation would have been very well avoided had the official respondents kept their records properly updated and taken correct action when the disputed post fell vacant in April 1989. In fact they have added to the confusion by wrongly showing in the seniority list, applicant as having been regularised on 3.7.78 as messenger, ahead of respondent - 3, while it was ^{only} his date of his initial appointment. Respondents' have expressed their regret for their mistakes and agreed to rectify the same. They have to pay the price for committing such irregularities.

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8. In the above view of the matter, we are convinced that the applicant has not made out any case in law for interference. OA therefore fails and is accordingly dismissed and the interim relief granted stands vacated. At the same time, keeping in mind the mistakes committed by the respondents which had led the applicant to approach the Tribunal we order a cost of Rs.2,000/- (Rupees two thousand only) against the official respondents and in favour of the applicant, which should be paid within three months from the date of receipt of the copy of this order.

(Govindan S. Tampi)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

Patwal/