

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 637/89
T.A. No.

199

DATE OF DECISION 31.1.1991.

Shri Bishan Dass Bhagat

Petitioner

Shri M.L. Chawla

Advocate for the Petitioner(s)

Versus

Union of India & Others.

Respondent

Shri P.P. Khurana

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

(Signature)
(AMITAV BANERJI)
CHAIRMAN
31.1.1991.

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PRINCIPAL BENCH: NEW DELHI

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DATE OF DECISION: 31.1.1991.

SHRI BISHAN DASS BHAGAT

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI. CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA. MEMBER (A)

FOR THE APPLICANT

SHRI M.L. CHAWLA. COUNSEL

FOR THE RESPONDENTS

SHRI P.P. KHURANA. COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri Bishan Dass Bhagat has filed this application under Section 19 of the Administrative Tribunals Act, 1985 against the order No.SSTT/DD/APPEAL-CASES/89/540 dated 20.2.1989, withholding his Memorial, addressed to the President wrongfully.

2. The relevant facts of the case are that the applicant was appointed as Telegraph Office Clerk in the Central Telegraph Office, Amritsar in a temporary capacity w.e.f. 1.11.1953. He was confirmed in the post of Telegraph Office clerk w.e.f. 26.4.1954, reckoning his seniority in the clerical cadre (Telegraph Traffic) w.e.f. 1.11.1953. He was deputed as a departmental candidate for undergoing training in the Telegraph Training Institute as Telegraphist from May, 1960. In the meantime, the Punjab Circle was bifurcated w.e.f. 1.1.1961. As a consequence of the bifurcation the Telegraph Traffic officials were asked to give their

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option either to remain in Punjab Circle or to serve in Delhi. The applicant opted to work in Delhi Circle under General Manager, Telephones. After completion of his training he was appointed as temporary C/S Telegraphist in the grade of Rs.110-240 with the initial salary of Rs.114/ in the C.T.O., New Delhi w.e.f. 16.12.1961 vide order dated 28.2.1961 (Annexure-V). The appointment was purely temporary and he was liable to be reverted to his substantive post without assigning any reason. He worked for some time on the Teleprinter and other high speed systems of telegraphs in the C.T.O., New Delhi, but is said to have developed some nervous disability to discharge and perform his duties as Telegraphist. He was, therefore, transferred to non-operative duties to work as Clerk in the office of the Accounts Officer, Telephone Revenues, New Delhi vide order dated 7.3.1963. He also could not pass the signalling tests prescribed for the category and consequently, could not earn the annual increments from 1961 to 1966. On account of his physical incapacity for working as a Telegraphist, he made several representations for his reversion to his substantive post of Clerk and finally the respondents conceded his request under para 38 of the P & T Manual vide order dated 21.1.1967 according to which he was to forego all claims to future promotions to the cadre of Telegraphist and other posts in the line of that cadre. He is aggrieved by the loss of seniority and has prayed for a direction to the respondents to forward his Memorial to the President in which he has requested that his service from 1.11.1953 to 4.10.1967 may be counted for promotion and seniority etc.

To fortify his case Shri M.L. Chawla, the learned counsel for the applicant drew our attention to the

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decision of the Principal Bench of the Tribunal in TA-783/85 (CW-678/82) in the case of Dev Dutt Sharma vs. Union of India & Ors. The circumstances however of the case in Dev Dutt Sharma (supra) are not all fours with the case before us. The learned counsel also drew our attention to Rule 123-A, paragraph 6 of the P & T Manual, Vol. II, which lists the circumstances in which petition may be withheld. The learned counsel, therefore, felt that respondents cannot withhold the forwarding of the Memorial to the President submitted by the applicant.

2. The respondents in their written statment have brought out that the applicant was not reverted to a non-operative job he was only attached with the Accounts Officer, Telephone Revenues, New Delhi for a short while, while functioning as a Telegraphist. Since he was complaining of physical disability to work as Telegraphist he was produced before the Civil Surgeon, Willingdon Hospital but the medical authority did not detect any organic defect and found him fit to write and type normally. Psychodiagnostic test however revealed job dissatisfaction and conflicts in the present job situation. It is, therefore, evident that the applicant was not interested to continue as C/S Telegraphist due to job dis-satisfaction and became habitual in making undesirable excuses. He did not pass the signalling test wilfully and consequently, did not earn annual increments to establish his disability. Since he persisted on reversion to the substantive post in the clerical cadre in Delhi this was agreed to under para 38 of P & T Manual Volume IV. His confirmation as a Clerk was in Punjab Circle and not in Delhi Circle. Under these circumstances, he had to forego his claim to original seniority under paragraph 38 of P & T Manual

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Volume IV, as he was not willing to go to Punjab Circle, where he was confirmed in the clerical cadre. The applicant filed a Suit No.222/77 against Union of India in the Court of Shri R.N. Jindal, Sub-Judge Ist Class Delhi which was dismissed with cost in the judgement delivered on 17.5.1980. He filed an appeal in the Court of Senior Sub-Judge. Delhi which was also dismissed on 27.3.1981. The applicant then filed CWP no.2716/84 in Delhi High Court, New Delhi which too was dismissed on 4.12.1984 with the observation that the petition is misconceived besides being "highly belated". Having failed in the appropriate forum before the establishment of the Tribunal, he has now filed this application on 27.3.1989.

Shri P.P. Khurana, the learned counsel for the respondents submitted that under these circumstances the applicant cannot seek any relief as prayed for in his application from the Tribunal at this stage. The prayer for directing the respondents to forward his Memorial to the President is only a ploy get over the limitation prescribed under Section 20 and 21 of the Central Administrative Tribunals Act.

We have heard Shri M.L. Chawla, the learned counsel for the applicant and Shri P.P. Khurana, the learned counsel for the respondents. The cause of action arose in 1967 when the applicant was transferred in terms of para 38 of P & T Manual, Volume IV from the cadre of Telegraphist vide G.M. Telephones, New Delhi order No.STB-1/20/64-II/107 dated 21.9.1967 to the clerical cadre. The applicant's case has undergone judicial review in the appropriate fora and there is no cause for agitating the same matter on the pretext of

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seeking a direction for getting his Memorial forwarded to the President. Further in terms of Section 19 of the Administrative Tribunals Act, 1985 an application lies in the Tribunal only if a person is aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. In this case there is no order against which the applicant is aggrieved. His grievance is against the non-exercise of discretion vested in the prescribed executive authority in withholding his Memorial to the President. Paragraph 123-A (6) of the P & T Manual Volume II, relied upon by the applicant, clearly states "that the prescribed authority may, in its discretion, ~~with~~ hold a petition" - in the following circumstances; item 7 lists the circumstance relevant in this case:

- (7) "the petition is a representation against the non-exercise in favour of the petitioner of a discretion vested in the prescribed authority; or"

Since the case relates to the exercise of discretionary power vested in the prescribed authority, we do not find any justification for issue of a direction to such designated authority, as the matter is highly belated and has been considered in the appropriate judicial fora and rejected.

In the circumstances the application is dismissed, with no orders as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A) 3/1/91

Amitav Banerji
(AMITAV BANERJI)
CHAIRMAN

'SKK'

Pronounced by me in open Court on 3/1/91

I.K. Rasgotra
3/1/91