

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
A H M E D A B A D B E N C H
~~NEW DELHI~~

O.A. No. 87/87

x19%

~~ExAxxNo.~~DATE OF DECISION 10-4-1990Mr. Bhangi Bachhubhai Kashiram PetitionerMr. MD Rana

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Mr. JD Ajmera

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. AV Haridasan, Judicial Member

&

The Hon'ble Mr. MM Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? N U
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? ✓

Date: 10-4-1990

Bhangi Bachhubhai Kashiram,
Serving as : Helper
Heavy Water Project (Baroda)
408, Yashkamal, Baroda.

- Applicant

(Advocate: Mr.M.D.Rana)

Versus

1. Union of India,
Department of Atomic Energy,
Heavy Water Plant,
Richardson & Cruddas Building,
5th Floor, Byculla,
Bombay-400 008.

2. Administrative Officer,
Heavy Water Project,
P.O.Fertilizernagar,
Vadodara.

- Respondents

(Advocate: Mr.J.D.Ajmera)

JUDGEMENT

Original Application No.87/87

(Hon'ble Shri AV Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Helper-A in Heavy Water Project, Baroda under the Department of Atomic Energy prays that he may be considered for promotion to the post of Tradesman or Higher Grade in the non-industrial establishment as was done in the case of his juniors and that ^{respondents} he/may be directed to ^{him} regularise /in his present post in the Department as Helper-A. The facts of the case as averred in the application can be briefly stated as follows.

...3...

2. The applicant was first appointed as Sweeper in the scale of Rs.70-1-80-EB-1-85 plus allowances in the year 1971 only purely on a provisional basis. This post was later redesignated as Helper-A in the scale of Rs.196-232. Thereafter he was called for interview for the post of Helper-B(C.M) on several occasions. But he made it clear that he was not interested in a promotion in the industrial establishment and he made a claim for promotion in non-industrial establishment. He went on making representation to the respondents to consider his case for promotion as Tradesman or to give him higher grade in the non-industrial establishment considering his long service and as was done in the case of other persons junior to him. In response to one of his representations, the Assistant Personal Officer by letter dated 22nd August, 1986 directed the applicant to appear for interview on 29th August, 1986 in order to judge his suitability for promotion to the next higher grade. Though the applicant attended that interview, he was again given appointment order as Helper-B on industrial establishment. The applicant on 7th November, 1986 wrote to the Administrative Officer stating that he must be considered on the basis of the circular issued by the Government to the post of Tradesman

or that he may be considered for higher grade on industrial establishment since he has been working in that department for a long time. But by letter dated 3rd December, 1986 at Annexure-C the applicant was informed that it was not possible to give him promotion or higher grade on the non-industrial establishment. It was also stated that he had been given sufficient opportunity for promotion which he himself had declined. The request of the applicant has been turned down on the ground that the Government of India had issued a directive to appoint non-supervisory persons only in the industrial establishment with effect from 1.1.1973. But even after this date several persons have been given higher grade and promotion as Tradesman in non-industrial establishment persons juniors to the applicant namely, S/Shri MV Bhanji, J.D. Harijan, ID Solanki and VD Harijan had been given the benefit of higher grade. The refusal on the part of the respondents to consider the applicant for promotion to Tradesman or to confer him higher grade in the non-industrial establishment to which he belong is arbitrary and violative of provisions of the Articles 14 and 16 of the Constitution. The applicant has not been regularised in this present post also. Therefore the applicant prays that the respondents may be directed to regularise him

in his post as Helper-A and to consider him for promotion to the post of Tradesman or grant him higher grade on the non-industrial establishment as was done in the case of his juniors with consequential benefits.

3. This application is opposed by the respondents.

In the reply affidavit it has been averred that the applicant was officiating as Sweeper with effect from 30th December, 1971 in the pre revised scale of Rs.70-85 that this scale was revised to Rs.196-232 redesignating the post as Helper-A, that the present pay scale of the post is Rs.756-940, that the applicant is already a regular employee of the Heavy Water Plant (Baroda) on non-industrial establishment, that he is entitled to be considered for promotion, subject to fulfilment of norms and being found suitable by the duly constituted Selection Committee,

that he was offered the post of Helper-B with effect from 1.5.1980 which he declined, that as per the policy decision of the Government, from 1.1.1973 onwards non-supervisory employees in the Heavy Water Projects are to be classified as industrial employees, that all the other persons than the applicant opted to come to the industrial establishment, that as the applicant alone continued in the non-industrial establishment, it is not possible to give him further promotion as the

concept of creation of permanent post for non-supervisory category on the non-industrial establishment has been given up.

4. We have heard the learned counsel on either side and have also gone through the records produced. One of the grievance of the applicant is that he has not been regularised in service. But this grievance does not survive any more because the respondents have in paragraph-4 of the reply statement stated that the applicant is already a regular employee of the Heavy Water Plant and (Baroda) on non-industrial establishment/is entitled to be considered for the promotion. So as the applicant is informed of the details of his regularisation, this part of the grievance can be taken to be re-dressed. Now coming to the promotion, the case of the respondents is that as non-supervisory post cannot be created in non-industrial establishment as per the directive of the Government from 1.1.1973 onwards, it is not possible to give promotion to the applicant in the non-industrial establishment and as the applicant has himself refused to accept the promotion in the industrial establishment, he has no legitimate grievance. It is evident from the averments in the application and also from Annexure-C that right from the year 1980, promotion to the post

11 

of Helper-B on industrial establishment was offered to the applicant and that he did not accept the same. The case of the applicant is that he belongs to a non-industrial establishment and therefore he should be given promotion or higher grade according to the rules in the non-industrial establishment. It is a common case that the applicant has opted to continue in the non-industrial establishment and that he is treated to be ^{on} / non-industrial establishment. If there is any provision for giving promotion or higher grades in the non-industrial establishment considering the length of his service, the applicant would be entitled to get it. The applicant has in the application averred that persons junior to him in the non-industrial establishment have been given promotion and higher grade while he has been discriminated against, even after coming into force of the Government directive prohibiting creation of posts of non-supervisory cadre in the non-industrial establishment. The applicant has given names of 4 persons who were junior to him and who had been given such promotions or higher grade. The learned counsel for the respondents brought to our notice that in the copy of the application given to the respondents, the names of these 4 persons were not shown. On a scrutiny of the original application



12 37

it is seen that the names are written in ink while the application is typed. Anyway, there is a clear averment in the application that persons junior to the applicant have been promoted in the non-industrial establishment or that they have been higher grade. ^{not} These averments have/been specifically denied in the affidavit filed by the respondents. Therefore we are of the view that the interest of justice would be met if the respondents are directed to consider the applicant for promotion or to grant him higher grade considering the length of his service on the non-industrial establishment from the date on which any person junior to him has been so promoted or given higher grade.

5. In the result, the application is partly allowed. The respondents are directed to inform the applicant as to the details of his regularisation in that post of Helper-A. The respondents are also directed to consider the applicant for promotion or ^{of} for confirmant/higher grade, if any person with less ^{been} length of service than him has ^{been} given such promotion or higher grade with effect from that date and to regularise his seniority accordingly and to grant him all benefits including arrears of wages. There will be no order as to costs.

M M SINGH
(M.M.SINGH)
ADMINISTRATIVE MEMBER

A.V. HARIDASAN
(A.V.HARIDASAN)
JUDICIAL MEMBER