

O.A./591/88
in
M.A.St.303/91

7

Date	Office Report.
24.7.91	<p>Present: Mr.M.D.Rana, learned counsel for the applicant.</p> <p>Mr.M.R.Raval proxy counsel for Mr.P.M.Raval learned counsel for the respondents.</p> <p><u>ORDER</u></p> <p>Adjourned to 30.7.1991. The matter should be listed for further orders as Mr.M.D.Rana, learned counsel informs that the heirs of the applicant have to be substituted and he has made an application for that.</p> <p><i>R.C. Bhatt</i> (R.C.Bhatt) Judicial Member</p> <p><i>M.M. Singh</i> (M.M.Singh) Admv. Member</p> <p>a.a.b.</p>
30.7.1991	<p>Present : Mr. M.D. Rana, learned counsel for the applicant</p> <p>Mr. M.R. Raval for Mr. P.M. Raval, learned counsel for the respondents.</p> <p>Heard Mr. MD Rana learned counsel for the applicant and Mr. M.R. Raval for Mr. P.M. Raval, learned counsel for the respondents. The cause list incorrectly mentioned ^{remember} Mr. Jayant Patel, as learned counsel for the respondents. Office should take note. Mr. Raval seeks two weeks' time to file reply in the M.A.. Time given.</p> <p><i>R.C. Bhatt</i> (R C Bhatt) Member (J)</p> <p><i>M.M. Singh</i> (M M Singh) Member (A)</p> <p><i>Presp. Submitted</i> <i>Reply not filed as per this order</i> <i>Objection</i> <i>SO</i> <i>25/2/92</i></p> <p>*Mogera</p>

M.A.St. 303/91

in

O.A.No.591/88

(C)

Date	Office Report	O R D E R
26.2.1992		<p>Heard Mr.M.D.Rana, learned advocate for the applicant. This is an application for condonation of delay and bringing legal heirs in place of deceased original applicant on record. This application is filed by the widow Sadhhaben to substitute her name in O.A. in place of her deceased husband died on 8th April, 1990. No doubt, there is a delay in filing this application and the time was given to the respondents to file reply and the learned advocate Mr. Rawal appeared on 30.7.1991 had prayed for two weeks' time to file reply in the M.A., which was granted, but till today no reply is filed. Hence the averments made in the application explaining the delay being uncontroverted are accepted. The delay is condoned. The applicant of M.A. be substituted in place of original applicant in original application and the amendment be carried out within a week. M.A. is allowed and the same is disposed of.</p> <p><i>new</i></p> <p>(R.C.Bhatt) Member(J)</p> <p><i>[Signature]</i> (M.Y.Priolkar) Member(A)</p>

O.A./591/88

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Date	Office Report	ORDER
30.3.1992		<p>Learned advocate Mr. Rana for the applicant is permitted to carry out the amendment.</p> <p><i>R. Venkatesan</i> (R. Venkatesan) Member (A)</p> <p><i>R.C. Bhatt</i> (R.C. Bhatt) Member (J)</p> <p>*Kaushik</p> <p><u>O.A. 591/88</u></p> <p><u>Present:</u> Mr. M.D. Rana Learned Advocate for Applicant.</p> <p>Mr. Akat Kaushik Learned Advocate for the respondents.</p> <p>Oral judgement delivered in open Court.</p> <p><i>R.C. Bhatt</i> (R.C. Bhatt) Member (J)</p> <p><i>M.V. Krishnan</i> (M.V. Krishnan) Vice Chairman</p>

(33)

29.7.92

Recovery
from salary

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 591/88
~~PA No.~~

DATE OF DECISION 27.7.1992

Ghanashyambhai Dani Petitioner

Mr. M.D. Rana Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr.N.V. Krishnan : Vice Chairman

The Hon'ble Mr.R.C. Bhatt : Member (J)

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

Ghanashyambhai Dani,
(Advocate: Mr. M.D. Rana)

... Applicant.

Vs.

1. Union of India,
Through
General Manager,
Telecommunication,
Government of India,

2. District Engineer,
Telecommunication,
Bhavnagar.
(Advocate: Mr. Akil Kureshi)

... Respondents.

O R A L J U D G M E N T

O.A./ 591 / 88

Date: 27.7.92.

Per: Hon'ble Mr. R.C. Bhatt

: Member (J)

1. Mr. Rana learned advocate for the applicant and Mr. Akil Kureshi learned advocate for the respondents are present.

2. The original applicant Mr. Ghanashyambhai Dani has filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the relief that the impugned order dated 10th August, 1988 issued by the Telecom. Dist. Engineer, Bhavnagar for recovery of the amount and for giving effect to the order of reversion from 4th April, 1984, be quashed and set aside and the respondent no. 2 be directed to stay the implementation of the order dated 7th September, 1988 issued

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by the account officer. The applicant has expired during the pendency of this application and his heirs and legal representatives are on record. The respondents have resisted the application by filing reply.

2. The case of the applicant is that he was promoted in the year 1982 and the order of reversion was taken effect from 4th April, 1984. The applicant being aggrieved by this order reverting him from the post of technical supervisor to the post of technician in the grade of Rs. 260-480 filed Civil Suit for a declaration and injunction before the court of Civil Judge (S.D.) Bhavnagar, praying that the order of reversion be held as illegal and unlawful. Ultimately, the suit was transferred on the constitution of the Central Administrative Tribunal. The Tribunal dismissed the application for default on 21st March, 1988. Thereafter, the restoration application was filed which was also rejected. Eventually, the respondent no. 2 passed the order dated 10th August, 1988, demoting the applicant from technical supervisor to the post of technician with effect from 4th April, 1984, the copy of which is produced at Annexure A/1. The learned advocate for the applicant has submitted that the order Annexure A/1 is quite illegal which ^{is} the effect of recovering the salary from 1984 till the actual reversion. It is submitted on behalf of the applicant that the authority has no power to effect

the recovery from the applicant. The respondent no. 2 gave direction to J.A.O. to make the recovery from the pay of applicant and the J.A.O. in pursuance calculated the recovery of the amount of Rs. 11,332/-

3. Learned advocate for the applicant submitted that the consequential order of the G.A.O. along with order Annexure A/1 dated 10.8.1988 require to be quashed and set aside because the original applicant was legally protected under the order of the court against his reversion. The applicant has produced at Annexure A/2 the order dated 7th September, 1988.

4. The learned advocate for the respondents submitted that the applicant was reverted to the post of technician by order dated 6th April, 1984. Mr. Kureshi learned advocate for the respondents submitted that the date on which the learned Civil Judge (S.D.) has passed the order of status quo, the applicant was already reverted to the post of technician but as there was order to maintain status quo, he was paid the salary of the higher post of Technical Supervisor. He submitted that as the application is ultimately dismissed, the respondents were entitled to recovery the amount of Rs. 11,332/-. Admittedly, respondents paid to the applicant salary on the basis of the status quo order of the court. Learned advocate for the applicants submitted that the Annexure A/1 dated 10.8.1988 of Telecom. Dist. Engineer, Bhavnagar shows that the order for reversion

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dated 6th April, 1984 was kept in abeyance presumably due to the order of status quo passed by the court. He submitted that the respondents could have moved the court for vacating status quo order if they wanted the order of reversion implemented but they did not choose to do so and continued to pay higher salary to the applicant on the basis of this applicant on higher post. Therefore, now it is not open to the respondents to recover the amount of higher pay paid for the period from 4.4.1984 to 31.7.1988 during which period the order of suspension was kept in abeyance. He submitted that the respondents ordinarily would not pay the scale of higher post if the reversion order was to be implemented nor is there any material to show that reversion order was implemented. Hence, order Annexure A/2 for recovery of the amount from the applicant in pursuance of the order Annexure A/1 requires to be quashed and recovery if made in pursuance of the impugned order Annexure A/2 dated 7.9.88 shall have to be refunded.

ORDER

Application is allowed to the extent that the order Annexure A/2 dated 10th August, 1988 is quashed and set aside and the order Annexure A/1 giving effect of reversion to the original applicant from 4.4.1984 is also

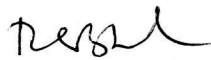
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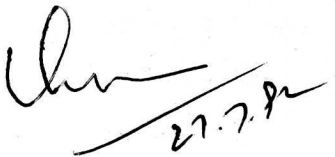
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set aside and it is held that it shall effect
from 10th August, 1988, and the respondents
are directed to refund the amount if any
recovered in pursuance of order Annexure
A/2 dated 7.9.1988. Application is disposed
of. No order as to costs.


(R.C. Bhatt)
Member (J)


(N.V. Krishnan)
Vice Chairman

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