

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 282/90

TXN NO.

DATE OF DECISION 14-9-1994

Shri D.N. Rao

Petitioner

Mr. R.V. Deshmukh

Advocate for the Petitioner (s)

Versus

Union of India and ors.

Respondent

Mr. Akil Kureishi & Mr. Adesara

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel

: Vice Chairman

The Hon'ble Mr. V. Radhakrishnan

: Member (A)

JUDGMENT

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

50.

CASE NUMBER

STATE ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DECISION

.02,6,0

.02,7,0

DATE OF DECISION

Plaintiff

Plaintiff for the respondent(s)

6-18

Respondent

Plaintiff for the respondent(s)

COURT

Type of procedure

Type of procedure

ITEM

Whether the decision of the court is to be annulled or set aside and for what reason

Whether the decision is to be quashed

Whether the court has jurisdiction to hear the case and whether the decision is to be quashed

Whether the court has jurisdiction to hear the case and whether the decision is to be quashed

(11)

O.A./282/90

Shri D.N. Rao,
Head Clerk,
Office of Executive Engineer,
Telecom Civil Division,
Street No.6, Janta Society,
Community Hall, Near L.I.C. Building,
Rajkot-360 001 : Applicant

(Advocate: Mr. R.V. Deshmukh)

Versus

1. Union of India
Through :
the Superintending Engineer(C)
Postal Civil Circle, 1st floor,
Naranpura Area Post Office,
Naranpura, Ahmedabad-380 013.
2. The Chief General Manager,
Telecom, Gujarat Telecom Circle,
Near High Court, Ambica Chambers,
Navrangpura, Ahmedabad.
3. The Superintending Engineer,
Telecom Civil Circle,
5th Floor, Vijay Towers,
Ankur Complex, Nr Ankur Bus stand,
Naranpura, Ahmedabad. : Respondents

(Advocate: Mr. Akil Kureshi &
Mr. Adesara)

Date : 14-9-1994

JUDGMENT

Per : Hon'ble Mr. N.B. Patel : Vice Chairman

The applicant has filed this application praying for the following reliefs :-

" (A) Be pleased to quash and set aside the Order No.21 (6) SEPCC(AHD)/90/347 dated 25th June 1990 passed by the respondent No.1 at Annexure-A II and further be pleased to direct the respondents that

the applicant having been promoted by a validly constituted Departmental promotion Committee may be promoted and posted as Office Superintendent (Telecom) Civil Circle, Ahmedabad.

(B) Be pleased to award the costs of this application".

2. The impugned order dated 25.6.1990 is produced at Annexure A-11 whereby the Respondent No.4 Smt. B.H. Khalsa, is purported to have been "officially absorbed" at Ahmedabad as Office Superintendent in the Telecom Civil Circle, Ahmedabad w.e.f. 30.6.90 A.N. consequent upon the retirement of one Shri S.A. Rahim who was till then working as Office Superintendent in the Telecom Civil Circle, Ahmedabad.

3. We may first set out certain facts about which there is no controversy between the parties. The applicant and the respondent No.4 both originally belonged to the cadre Head Clerk in the Gujarat Telecom Circle at Ahmedabad. The applicant was senior to the Respondent No.4 in the cadre of Head Clerk. At the relevant time, there were 4 Circles in the Gujarat Telecom Circle, namely, Postal Civil Circle, Ahmedabad, Postal Electrical Circle, Ahmedabad, Telecom Electrical Circle, Ahmedabad and Telecom Civil Circle, Ahmedabad. Each of these Circles had one post of Office Superintendent. To be eligible for promotion to the post of Officer Superintendent from the post of Head Clerk, one was required to

complete 5 years of service as a Head Clerk. The post of Office Superintendent is a selection post and Departmental Promotion Committee is required to consider and decide about the fitness of persons for promotion from the post of Head Clerk to the post of Office Superintendent. The applicant's case for promotion to the post of Superintendent was considered by the D.P.C. and he was found fit for promotion in 1988. At that time, the applicant was working as Head Clerk in the office of the Department at Rajkot. The applicant was actually promoted to the post of Office Superintendent by order dated 12.12.1988 (Annexure A-1) and he was posted as Officer Superintendent under S.E., Postal Electrical Ahmedabad. Soon after receiving this promotion order, the applicant sent Telegram (Annexure A-2) dated 15.12.88 stating that he was not prepared to accept promotion as Office Superintendent "without firm assurance". On the same day, i.e. 15.12.1988, he also sent a letter from Rajkot addressed to the S.E., Postal Civil Circle, Ahmedabad wherein he mentioned that he had come to know that the Postal Electrical Circle, Ahmedabad is likely to be shifted to South India or elsewhere in near future and that, if that happens, there was every possibility that he may again be reverted to the post of Head Clerk. In the letter the applicant stated that if such a contingency arises in future and consequently he is to be reverted he may be posted to and accommodated

in any of the existing divisions at Ahmedabad and that he should not be posted back to Rajkot. The applicant specifically wanted an assurance to this effect to be given to him. He ended his letter in the following words :

"In case no such assurance could be given, then I am not interested in the promotion for the present and may be allowed to continue at Rajkot".

It is very clear from this letter that the applicant stated that if he was not given a firm assurance as demanded by him, he was not interested in promotion to the post of Office Superintendent and he may be continued as Head Clerk at Rajkot. The Superintendenting Engineer, Postal Civil Circle, Ahmedabad, to whom the telegram and the letter were addressed replied to the applicant telegraphically (vide Annexure A-4) stating that no assurance "for hypothetical issues" could be given and the office had, therefore, taken note that the applicant was not willing for promotion to the post of Office Superintendent. This telegram was followed by a letter which is more or less in the same terms. It was clearly mentioned that no assurance can be given that the applicant would be kept at Ahmedabad in the event of his reversion to the post of Head Clerk. It was also clearly stated that the applicant's letter was treated as his refusal to accept the promotion offered to him. The applicant

(13)

did not make any demur against the acceptance of his refusal of promotion. Since only one post of Office Superintendent was to be filled up at the relevant time and since the applicant's refusal of promotion was accepted, the DPC was held again and the Respondent No.4, who was admittedly immediately next junior to the applicant, was selected for promotion and promotion order dated 20.12.1988 (Annexure R-7) was issued. Pursuant to this promotion order, the Respondent No.4 took over charge as Office Superintendent on 3.1.1989 or 4.1.1989. On 5.4.1989 or there about, the entire Postal Electrical Circle Ahmedabad was shifted to Bangalore but a policy decision was taken at that time to accommodate, as far as possible, the employees working in the Postal Electrical Circle, Ahmedabad in the other three Circles at Ahmedabad. It happened that all the employees of the Circle, which was shifted to Bangalore, except the Respondent No.4, could be accommodated in the other Circles in Gujarat. So far as the Respondent No.4 is concerned, she was also not physically shifted to Bangalore but an arrangement was made so that she may continue to work at Ahmedabad though she would be charged against the post of Office Superintendent which was also transferred to Bangalore with the shifting of the Electrical Circle to Bangalore. In other words, the arrangement made was that though the Respondent No.4 will, on paper, be on the Establishment of the Electrical Circle, Bangalore,

and she would draw her salary etc. from the Bangalore Circle, she was required to actually work at Ahmedabad. In this connection, a proposal was made by the Superintending Engineer of Postal Civil Circle, Ahmedabad to Chief Engineer (Civil), Department of Post, New Delhi, by letter dated 12.4.1989 (Annexure R-9), mentioning therein that all the staff members except the Respondent No.4 were suitably accommodated in Ahmedabad itself. It was stated that, so far as Respondent No.4 (who is a lady), it was proposed that this post may remain on the roll of Superintending Engineer (Electrical) Postal Electrical Circle, Bangalore, but the Respondent No.4 may be continued to work at Ahmedabad by attaching her with Postal Civil Circle, Ahmedabad for day-to-day working. It was stated in the letter that this was the only way in which reversion and transfer of officials can be avoided pointing out that if the Respondent No.4 was reverted, it will result in a chain reaction and some other officials would also have to be reverted. It was stated that the Superintending Engineer (E) Postal Circle Bangalore can fill up all vacancies at Bangalore but may not fill up the post of Office Superintendent at Bangalore till it was possible to suitably accommodate the Respondent No.4 as Office Superintendent in any one of the three Circles remaining at Ahmedabad after the shifting of Electrical Circle to Bangalore. It was also mentioned in the letter that this arrangement may have to be continued at the most for a year and a quarter as one of the

Office Superintendents, namely, one Shri Rahim, was to retire w.e.f. 30.6.1990. It was also mentioned that for some time the services of the Respondent No.4 would be required at Ahmedabad for winding up the work of Electrical Circle and subsequently this "special" arrangement may have to be kept in operation for some more time till a clear vacancy in the post of Office Superintendent arises on the retirement of Shri Rahim on 30.6.1990. The letter clearly mentioned that this would be an ideal solution under the circumstances, especially to honour the commitment of the Department to the staff that nobody would be reverted and transferred on account of shifting. It was also mentioned that from the audit point of view also, this proposal would not entail any extra expenditure. The letter was concluded by pointing out that this type of arrangement had been made at the time of shifting of Postal Electrical Division Bombay to Bangalore and the staff members who could not be absorbed at Bombay against the sanctioned posts were paid from the Electrical Postal Circle Bangalore till they were permanently absorbed at Bombay. This proposal was accepted by the Chief Engineer (Civil), Government of India, Ministry of Communication, Department of Posts, New Delhi by his letter dated 18.7.1989 (Annexure A-10). It may be noted that the Postal Electrical Circle, Ahmedabad was shifted to Bangalore on 5.4.1989. Proposal to continue the Respondent No.4 at Ahmedabad as stated above was made on 12.4.1989 and it was accepted on 18.7.1989. Shri Rahim retired w.e.f. 30.6.1990 (after noon) and the impugned order Annexure A-11 was issued on 25.6.90

(P)

mentioning that, consequent upon the retirement of Shri Rahim w.e.f. 30.6.1990 after noon, Smt. B.H. Khalsa (Respondent No.4) Office Superintendent, erstwhile Postal Electrical Circle, Ahmedabad, was finally absorbed at Ahmedabad as Office Superintendent w.e.f. 30.6.1990 after noon and was posted as Office Superintendent in Telecom Civil Circle, Ahmedabad.

It is the above order the legality whereof is challenged by the applicant. According to the applicant, it was he who should have been promoted as Office Superintendent against the permanent vacancy which arose on the retirement of Shri Rahim. It requires to be noted here that it is only this action of the Department in "absorbing" the Respondent No.4 against the vacancy which arose on the retirement of Shri Rahim that is challenged by the applicant. The applicant had never challenged, till the filing of the present O.A. in June, 1990, the acceptance of his refusal of promotion, which was done in December, 1988 nor the promotion of the Respondent No.4 which was made by the order dated 20.12.1988 (Annexure R-7). While pointing out this position, it must, however, be mentioned that the applicant had made a representation (Annexure A-5) dated 15.4.1989 stating therein that it seemed to him that there was a design to accommodate the Respondent No.4 at Ahmedabad and to continue her "officiation" till a clear vacancy in the post of O.S. occurred on the retirement of Shri Rahim. The applicant also stated in this representation dated 15.4.1989 that he was willing to go to Bangalore alongwith Postal Electrical Circle and was also willing to work in any "officiating" arrangement

(19)

that may be made "in the Coordination Circle or under its Coordinative jurisdiction". He also mentioned that if Smt. Khalsa was continued by making an "Officiating" arrangement or otherwise in the cadre of O.S., that would adversely affect his prospects. This representation was rejected by the Superintending Engineer by his reply to the applicant (Annexure A-6) dated 5.7.1989. It may be recalled here that before the applicant made the representation (Annexure A-5) dated 15.4.1989, a proposal dated 12.4.1989 (Annexure-9) was already sent to the highest level for approving the arrangement suggested in Annexure R-9. Of course, that proposal was accepted by letter (Annexure R-10) dated 18.7.1989. At this stage, it may also be noted that when the decision to shift Electrical Circle from Ahmedabad to Bangalore was taken by the Ministry of Communications, Department of Posts, Government of India, the intention of the Government of India to accommodate, as far as possible, all the non-gazetted staff members of Ahmedabad Circle (which was to be shifted to Bangalore) at Ahmedabad was also taken. This is what is referred to as the commitment made to the staff members in the proposal of the Superintending Engineer, Postal Civil Circle, Gujarat, in his letter (Annexure R-9) dated 12.4.1989. It is also mentioned above that all the staff members except only the incumbent of the post of office Superintendent in the Electrical Circle at Ahmedabad could be accommodated in the Ahmedabad Office.

R-9

4. The respondents have resisted the application on the ground that the applicant, having clearly declined promotion in December, 1988 unless he was given a firm assurance to be retained at Ahmedabad in the event of his reversion to the post of Head Clerk on the shifting of the Circle to Bangalore, had no right to go back on his refusal of promotion as was tried to be done by him by his representation dated 15.4.1989 because, by that time, the next junior, i.e. Respondent No.4, was already considered by the DPC and actually promoted to the post of O.S. at Ahmedabad by the order dated 20.12.1988 and she had started working on that post from 3.1.1989 or 4.1.1989. On behalf of the respondents, it was also argued that if the applicant was aggrieved by the rejection of his representation (Annexure A-5) dated 15.4.1989, he should have taken appropriate legal remedy soon after the rejection of his representation by the letter Annexure A-6 dated 5.7.1989. We find ample substance in this contention of the respondents and we also take note of the fact that the only relief claimed in the O.A. is for quashing of the order (Annexure A-11) dated 25.6.1990 whereby the Respondent No.4 was posted against the clear vacancy arising on the retirement of Shri Rahim w.e.f. 30.6.1990. Therefore, the only question which falls for consideration is whether the order posting the Respondent No.4 against the clear vacancy which arose on 30.6.1990 is illegal, arbitrary or unfair.

5. Before considering the challenge posed by the applicant against the impugned order Annexure A-11,

one point may be disposed of. During the pendency of the application, but as late as in 1993, the applicant has introduced an amendment in the O.A. to the effect that the Respondent No.4 was promoted as Head Clerk on 20.12.1988 and as she had not completed 5 years of service as Head Clerk in December, 1988 (when her case was considered by the DPC) she was not eligible for promotion to the post of Office Superintendent. In connection with this contention, belatedly introduced in the O.A., it must first be pointed out that no relief, for having quashed the promotion order of the Respondent No.4 dated 20.12.1988, ^{Quashed} is even now claimed in the O.A. Even if such a relief was claimed at the time of the amendment in the O.A., it could not have been granted on the ground that it was too stale to be granted. Apart from this, it was pointed out by the learned Additional Standing Counsel that when the DPC considered the case of the Respondent No.4 and when she was promoted by order dated 20.12.1988, the Respondent No.4 had already completed 5 years of service. It was also pointed out that the earlier requirement that only persons who have completed 5 years of service as on the 1st July of the year of recruitment was subsequently deleted with the result that the period of 5 years was to be counted from the date of promotion to the post of Head Clerk till the date of actual promotion to the post of Office Superintendent and that, in the present case, the Respondent No.4 had completed 5 years of service

when her case for promotion was considered and she was promoted.

6. It is very clear that when the promotion order of the applicant dated 12.12.1988 (Annexure A-1) was issued there was a clear vacancy in the cadre of Office Superintendent in Gujarat and it was against that vacancy that the applicant was offered promotion but he had declined it. Consequent upon the applicant's refusal to accept promotion, the Respondent No.4 was promoted by the order dated 20.12.1988 (Annexure R-7) and this order does not show that the Respondent No.4 was promoted on adhoc basis or even on temporary basis or even on probation. It is true that the learned Counsel Shri Kureshi conceded that a period of two years' probation for promotees to the post of Office Superintendent is required by the Rules. However, even assuming that she was statutorily required to be treated as being on promotion for a period of two years, she is never reverted on the ground of unsatisfactory performance and, therefore, must be deemed to have been confirmed w.e.f. 3.1.1991 or 4.1.1991, as the case may be, depending upon the date she took over charge as Office Superintendent.

7. The next contention of Mr. Deshmukh, for the applicant, was that when the vacancy arose on the retirement of Shri Rahim w.e.f. 30.6.1990, the applicant was entitled to be considered for promotion against that vacancy and the Respondent No.4 should

not have been brought back from the establishment of Bangalore and posted against the said vacancy.

Mr. Deshmukh contended that the right of an eligible person to be considered for promotion is a valuable right, a fundamental right, and by being not considered for the vacancy arising on the retirement of Shri Rahim, the applicant was deprived of his valuable, nay fundamental right. There cannot be any quarrel with the proposition that the right of eligible person to be considered for promotion is a fundamental right and this proposition does not require backing-up by any decision. However, the situation which arose in this case was not that the Respondent No.4 was for the first time considered for promotion to fill up the vacancy which had arisen w.e.f. 1.7.1990 though she was junior to the applicant in the cadre of Head Clerk. As already mentioned, the Respondent No.4 was regularly considered for promotion by the DPC in 1988 and was promoted against a clear vacancy which was then existing in the Ahmedabad Circle. What happened on the retirement of Shri Rahim was only that the Respondent No.4 was provided against that vacancy by bringing her back from Bangalore Establishment to Ahmedabad Establishment. The question is whether such shifting of the Respondent No.4 from Bangalore to Ahmedabad against the said vacancy was in any way illegal. In our view, there is no prohibition pointed out against such administrative action anywhere in any Rules. The action in shifting the Respondent No.4 to Ahmedabad cannot, therefore, be held to be illegal. There was no illegality as such in that

action. It is, of course, true that such an administrative action should not be resorted to in colourable exercise of administrative powers. Such a power cannot be exercised with the ulterior motive of depriving even junior persons of their promotion prospects. However, in the overall circumstances of this case, it is not possible to say that the action in bringing the Respondent No.4 to Ahmedabad from Bangalore was actuated by any personal malice against the applicant or even against persons who may be juniors to the applicant in the cadre of Head Clerk. A policy was formulated at the time when Ahmedabad Circle was to be shifted to Bangalore and, as a part of that policy, it was decided in April, 1989 that, as far as possible, all non-gazetted staff-members of the Ahmedabad Circle will be accommodated in the remaining three Circles of Ahmedabad. In fact also, all such members could be accommodated in the remaining three Circles at Ahmedabad but only the Respondent No.4 could not be accommodated here. It was, therefore, that an arrangement was worked out and proposed by the letter (Annexure R-9) dated 12.4.1989 to charge the Respondent No.4 against the Circle at Bangalore and in that proposal itself it was mentioned that this arrangement will have to be continued till 30.6.1990 when Shri Rahim retired. This proposal was accepted at the highest level as shown by the letter (Annexure R-10) dated 18.7.1989. Thus, it was as a part of the policy devised by the Department in the larger interests of all the affected employees that the Respondent No.4 was accommodated at Ahmedabad against the vacancy which arose on the retirement of

3

Shri Rahim. It is not possible to brand this action as being in colourable exercise of the administrative power. There is absolutely no material on record to indicate that the Respondent No.4 was actually given an assurance at the time of her promotion in December, 1988 that though she will be promoted against the post at Bangalore she will be accommodated at Ahmedabad till 30.6.1990 against the post at Bangalore and thereafter she will be shifted here against the vacancy to arise on the retirement of Shri Rahim. If the respondent No.4 was given any assurance, the action of the Department would have been exposed to the charge of being unfair, because the Department had not given any assurance to the applicant when he demanded the same. If the applicant had also accepted promotion even on the risk of going to Bangalore, he would also have received the same treatment which the Respondent No.4 has got. At least, there is nothing on record to show that while the Department declined to give any assurance to the applicant, they had given some assurance to the Respondent No.4. It also needs emphasis that, in the very proposal made in 1989, it was suggested that the Respondent No.4 may eventually be accommodated against the vacancy arising on the retirement of Shri Rahim and in that way the policy formulated in April 1989 will be given effect to such an assurance was neither demanded by the applicant in December 1988 nor given to her. ^{As} ^{Against} this the applicant had demanded a firm assurance and the assurance which the applicant had sought, when he was offered promotion, was too absurd to be given by any Department. He had stated that he was prepared to

accept promotion at Ahmedabad provided he was given an assurance that when Ahmedabad Circle was shifted to Bangalore, if any occasion arose to revert him to the post of Head Clerk, he must be retained at Ahmedabad and not transferred to Rajkot. He wanted a firm assurance to this effect saying that, unless such an assurance was given to him, he was not interested in promotion. The Department rightly declined to give any such assurance as indeed no such assurance on hypothetical contingencies, possibly arising in future, could have been given. The entire predicament in which the applicant finds himself is his own creation.

8. In the circumstances of this case, it is also not possible to accept the contention that the Respondent No.4 was junior to the applicant when she was accommodated in Ahmedabad Circle against the vacancy which arose on the retirement of Shri Rahim. In this connection a reference may be made to guideline No.17.12 of the Guidelines on Departmental Promotion Committees. This guideline reads as under :

"17.12 When a Government employee does not want to accept a promotion which is offered to him he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially

refused promotion, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises whichever is later. On the eventual promotion to the higher grade, such Government servant will lose seniority vis-a-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above mentioned policy will not apply where ad hoc promotions against short term vacancies are refused". (Emphasis provided)

9. It is clear from the above guideline that on the applicant declining promotion, the Respondent No.4 was promoted as Office Superintendent while the applicant remained in the cadre of Head Clerk. The Respondent No.4 was never reverted to the cadre of Head Clerk. There was no question in this case of a Head Clerk of Bangalore Circle, whether senior or junior to the applicant, having been brought to Ahmedabad and posted against the vacancy which arose on 1.7.1990. Guideline No.17.12 quoted above would, on the contrary, indicate that if after the promotion of the Respondent No.4 as Office Superintendent, the applicant was considered for promotion against the vacancy next arising, then also the applicant would have been junior to the Respondent No.4 as Office Superintendent. By being brought from Bangalore to Ahmedabad as Office Superintendent, the Respondent No.4 has not affected the seniority of any Office Superintendent working in the Ahmedabad Circle. We have pointed out above that, otherwise also, there was no illegality in shifting the Respondent No.4 from Bangalore to

Ahmedabad in the peculiar circumstances of this case. We have also pointed out that there was also nothing unfair or arbitrary or discriminatory about such shifting of the Respondent No.4 from Bangalore to Ahmedabad.

10. In the result of the above discussion, we find that the challenge posed by the applicant against the impugned order Annexure A-11 must fail. The application, is, therefore, dismissed. However, there will be no order as to costs.


(V. Radhakrishnan)
Member (A)


(N.B. Patel)
Vice Chairman