

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 836 of 96 with MA 202 of 96(OA 579/95)

Present : Hon'ble Mr. Justice A. K. Chatterjee, Vice-Chairman
Hon'ble Mr. M.S. Mukherjee, Member (A)

J. P. PANDEY

VS

UNION OF INDIA & ORS

For the petitioner : Mr. R.K. De, counsel

For the respondents : Mr. M.S. Banerjee, counsel

Heard on : 18.9.96 : Order on : ~~19.11.96~~ 5-12-1996

O R D E R

M.S. Mukherjee, A.M.:

This is a petition u/s 19 of the A.T. Act, 1985, in which the petitioner is aggrieved by the order dt. 15.6.96 (Annexure-A6 to the petition) by which the Superintending Engineer, Coordination Circle, Eastern Zone, CPWD, Calcutta, purported to comply with the orders of this Tribunal dated 1.5.96 in O.A. 579 of 95 (Debasish Chatterjee - vs- UOI) quashed the previous posting order of the Deptt. dated 27.3.95 posting the petitioner to BFR Circle, CPWD, Calcutta as Stenographer, Gr.II and instead he has been posted with immediate effect to Malda.

2. The facts of the case are that earlier by an order dt. 12.4.94, when the petitioner was working as Stenographer, Ordinary Grade and attached to Calcutta Electrical Division-I, Calcutta, was offered to be promoted as Stenographer, Gr.II to take up an existing vacancy at Malda Central Circle, Malda. The said order of promotion provided for a facility of option either to accept the promotion or to refuse the same. The petitioner states that he did not exercise his option for promotion to an outstation and that he subsequently on 18.4.95

informed the authorities that he was not willing to accept promotion out of Calcutta. The petitioner's contention is that by his such option, he could not be posted out of Calcutta but his seniority position in the selection panel by the relevant DPC for promotion as Stenographer, Gr.II remained undisturbed. Thereafter, in March 1995, after about one year, when certain vacancy occurred in BFR Circle of CPWD at Calcutta and as the petitioner was senior to many, he was given posting at Calcutta on promotion as Stenographer, Gr.II by an order dated 27.3.95. The said promotion as Steno, Gr.II was given effect to from the actual date of his assumption of the charge of the post and he accordingly reported to the concerned office by filing his joining report on 8.5.95. Since then, the petitioner claims to have been working as Steno, Gr.II in Calcutta to the entire satisfaction of the authorities.

3. However, on 27.3.95 another office order was issued and one Shri Debasish Chatterjee and several others were offered promotion for the first time as Steno, Gr.II and as in the past they were offered stations outside Calcutta, ^{it also} ^A ~~the~~ ~~station~~. Shri Debasish Chatterjee accepted the offer of promotion but did not accept the condition to move over to the station where the said vacancy was lying. He demanded that a vacancy be created in Calcutta, the popular station and he be posted in Calcutta and when this request was turned down, he moved this Bench of the Tribunal through OA 579 of 1995 which OA was decided by the Tribunal by its order dt. 1.5.96. Shri Chatterjee had impleaded the present petitioner as a private respondent in that OA and he (Shri Debasish Chatterjee) also duly served notice on the present petitioner about the case. However, it is the contention of the present petitioner that when that case was heard and decided by this Bench of the Tribunal, the Tribunal itself did not issue any notice to him (the present petitioner). As such, this Bench of the Tribunal decided OA 579/95 at the back of the present petitioner and that the said order of the Tribunal has prejudicially affected

4. By the said judgement dated 1.5.96 in OA 579/95 (Debasish Chatterjee -vs-UOI), this Bench of the Tribunal held that the previous order of Superintending Engineer, Coordination Circle, CPWD, Calcutta, dated 27.3.95 which partially modified an earlier order of the CPWD dt. 12.4.94 promoting and posting the respondent No. 4 in that OA (i.e. the present petitioner) against an existing vacancy in Calcutta be quashed forthwith and in the resultant vacancy, the official respondents shall make fresh promotion from amongst the eligible persons by following the relevant rules. The prayer of Shri Debasish Chatterjee (applicant of that OA) for modification of the impugned order dt. 27.3.95 to the effect that he (Debasish Chatterjee) be promoted and posted in Calcutta, was rejected by the Tribunal.

5. The present petitioner's ~~other~~ grievance is that by the said order vis-a-vis private respondent No.4 this Tribunal quashed the promotion and posting order of the present petitioner (who was respondent No. 4 in that OA) at his back and also when this was not the specific relief sought for by the petitioner of OA 579/95. In passing this order, the Tribunal did not ^{also allegedly} examine the relevant facts correctly.

Subsequently, the official respondents by the impugned office order dt. 14.5.96 (Annexure-A6) have ordered posting of the present petitioner to Malda as already indicated.

6. The petitioner has, therefore, prayed for a declaration to modify that part of this Tribunal's order dt. 1.5.96 in OA 579/95 to the extent prejudice has been caused to the present petitioner and he has also asked for a direction on the respondents to quash the impugned order dt. 14.6.96 and also to grant him consequential benefits by restoring him to his original position before the order dt. 1.5.96 had been passed by the Tribunal.

7. The official respondents have contested the case by filing a written reply. The petitioner meanwhile has filed MA 202 of 96 seeking recall of sub-paras (i) and (ii) of para 20 of the order dated 1.5.96 in OA 579 of 95. The official respondents have also filed a reply to the said MA.

8. We have heard the learned counsel for the parties and have gone through the documents produced. At the time of hearing, Mr. R.K.De, the 1d. counsel for the petitioner has submitted that he does not wish to argue on MA 202/96. Because of urgency of the matter, we propose to dispose of the case at the admission stage itself.

9. The entire case emanates from the original office order dt. 12.4.94 (the petitioner points out that this order should be dated 12.4.94) ~~and previous judgments OA 579/95~~ issued by the Supdt. Engineer, Coordination Circle, E.Z. CPWD regarding earlier promotions to the post of Steno, Gr.II and the related proceedings. From the preamble paragraph of the said office order, it is gathered that promotion/posting order in respect of 6 specific Steno, Ordinary Grade to Sr. Grade ordered earlier on 11.2.94 was thereby cancelled due to refusal/conditional acceptance/non-receipt of intimation within stipulated period from those six employees, who refused to move to the new station on promotion. Consequent on such cancellation, 6 new Steno, OG were granted promotion as Senior Grade Stenographer on purely temporary basis w.e.f. the actual date of their assumption of charge of the higher post. These new incumbents included also the present petitioner, who at the time of promotion had been posted as Steno, OG in CED-I/Calcutta. Under the said order, it was prescribed that these new promotees would have to intimate their acceptance/refusal of the above promotion/posting order within 15 days whether they would accept the promotion to the new station of posting. It was further specifically laid down that any conditional acceptance of promotion would not be entertained and that in

case no intimation of acceptance/refusal of the above promotion would be received from the promoted persons within a specific date, his promotion would be liable to be cancelled without making any further reference. As part of the said order, these new promotees were all transferred from their existing station to different stations on promotion and the present petitioner was transferred from his present posting at CED I/Calcutta to MCC/Maldah against an existing vacancy.

10. It is, therefore, clear that the aforesaid promotion was conditional of acceptance by the promoted persons as indicated in the said promotion order and that if transfer on promotion was not accepted or no option was given within the stipulated period, the promotion was liable to be cancelled without any further reference.

11. Clearly, the petitioner, who did not also move out of Calcutta, formally indicated his unwillingness to move to Malda. Under the circumstances, he was not entitled to the promotion and it was liable to be cancelled.

12. Strangely, however, as analysed in details in our previous judgement in OA 579/95, the authorities did not cancel the promotion order dt. 12.3.94 (or 12.4.94) although the order indicated that such promotion was liable to be cancelled without making any further reference. Instead on 27.3.95, they passed two separate orders. By one order they partially modified the previous order of promotion and posting in respect of Shri J.P.Pandey (present petitioner) and previous posting at Malda was cancelled and he was instead posted to certain CPWD circle at Calcutta. By another order, which was exactly in line with the orders dt. 12.3.94 or 12.4.94, the promotions of previous promotees (excep the present petitioner) who had refused to move on transfer, had been cancelled and in their place equivalent number of new persons were promoted as Sr. Grade Stenographer on condition that they would have to move to the new station of posting within 15 days, failing which the promotion would be cancelled. The new promotees included Shri

Chatterjee had been transferred from his previous station at Calcutta to Malda. In our order dt. 1.5.96 in OA 579/95, we had held that this was clear case of undue favouritism in favour of the present petitioner (who was respondent No. 4 in that OA) whose promotion had not been cancelled despite his refusal to move to other station. Instead he was adjusted against a vacancy subsequently available in Calcutta to the exclusion of other candidates similarly circumstanced. The aforesaid promotion of the present petitioner was, therefore, ordered to be quashed forthwith.

13. The present petitioner has not been able to adduce any reasonable ground as to how our previous order was wrong on merits. His present argument is that he was not the longest stayee in Calcutta to be transferred to a different station.

~~However~~
~~it abundantly~~
 This is not very relevant as the original order of promotion made it ~~very~~ clear that the new promotees would have to move to the new station where they had been promoted failing which the promotion was liable to be cancelled. How can, therefore, arise the question of period of stay in the previous station by the petitioner ?

14. The petitioner's next grievance is that the said OA had been decided at his back and that it was not part of the relief claimed by the petitioner Shri Debasish Chatterjee. But as already indicated, the present petitioner had been duly served with notice by Shri Debasish Chatterjee when the case was moved. It is he (the present petitioner) who chose to remain absent on the date the petitioner had been moved and follow up the court proceedings. A person should normally be expected to watch his interest and by choosing not to do so, later on, he cannot protest that he had not been informed of ~~at his back~~ ^{at the proceedings had been conducted} the date of hearing. This objection is, therefore, overruled.

15. If the petitioner had any legitimate grievance against the previous order of the Tribunal, he could have moved a review petition on the ground that it had been passed at his

back. But no such review petition has been filed despite specific objection having been taken by the official respondents in response to the present OA. On the other hand, a separate MA No. 202/96 has been filed by the petitioner in relation to OA 579/95 seeking recall or modification of the order dt. 1.5.96 passed by this Tribunal in that OA. The official respondents has contested this MA also on the ground that this is not a review petition and at the stage of hearing, the learned counsel for the petitioner has submitted that he did not want to argue on this MA 202/96. Therefore, the aforesaid objection of the petitioner is rejected.

16. We also do not find any merits in the object that OA 579/95 has been decided on a matter for which no relief had been prayed for by the petitioner of that OA. Well the Tribunal is not estopped from passing any appropriate orders in the interest of fair play, equity, propriety and justice.

17. Through the petition, the petitioner has relied on two decisions viz. Savitri Devi-vs- UOI, reported in 1987(4) ATC 40 (Principal Bench) and Y.K.Verma -vs- UOI as reported in 1987(4) ATC 157 in support of his case. We have gone these rulings. But we fail to understand as to how these are of any help the petitioner. The former case relates to transfer of the petitioner who was to retire shortly and in whose case the respondents agreed not to transfer her. The second case relates to a disciplinary proceedings related seniority and promotion. The facts of the present case are clearly different.

18. In view of our discussions made above, we find that the petition is not tenable and is liable to be dismissed and is accordingly dismissed. MA 202/96 also stands dismissed. There will be no order as to costs.

M.S. Mukherjee
(M.S.MUKHERJEE)
5/12/96
MEMBER (A)

A.K. Chatterjee
(A.K.CHATTERJEE)
5.12.96
VICE CHAIRMAN