

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 299/04
JODHPUR THIS day THE February 27, 2009**

CORAM:

**HON'BLE MR. N.D. RAGHAVAN, VICE CHAIRMAN
HON'BLE MR. SHANKAR PRASAD, MEMBER (A)**

Vijay Kumar Duggal S/o Late Shri Rajendra Nath, aged about 44 years, by caste Duggal, Punjabi Khatri, R/o 1/110, Goverdhan Villas, Udaipur, presently working as UDC at Akashwani, Udaipur reverted from the post of Accountant at DMC, Bhilwara.

.... Applicant.

For Applicant : Mr. Manoj Bhandari, Advocate.

VERSUS

1. Union of India through the Secretary to the Government, Ministry of Information and Broadcasting, Mandi House, New Delhi.
2. The Chief Executive Officer, (Prasar Bharti) Ministry of Information and Broadcasting, PTI Building, New Delhi.
3. The Dy. Director (Administration), Prasar Bharti, Information and Broadcasting Corporation, Directorate, All India Radio, Sansad Marg, New Delhi.
4. The Station Director, Prasar Bharti, Information and Broadcasting Corporation of India, All India Radio, Jaipur (Rajasthan).

.... Respondents.

For Respondent Nos. 1 to 4 : Mr. M. Prajapat, proxy counsel for Mr. Ravi Bhansali, Advocate.

For Respondent Nos. 5 to 7: Mr. Kuldeep Mathur, Advocate.

ORDER

[PER SHANKAR PRASAD, MEMBER (A)]

Aggrieved by the order dated 04.10.2004 granting regular and promotion to Shri K.P. Panwar & two others/ reverting Shri B.K.



Panwar and another regular accountant and the applicant & two others, who were ad hoc accountants, as UDCs, the applicant has preferred the present O.A. He seeks quashing of this order. While issuing notice on 09.12.2004, Interim Relief against reversion was granted on the analogy of Shri B.K. Panwar, who had preferred O.A. 255/2004 against this very same order.

2. It appears from the corrigendum dated 05.10.2004 to this order that Shri K.P. Bissa and two others had preferred O.A. 257/2001 seeking regularization of their service as Clerk Grade-II from the date of ad hoc appointment. This corrigendum reads as under:-

"Pursuant to the Honourable Central Administrative Tribunal, Jodhpur Bench Order dated 19th September, 2004 in OA No. 257/2001 and DG:AIR, New Delhi Order No. 60/2004-SII (File No. 7/41/2001-SII (Vol.II) dated 25th August, 2004 regularizing the Adhoc Services of S/Shri K.P. Bissa, S.K. Silu and M.K. Ranga, UDCs, AIR, Bikaner w.e.f. the date of their initial appointment in the capacity of Clerk Grade-II on Adhoc basis i.e. 7th May, 1979, 26th May, 1979 and 7th August, 1979 respectively as well as on recommendation of the Review Departmental Promotion Committee in its Meeting held on 1st October, 2004, the dates of promotion of S/Shri K.P. Bissa, S.K. Silu and M.K. Ranga from Clerk Grade-II to Clerk Grade-I/SK/UDC is hereby advanced to 25th March, 1987 and are hereby promoted to the grade of Head Clerk/Accountant/SSK with effect from 27th May, 1994 (the date of regular promotion of their immediate junior incumbent) on Notional Basis and posted at the Stations/Offices indicated below:-"



27

(3)

3. The case of the applicant in brief is that in the seniority list published on 29.01.2002 his name was shown at Serial 10 of the seniority list, while that of Shri K.P. Bissa & two others were shown at Serial 33, 47 and 48. The applicant was promoted against the vacancies of direct recruitment/departmental examination quota and therefore he can be reverted only when those ~~person's~~ ^{persons} are joined. The applicant was not a party to the said O.A. No. 257/2001 and the said decision cannot affect his accrued rights. Rejoinder is filed.

4. The respondents in their reply have stated that applicant was promoted on ad hoc basis and can be reverted in terms of that order. In pursuance to the order of this Tribunal in O.A. No. 257/2001 the seniority had to be modified and review DPC was conducted. They have defended their action.

5. We have heard the learned counsels.

6. The counsel placed reliance on the decision in B.K. Panwar's case. The counsel for the applicant has contended that the present case is squarely covered by the said decision. No other points were argued.

7. The judgment on O.A. 257/2001 is not on record.

(R)

8. Shri K.C. Vyas & two others had filed O.A. 98/2005 seeking similar benefits as that of the applicant in O.A. 257/2001. The present applicant & Shri B.K. Panwar had been impleaded in O.A. No. 98/2005. The Tribunal held :-

"In view of what has been said and discussed above and the legal position crystallized, we reach to an irresistible conclusion that this Original Application is hit by law of limitation as well as devoid of any merit or substance. The same stands dismissed, accordingly. However, all the parties are directed to bear their respective costs."

9. Shri B.K. Panwar, who had also been reverted, filed O.A. 255/2004. No private respondent was impleaded therein. The Tribunal took note of the fact that he had been promoted on regular basis and was therefore required to be put to notice. It did not examine the other contentions. The Tribunal held:-

"In the result, this original application has ample force and substance and the same stands allowed accordingly. The impugned order dated 4th October 2004 (Annex A/1) is hereby quashed qua the applicant and the applicant shall be entitled to all the consequential benefits. The interim order already issued is made absolute. This order shall not foreclose the right of respondents for passing a fresh order in the same matter in accordance with law i.e. after following the due procedure. Costs made easy."



10. One Shri Shankar Lal Panwar & applicant were promoted on adhoc basis vide order dated 19.01.2004. It is clearly indicated



that this will have no effect on his seniority. The facts from Shri B. K. Panwar are distinguishable.

11. It is also seen from impugned order that while three person are promoted, five persons have been reverted. Out of these two persons namely Shri B.K. Panwar and Radha Mohan Sharma were holding the post on regular basis & three persons including the present applicant were holding the post on adhoc basis. Thus to accommodate S/Sh K.P. Bissa, S.K. Sillu, and M.K. Ranga only three persons were required to be reverted. The name of these five persons appears at Serial 6 to 10 of the seniority list. It is also seen that the name of applicant is shown at Serial 10.

12. **The Apex Court in K. Ajit Babu and Others V/s Union of India and others** have held as under:-

"Ordinarily, the right of review is available only to those who are party to a case. However, even if a wider meaning is given to the expression "a person feeling aggrieved" occurring in Section 22 of the Administrative Tribunals Act whether such person aggrieved can seek review by opening the whole case has to be decided by the Tribunal. The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 CPC. Although strictly speaking Order 47 CPC may not be applicable to the tribunals but the principles contained therein surely have to be extended to them. Otherwise, there being no limitation on the power of review it would be an appeal and there would be no certainly of finality of a decision. Besides that, the right of review is



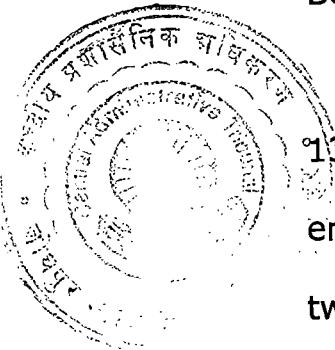
(6)

available if such an application is filed within the period of limitation.

(para 4)

Consistency, certainty and uniformity in the field of judicial decisions are the benefits arising out of the "Doctrine of Precedent". The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is that the case should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in the earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger Bench/Full Bench. In the present case, the Tribunal rejected the application of the appellants thinking that the appellants were seeking annulment of the decision of the Tribunal in TA No. 263 of 1986. This view taken by the Tribunal was not correct. The application of the appellant was required to be decided in accordance with law. (Para 6)"

The above decision of the Apex Court shows that in case we wish to take a different view than the one taken in O.A. 257/2001, the only option left for us would be to refer the matter to a Larger Bench/Full Bench.



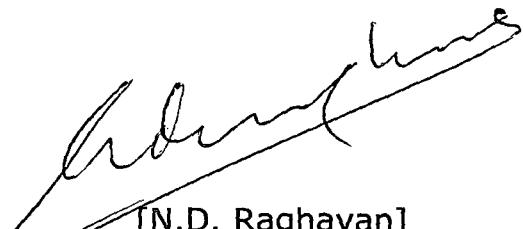
13. We also note that the applicant is junior most of the five employees, who have been reverted to promote Shri K.P. Bissa and two others. The remaining persons have not been impleaded as

(7)

private respondents. Even if we decide that the matter merits a reference to Full Bench and the Full Bench takes a view that three promoted persons could not have been assigned seniority over the three senior most amongst the five persons including the two persons promoted on regular basis, ^{In these three persons in prior basis} they will also have a claim. Thus his seniors are a necessary party.

14. We are, accordingly, of the view that the O.A. is not maintainable for non-joiner of the necessary parties. We also find that the applicant was promoted as a stop-gap-arrangement, such stop-gap-arrangements confer no legal right on the applicant. Even though more than four years have passed, the applicant has not brought anything on record to indicate as to whether any direct recruitment/Limited Departmental Competitive Examination has taken place. This is an important material information for deciding this O.A. We have already held above that the case of the applicant is distinguishable from that of Mr. B.K. Panwar. In conclusion the O.A. ^{is held} fit to be dismissed and is dismissed accordingly. No costs.

Shankar Prasad
[Shankar Prasad]
Member (Admn.)


[N.D. Raghavan]
Vice Chairman

Rss

Copy send
Sodha
6/3/09

Copy Recd
Sodha
3/3/09
for Dinesh Bhandari Ad

Diry
D. S. Sodha 5/3/09
for Kewaldeep Mathur
Ado
Ado

Part II and III destroyed
in my presence on 8/3/09
under the supervision of
section officer () as per
order dated 07/07/2015

Section officer (Record)