

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA**

ORIGINAL APPLICATION NO.: 617/1997

Date of order: 19 .05.2005

CORAM:

**HON'BLE MR. J. K. KAUSHIK, JUDICIAL MEMBER.
HON'BLE MR. A.K. BHATT, ADMINISTRATIVE MEMBER.**

Shri S.C. Basak

...Applicant.

[Rep. by Mr.S.K.Dutta, Advocate for applicant]

V E R S U S

Union of India and others

Respondents.

[Rep. by Mr. R.N.Das and MS. S.Banerjee, advocates for respondents]

O R D E R

Per Mr. J.K. Kaushik, Judicial Member

Shri S.C. Basak has filed this Original Application under section 19 of the Administrative Act 1985 assailing the reversion order dt. 3-6-1997 at Annexure-N and has sought for quashing the same with the direction to respondents to continue him to discharge the duties attached to the post of Chief DTI (M) without any interruption amongst other reliefs.

2. We have heard the learned counsel representing the contesting parties at a considerable length and have carefully perused the pleadings and records of this case.



3. The abridged material facts of this case are that the applicant enjoyed his promoted to the post of Chief DTI (M) in scale of Rs. 2000-3200 on regular basis vide order dated 22-5-1995. Thereafter, he was further promoted for a period of four months to the post of SH DTI (M) in scale of Rs. 2375-3500 w.e.f. 13-12-1996 purely on ad hoc basis vide Annexure-K to the rejoinder. Thereafter, vide impugned order dated 3-6-1997 the applicant was ordered to be reverted to the post of Senior DTI (M) in the scale of Rs. 1600-2660. He has assailed the validity of the same on numerous grounds.

4. The further relevant facts are that, subsequently, an order came to be passed by this bench of the Tribunal in O.A. 436 of 1992 on dt. 16-1-1998 in case of applicant itself wherein he had claimed for grant of promotion against one post of Sr DTI (M) meant for reserved community w.e.f. 1-11-1991. This Bench of the Tribunal was pleased to dispose of the same with the following observations: -

"In view of the position, the application is disposed of with the direction that within three months from the date of communication of this order the respondent NO.3, General Manager of S.E. Railway shall constitute a group of officers comprising the Chief Personnel Officer and two other suitable officers who were not earlier involved in the processing of the relevant file and passing of the impugned order. This group of officers should re-examine the matter keeping in view the contention made by the applicant to the effect that if the contents of the letter dated 1-11-1991 and also the order passed by the Tribunal in CCP No. 99/91 are examined, it is found that the post was actually being reserved for the SC Community. So it should be reserved. But it was erroneously not done. Therefore, we direct the

sd

respondents to give promotion to the applicant with effect from the due date provided that he is found otherwise fit; if such promotion is given to the applicant, he shall not get any arrears of pay and allowances on the basis of the promotion is given to the applicant, he shall not get any arrears of pay and allowances on the basis of the promotion since he did not function on the said post. Be he shall be given notional seniority with all consequential benefits. We also direct the said group of officers to give personal hearing to the applicant who will place all relevant records to them for examination of the case."

5. In pursuance with the aforesaid order, the respondent department has examined the matter in detail vide order dated 2-11-1998. Consequently, the very impugned order of reversion of the applicant has also been reviewed. The reversion of the applicant to the post of Senior DTI (M) 1600-2660 had been modified to that of the post of CH DTI (M) in the pay scale of Rs. 2000-3200. One of the respondents Shri Bhowmick has been regularized as Chief DTI (M) in the pay scale of Rs. 7450-11500 vide order dt. 31-5-1999. Incidentally, none of the subsequent orders have been challenged by the applicant either in this OA or else where.

6. The learned counsel for the respondents have submitted that the very nature of the original applicant has changed inasmuch as the very impugned order has ceased to exist having been modified to a substantial extent. There remains nothing in this Original Application for adjudication by this bench of the Tribunal since the complete case of the applicant relating to various promotions came to be examined through a Committee constituting as per the direction of this very Bench of the

[Signature]

Tribunal in another case and having considered the matter thoroughly a final order has been passed which is not under challenge before this Bench of the Tribunal. Hence the very Original Application has rendered infructuous. and the same should be dismissed as such.

7. On the other hand, the learned counsel for the applicant had submitted that the impugned order still survives since the applicant has been reverted to two posts below but his claim would be now that he is reverted one post below. He has, however, contended that due to the pendency of this case, the applicant could not challenge the subsequent orders. He has also submitted that otherwise the applicant is not satisfied with the subsequent order and has been hoping that if the impugned order in this O.A is quashed, he would get the proper justice and appropriate place in regard to his seniority and promotion position.

8. We have considered the rival submissions put forth on behalf of both the parties. The admitted position of this case is that the entire case of the applicant came to be examined as per the directions of this Bench of the Tribunal in O.A. No. 463/92(supra). In implementation of the said direction, the respondents in their wisdom have passed the order dt. 2-11-1998, which is Annexure-O to the rejoinder to the reply. The word 'in supersession of the impugned order' has not been



mentioned but we find that the impugned order has been substantially modified. In case we proceed on examining the propriety or validity of the impugned order at this juncture and also if any order is passed in favour of the applicant the position would be anomalous rather absurd inasmuch as the order which has been passed in pursuance with another decision of this very bench of the Tribunal i.e. order dt. 2-11-1998 would stand having not been challenged. In this view of the matter, even the doctrine of judicial constituency may not be maintained. Simultaneously, we cannot afford to leave the applicant without any remedy. To struck a balance between two extremes, we dispose of this Original Application in the following terms: -

" Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that the relief prayed in this OA cannot be granted. However, in the interest of justice we give a liberty to the applicant to file a fresh application before this Tribunal whereby he can challenge the subsequent orders like that of dt. 2-11-1998 at Annexure-O to the rejoinder within a period of one month from the date of communication of this order and if so filed, the same may be entertained on merits by treating the O.A within limitation. No costs."


(ANAND KUMAR BHATT)
ADMINISTRATIVE MEMBER


(J.K. KAUSHIK)
JUDICIAL MEMBER

LG