

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No.
~~108XMX~~

114/

1990

DATE OF DECISION 20.11.1990

K.V Madhavan

Applicant (s)

M/s. Ashok M.Cherian,

Mathews Valsalan & C.A Joy

Advocate for the Applicant (s)

Versus

Garrison Engineer, Garrison Respondent (s)

Engineer's Office, Military Engineering Service,
Naval Base P.O, Cochin-4 and 3 others

Mr. A.A. Abul Hassan, ACGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. A.V HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice-Chairman)

The applicant who has been working as Refrigerator Mechanic under the Garrison Engineer, Military Engineering Service, Naval Base, Cochin has filed this application dated 5.2.1990 praying that the impugned order dated 20.12.89 (Annexure A-3) reverting him from the pay scale of Rs.330-480 to that of Rs.260-400 with retrospective effect from 23.12.82 and reducing his pay from that date to Rs.266/- and further revising his pay with effect from 1.1.86 on that basis in the revised pay scale of Rs.950-1500 instead of Rs.1200-1800 should be set aside and that the respondents be directed to allow him to continue in the higher pay scale and not to

deduct any amount from his pay for recovery of the arrears. The brief facts of the case are as follows.

2. The applicant was originally appointed as a Pump Attendant in 1971 in West Bengal under the Eastern Command and then, in accordance with the respondents themselves, promoted as Refrigerator Mechanic with effect from 23rd December, 1982 in the pay scale of Rs.330-480 vide the order dated 20th December 1982 on probation for 2 years. The authority for this fact has been produced by the applicant also at Annexure A-1. He was transferred to Garrison Engineer, Cochin on compassionate grounds and took over on 5th January, 1984 in the Southern Command on a permanent basis in the same scale of pay (Annexure A-2). Even after his transfer he continued to draw his pay in the unrevised scale of Rs.330- 480 till by the impugned order dated 20.12.1989(Annexure A-3) even as Refrigerator Mechanic he was reverted to the lower scale of Rs.260-400 with effect from 23.12.1982 on the ground that the "pay of Rs.330-480 was applicable to 20% of the Ref. Mech. H.S II created w.e.f 15.10.1984 consequent upon implementation of three grades structure, placing the individual in the higher scale of pay w.e.f 23.12.82 was objected to by audit". The applicant has argued that his promotion to the scale of Rs.330-480 in 1982 was prior to the instructions of three grades structure which came into effect from 15.10.84 and thus his rights cannot be abrogated unilaterally ^{and that too &} with retrospective effect. He has also argued that such an

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order without any notice given to him and making recovery is against the principle of natural justice. The respondents have accepted the factual position as indicated above and have stated that the pay scale of Refrigerator Mechanic was revised from Rs.260-350 to that of Rs.260-400 for fitment of industrial workers of M.E.S on the recommendation of the Expert Classification Committee. For this they have produced a copy of the order of the Ministry of Defence dated 11th May 1983 (Ext.R2(a) , in Annexure-1 of which the post of Refrigerator Mechanic has been shown to carry the revised pay scale of Rs.260-400. In Annexure-3, however, the same post of Refrigerator Mechanic has been shown to be given the higher pay scale of Rs-330-480 in the M.E.S. According to the respondents the introduction of the higher pay scale was to take place after the issue of Government's sanction and ^{the} _{after} ^{the} _{modalities} of creation and filling up of the post were indicated in the Ministry of Defence's letter of 15th October 1984 (Annexure R-2(b)) and the Engineer-in-Chief's letter dated 3rd September 1984 at Annexure R-2(c). By a further letter of ^{the} _{Engineer-in-Chief's} Branch dated 4th July 1985(Annexure R-2(d)) the percentages of posts in HS I, HS II and Skilled Grade and related matters were covered. The respondents have also stated that by a further letter of the Ministry of Defence dated 19th April, 1985 only a Skilled Tradesman with three years of service qualifies for promotion to HS II.

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Since the applicant had not passed the trade test to qualify for promotion to H.S II grade of Refrigerator Mechanic, his promotion to the H.S II scale was irregular. They have, however, conceded that the higher pay scale was given to the applicant by a letter of the Chief Engineer, Eastern Command dated 30th September, 1982. Finally, they have stated that since he had not passed the prescribed trade test to qualify for promotion to H.S II and his promotion was dependent upon availability of vacancy, seniority etc. he could not be maintained in the higher grade.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is an admitted fact that the applicant was promoted as a Refrigerator Mechanic on probation for 2 years in December, 1982 (vide Annexure A-1). It is also not disputed that ever since 1982 till December 1989 when the impugned order has been passed, the applicant has been working in the higher post uninterruptedly and unconditionally. Accordingly it was against the principle of natural justice that the impugned order has been passed reverting him from the scale of Rs.330-480 to the lower scale of Rs.260-400 without giving him any notice or reasonable opportunity to defend his position. In more or less a similar case the Principal Bench of the Tribunal in its judgment to which one of us was a party

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.5.

in Chander Bhan vs. Union of India, (1987) 3 ATC 432, held that reduction in emoluments affected unilaterally without a show-cause notice is against the principle of natural justice and illegal. The order of promotion passed in 1982 did not mention ^{Semi-skilled, skilled or Highly Skilled} ~~the~~ ^{any} grade of Refrigerator Mechanic. He has been reverted by the respondents on the basis of the order passed by the Ministry of Defence on 11th May 1983 on the ground that he was not eligible to be promoted as Refrigerator Mechanic HS II. Annexure-3 to the aforesaid order of May, 1983 does not indicate that the pay scale of Rs.330-480 would be attached to the post of Refrigerator Mechanic HS II. Accordingly this order cannot be strictly applied to justify the applicant's reversion. Further the provision of three grades structure and prescription of certain qualifications and passing of prescribed trade test are relatable to certain orders and instructions passed at Annexures R-2(a) to R-2(k) which were passed during 1983-1988. These orders and instructions, therefore, cannot be given retrospective effect to undo the unconditional promotion given to the applicant in 1982 vide Annexure A-1.

4. The respondents ~~are~~ ^{are} also by the principle of promissory and equitable estoppel cannot revert the applicant to a lower scale in 1989 on the ground that his promotion in 1982 was by mistake. In Smt. Pushpa Bhide vs. Union of India & Ors., A.T.R 1989(1) C.A.T 397, it was

held that seniority, emoluments and rank eventhough assigned by mistake or oversight, ^y ~~but~~ ^{e e e} ~~has been~~ allowed to be enjoyed for several years, cannot be corrected or withdrawn retrospectively at the expense of the applicant by the principle of estoppel. In the judgment rendered by the then Hon'ble Chairman in the Principal Bench of the Tribunal in Dr (Mrs.) Anita Ganju and others v. Union of India and others, (1988) 7 ATC ^{it was} 234, [^] ~~^~~ held that by the principle of estoppel, the respondents having appointed the applicants therein as Junior Residents in Safdarjang Hospital, New Delhi, when the applicants were not guilty of misrepresentation, the respondents cannot terminate their residency on the ground that the college in which they ^{had} ~~^~~ [^] graduated in medicine was not recognised by the Indian Medical Council. In Rajendra Prasad v. Karnataka University, AIR 1986 SC 1448, the Supreme Court allowed the appellants to continue their studies in the respective Engineering Colleges in which they were granted admission eventhough they were not eligible for admission. The Court held that "the blame for their wrongful admission must lie more upon the engineering colleges which granted admission than upon the appellants. It is quite possible that the appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year B.Sc. Examination of the Rajasthan and Udaipur Universities was recognised as equivalent to the Pre-Univer-

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sity Examination of the Pre-University Education Board, Bangalore ... The fault lies with the engineering colleges which admitted the appellants because the Principals of these engineering colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these engineering colleges". In K.B.Jagannathan & 2 Ors. vs. Union of India & Ors, A.T.R 1987(2) C.A.T 67, the Principal Bench of the Tribunal held that by the principle of estoppel the applicants who were actually appointed as Typists in 1981 cannot be reverted to the original post of Khalasis on the ground that the post of Typists are available only to those Class IV employees who have no other avenues of promotion from Class IV cadre and the applicants did not fall in that category as they had other avenues of promotion. In Express Newspapers Pvt. Ltd and others v. Union of India and others, AIR 1986 SC 872, it was held by the Supreme Court that where the Express Newspapers Private Limited had acted upon by the grant of permission by the then Minister of Works and Housing and constructed the new building with the concurrence of the Delhi Development Authority, by the application of the doctrine of promissory estoppel, the lessor(Union of India) was clearly precluded from contending that the order of


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the Minister was illegal, improper or invalid. The Madras High Court in V.P Thirunavukkarasu v. The State of Tamil Nadu, 1974 (1) L.L.J 323, held that the order reverting the petitioner to a lower post of Field Surveyor when he had been allowed to continue in the higher post for 20 years, on discovery of his not possessing the minimum educational qualification, is illegal on ground of estoppel. In that case it was held that for no fault of the petitioner he was made to suffer after he had put in 20 years of service in the belief that he was qualified to continue in service. It is not the case of the respondents that at any time the petitioner represented that he was fully qualified or that he was informed at any time that he did not possess the general educational qualification. The respondents by reason of their inaction or silence for a long number of years after the petitioner's promotion have induced him to believe that he was qualified to continue in service. It was held that by the application of the doctrine of equitable estoppel, the order of the respondents cannot be sustained.

5. In the conspectus of facts and circumstances we allow the application, set aside the impugned order at Annexure A-3 and direct that the applicant should be continued in the scale of Rs.330-480 as if the impugned order had not been passed. Any recovery made shall be refunded within a period of three months from the date

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of communication of this order. There will be no
order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER

20/11/90


(S.P. MUKERJI)
VICE CHAIRMAN

20.11.90

n.i.i

(42) Mr Ashok M Cherian
Mr AA Abul Hassan

Mr Abul Hassan, ACCSC takes notice of the CPC and seeks time to file reply within 4 weeks with copy to the petitioner. Time granted. List on 6.4.93.

ph

AVH

SPM

24.2.93

(26)

CPC 33/93 Mr. Asok M. Cherian
DA 114/90 Mr. A A ^{Mr. TPM Ibrahim Khan (by proxy)} Abul Hassan, ACCSC.

Mr. Ibrahim has taken over the file from Mr. A. A. Abul Hassan ^{as} later's term as ACCSC expired. He wishes to file reply statement within 3 weeks. He may do so.

List the CPC on 20/4/93 for hearing.

to
6/4

RR

AVH

6/4/93

20-4-93
(22)

Proxy counsel for petitioner
Mr Shafik

The counsel for respondents seeks 10 days further time to file reply. He may do so with a copy to the other side. List for further direction on 24.5.93

to
20/4

(RR)

(AVH)

20-4-93

4.9

CCP 33/93 in OA 114/90

Mr. Asok M. Cherian
Mr. TPM Ibrahim Khan by proxy

The learned counsel for respondents seeks
3 weeks time. Granted. Post on 19.6.93.

RR

24.5.93

ND

ND & RR

Mr Asok M. Cherian
Mr TPM Ibrahim Khan by proxy

At the request of learned
counsel for respondents Post on 5.7.93.

(RR)
11/6

(ND)
11/6

5.7.93

(19)

Mr. Ashok M Cherian
Mr. Shefiq rep. Ibrahim Khan

In answer to an application for Contempt
it is stated that

"The judgment of this Hon'ble Tribunal in O.A.
114/90 setting aside the impugned order....a Special
Leave Petition has been filed before the Hon'ble
Supreme Court of India on 9.5.91".

The ^{deponent} respondents should not have come up with
a bald statement. Two years and 19 days after the
filing of the alleged SLP, he should have given the
number of the SLP, orders if any etc. The respondents

contd...

Reply to judgment
filed on 3/6/93

15-

Ad 24/2
Simon

Reorder
dated - 06/6/93

appears to take things very casually thinking that the proceedings can be stopped on such vague statements. The deponent of the statement dated 28.5.93 shall pay Rs.100/- as costs from his personal sources, to the petitioner and he is granted further opportunity of filing a proper statement, which he will do within three weeks from today.

Post after three weeks.

R. Rangarajan
AM

C. Sankaran Nair (J)
VC

2.8.93

Mr. Ashok M Cherian

Mr. TPM Ibrahim Khan

This petition is filed on the allegation that the respondent committed wilful disobedience of the order of this Tribunal in O.A.114/90. The said judgment directed the respondent to allow the applicant to remain in the scale Rs.330-480.

Respondent in his affidavit dated 28.5.93 stated that he:

"is not empowered to allow higher scale of pay without the sanction of the Head of the Department namely Engineer-in-Chief. The case had been taken up with him."


This shows that the respondent had taken necessary action to comply with the orders of the Tribunal but he could not comply with part of it because it was not in his power to do so. He had promptly taken up the matter with the superior officer.


In the circumstances there is no Contempt much less any wilful contempt on the part of the respondent Major I.M.Pathak.

contd...

Petitioner has not shown any rule or order or provision of law which enables the respondent to sanction higher scale.

In the circumstances, notice issued to the respondent will stand discharged and the petition is dismissed. No costs.

mh

R. Rangarajan
A.M.


Chettur Sankaran Nair (J)
V.C.

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2/5/53
mkray

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

C.P.C.No. 51/97 in OA 114/90

Thursday, this the 23rd day of October, 1997

C O R A M :

HON'BLE MR A V HARIDASAN, VICE CHAIRMAN

HON'BLE MR P V VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

KV Madhavan
Refrigator Mechanic
Office of the Assistant Garrison
Engineer
Military Engineering Service
N.A.D.
Aluva .. Petitioner

By Advocate Mr Asok M Cherian

Vs

Major Ramendra Mathur
Garrison Engineer
Military Engineering Service
Naval Base
Kochi .. Respondent

By Advocate Mr TPM Ibrahim Khan, SCGSC

The Petition having been heard on 23.10.1997, the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR A V HARIDASAN, VICE CHAIRMAN :

Learned counsel on either side state that the directions in the order has already been complied with. We find no need to proceed further with the Contempt Petition (Civil). The Contempt Petition (Civil) is closed.

Dated, the 23rd October, 1997


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


AV HARIDASAN
VICE CHAIRMAN

VS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

R.A.No.105/93 and M.P.No.1503/93 in
CP(C) 33/93 in O.A.114/90

DATE OF DECISION: 1/10/1993.

~~Major~~ I.M.Pathak .. Review Applicant
Mr.TPM Ibrahim Khan .. Advocate for Review Applicant

Versus

K.V.Madhavan .. Respondent in R.A. and applicant in O.A.

CORAM

The Hon'ble Mr.Justice Chettur Sankaran Nair, Vice Chairman
The Hon'ble Mr.R.Rangarajan, Administrative Member

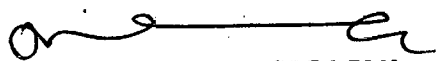
J U D G M E N T


Chettur Sankaran Nair(J), Vice Chairman.

This is an application to review an ancillary order awarding costs. No error apparent on the face of the record is shown to review the order. Quite apart from the question whether an order awarding costs is a reviewable order, the Review Application is filed out of time. There are no good grounds to condone the delay.

2. The apprehension of the applicant herein that award of costs might stand in the way of his earning promotions is not well founded. An order awarding costs, is not an order casting aspersions on a service officer, and this shall not stand in the way of his career prospects. Review Application is dismissed. No costs.

Dated the 1st day of October, 1993.


R.RANGARAJAN
Administrative Member


CHETTUR SANKARAN NAIR(J)
Vice Chairman

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