

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.325/96

Thursday this the 4th day of June, 1998.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR.S.K.GHOSAL, ADMINISTRATIVE MEMBER

1. A.K.Paul,
Machine Assistant(Offset),
Government of India Press,
Koratty.
2. A.L.George,
Machine Assistant,
Government of India Press,
Koratty.Applicants

(By Advocate Mr.M.R.Rajendran Nair)

vs.

1. The Manager,
Government of India Press,
Koratty.
2. The Director of Printing,
Ministry of Urban Development,
Government of India,
Nirman Bhavan,
New Delhi.
3. Union of India represented by
Secretary to Government,
Ministry of Urban Development,
Department of Printing and Stationery,
New Delhi.Respondents

(By Advocate Mr.S.Radhakrishnan, ACGSC)

The Application having been heard on 4.6.98, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

Applicants: two in number had earlier filed O.A. 696/94 for absorption as Machine Assistants(Offset) w.e.f. 1.11.89 with consequential benefits. This application along with O.A.1737/94 and O.A.1664/94 was heard by a Bench of the Tribunal and was disposed of by a final order dated 29.5.95.

The Tribunal gave the following declaration and directions:

"5. The situation that has now arisen namely alleged grant of wrong promotion and alleged denial of rightful promotion, has to be examined carefully. Respondent Director of Printing, Ministry of Urban Development, Govt. of India should consider the whole issue afresh. He will extend opportunities to all the Machine Attendants(Offset) to put forward their respective claims. Thereafter, the said Director will make promotions to posts of 'Offset Machine Assistants' (with the help of a Departmental Promotion Committee if that is contemplated by the rules). If it is considered necessary, supernumerary posts may also be created to accommodate those who would have obtained promotions but for the restructuring. It will be open to applicants to place their grievance regarding the date from which they should get promotion before the Director. A final decision in the matter will be taken within four months of the date of receipt of the representations. Respondent Director will invite representations and indicate the last date by which representations should be received which should not be beyond two months of today.

6. Status quo as on today will be maintained till final orders are made so that the matter is not complicated in the meanwhile."

2. Pursuant to the above, applicants 1 and 2 submitted detailed representations Annexures A-9 and A-10 respectively. In purported obedience of the directions contained in the order of the Tribunal in O.A.696/94 and connected cases, the first respondent passed the impugned order dated 13.2.96, according to which the applicants had been regularised as Machine Assistants(Offset) w.e.f. 25.11.92. Alleging that the applicants had been working as Machine Assistants(Offset) even w.e.f. 1.11.89 and after training had also been trade tested in August, 1990, the applicants filed the present application impugning Annexure A-11 order and for a declaration that they are entitled to get their appointments as Machine Assistants(Offset) with retrospective effect from 1.11.89 with consequential benefits. The application was heard by a Division Bench consisting of Hon'ble Mr.A.M.Sivadas, Judicial Member and Hon'ble Mr.S.K.Ghosal, Administrative Member. The Judicial Member set aside the order on the ground that it is cryptic and devoid of application of mind since it is not

discernible from the order as to whether the Director had considered the entitlement of the applicants for absorption with effect from the date they claimed absorption and whether the necessity of creating supernumerary posts was considered. The learned Administrative Member on the other hand opined that it is always not practicable for all administrative orders to contain detailed reasons and that, therefore, the proper course would be to direct the respondents to produce the file which led to the impugned order and to see whether the file would disclose reasons and then dispose of the application accordingly. In view of the cleavage of views, the Bench decided to refer the matter to the Hon'ble Chairman under Section 26 of the Administrative Tribunals Act. They formulated the following points for reference:

- "(1) Is it not necessary that A-ll order itself should contain the reasons for the conclusion?
- (2) When the direction is given by the Tribunal to take a decision by a respondent, is not that respondent bound to consider the matter on merits and dispose it of by a speaking order considering all aspects and the grounds raised by the applicants and reflecting them in the decision itself?
- (3) Is it legally correct to say that "given the very nature and quantum of administrative decision making it will be totally infeasible to insist that all finally issued administrative orders must contain explicitly all the grounds for and against those final orders?"
- (4) Is it legally correct to say that unless there is a clear and prior direction from the Tribunal to consider a particular representation and then pass a speaking order, the requirement of passing a speaking order cannot be presumed to exist in all the cases?
- (5) In the absence of detailed reasons for the conclusion in A-ll order, is it for the Tribunal to call upon the respondent department to produce all concerned records and examine whether before arriving at the impugned administrative decisions, reasonable considerations had been had of all the relevant and pertinent factors?"

3. When the Hon'ble Chairman after hearing the matter himself by order dated 1.1.98 held that it would be proper to refer the case to a Full Bench to decide:

"(i) Whether in the facts and circumstances of the case, it is necessary to resolve the points in difference referred to the third Member? If so, the Full Bench may resolve the difference,

OR

(ii) Whether the case can be finally decided on the basis of the materials available before the Tribunal. If yes, the Full Bench itself may finally decide the case, after hearing the learned counsel for the parties".

The matter was then placed before the Hon'ble Chairman on the administrative side for constituting a larger bench to hear and settle the disputed points and the Hon'ble Chairman has constituted the Full Bench.

4. When the case was opened before the Full Bench, at least on one point we found unanimity of views between the counsel. Counsel on either side were of the view that the order of reference is incompetent. According to the learned counsel, where there is a difference of opinion between two Members constituting a Division Bench and the case is referred to Hon'ble Chairman in accordance with the provisions of Section 26 of the Act, the Hon'ble Chairman has to either resolve the issue himself or refer the matter to other Member or Members. Section 26 does not empower the Chairman to constitute a Full Bench, argued the counsel.

5. We have heard the arguments of the learned counsel and considered the matter. Clause (d) of sub-section (4) of Section 5 of the Administrative Tribunals Act, 1985 empowers the Chairman to constitute a Bench composed of more than two members. It reads:

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"(4) Notwithstanding anything contained in sub-section(1) the Chairman-

- (a) ..
- (b) ..
- (c) ..
- (d) may, for the purpose of securing that any case cases which, having regard to the nature of the questions involved, requires or require, in his opinion or under the rules made by the Central Government in this behalf, to be decided by a Bench composed of more than two members issue such general or special orders, as he may deem fit:

Provided that every Bench constituted in pursuance of this clause shall include at least one Judicial Member or one Administrative Member."

The opinion of the Hon'ble Chairman as to whether a particular case is required to be decided by a bench composed of more than two members has to be formed having regard to the nature of the question involved in the case. In this case as the Hon'ble Chairman heard the case on a reference under Section 26, an opinion was formed that the case was required to be decided by a bench composed of more than two members. It was thus that the Hon'ble Chairman has constituted this Bench. Just because the matter came to be heard by the Hon'ble Chairman on a reference under Section 26, the Hon'ble Chairman's power to constitute a larger bench under Section 5(4)(d) is not affected. Therefore we do not find any merit in the argument advanced by the counsel. Further neither of the parties has challenged the correctness of the order of the Hon'ble Chairman constituting this Full Bench legally.

6. Coming to the issue under consideration, according to the order of the Hon'ble Chairman, the Full Bench has two alternatives, i.e., it may consider whether in the facts and circumstances of the case it is necessary to resolve the

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difference of views referred to third Member and if found necessary, the difference may be resolved or the Full Bench can dispose of the case finally on the basis of materials available before the Tribunal.

7. Learned counsel on either side agreed that the Full Bench may dispose of the matter finally after the respondents producing the file which led to the passing of the impugned order. The learned counsel for the respondents produced for our perusal the file which led to the passing of the impugned order. Accordingly, we have perused the file, the pleadings in this case, and the relevant orders and have also heard learned counsel appearing on either side. The impugned order Annexure A-11 was passed in obedience to the directions contained in the order of the Tribunal in O.A.696/94 and connected cases (Annexure A-8). A perusal of paras 5 & 6 of the order Annexure A-8 which have been extracted(supra) would make it clear that as per the directions the Director of Printing had to consider the whole issue afresh, to extend opportunities to all the Machine Attendants(Offset) to put forward their respective claims, thereafter to make promotions to posts of Machine Assistants(Offset) with the help of Departmental Promotion Committee, if necessary and if it was considered necessary, supernumerary posts might also be created to accommodate those who would have obtained promotions but for the restructuring. The applicants were to make representations indicating the dates with effect from which they claimed absorption as Machine Assistants(Offset). A final decision was directed to be taken after the above said exercises. Going through the impugned order Annexure A-11, we are unable to find that there has been any

consideration as to what would have been the dates on which the applicants would have become eligible for absorption as Machine Assistants (Offset) but for the restructuring. There is no indication also as to whether it was necessary at all to consider creation of supernumerary posts or whether that aspect was considered at all by the Director. In the file especially in the order of the Director dated 2.2.96, the only consideration regarding the case of the applicants was shown as follows:

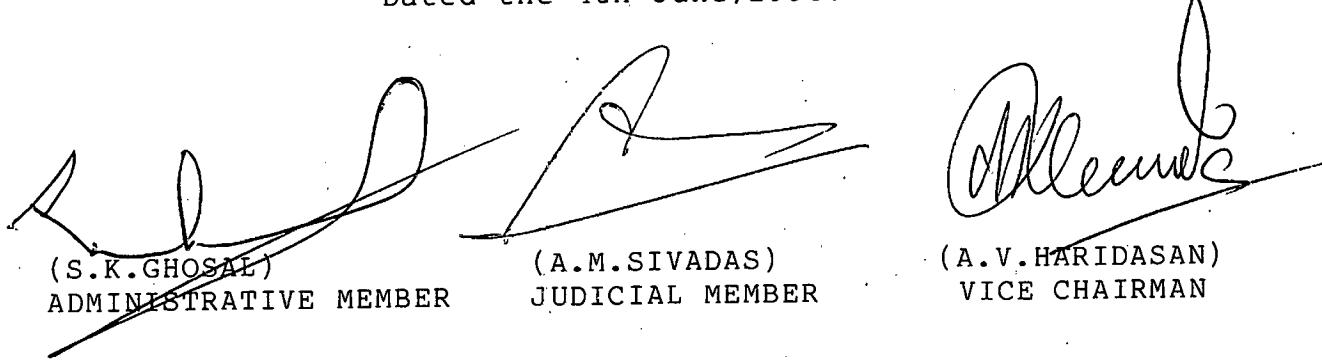
" S/Shri A.K.Paul and A.L.George, Offset Machine Assistants have made a request for antedating their appointment to the post, in their O.A.696/94. However, it has been observed that the Press have taken a stand in the said O.A that they have never worked as Offset Machine Assistant prior to 25.11.92 and have never been asked to work to the said post even on promotion on adhoc basis prior to the said date. It has been decided that the dates of appointment of Sh A.K.Paul and Sh.A.L.George may remain unchanged."

8. On a careful reading of the above, we are convinced that the Director had not bestowed any consideration on the claim of the applicants for absorption as Offset Machine Assistants w.e.f. 1.11.89 or 30.8.90 when they passed the trade test. The file does not disclose that the necessity or desirability of creating supernumerary posts was considered. In this view of the matter, we are of the considered view that the impugned order Annexure A-11 is liable to be set aside for want of application of mind. The Director of Printing ought to be directed to reconsider the entire issue afresh strictly in accordance with the directions contained in the order of the Tribunal Annexure A-8 and to give the applicants a speaking order.

9. In the light of what is stated above, OA is disposed of with the following declarations and directions:

- (i) Impugned order dated 13.2.96 Annexure A-11 is set aside.
- (ii) Second respondent is directed to reconsider the whole issue pertaining to the claims of the applicants for antedated absorption as Machine Assistants(Offset) w.e.f. 1.11.89 or at least with effect from the date they passed the trade test, and to pass a speaking order in accordance with the directions contained in the order of the Tribunal in O.A.696/94 and connected cases in the light of the observation made in paragraph 8 of this order.
- (iii) The above exercise shall be completed and a speaking order shall be given to the applicants within a period of six months from the date of receipt of a copy of this order.

Dated the 4th June, 1998.



(S.K.GHOSAL)
ADMINISTRATIVE MEMBER

(A.M.SIVADAS)
JUDICIAL MEMBER

(A.V.HARIDASAN)
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A- 8 : Order in O.A 696/94 dated 29-5-95 by this Tribunal.
2. Annexure A- 9 : Representation dated 14-7-95 submitted by the 1st applicant to the 2nd respondent.
3. Annexure A-10 : Representation dated 14-7-95 submitted by the 2nd applicant to the 2nd respondent.
4. Annexure A-11 : Order ..F.No.16011/43/95/EI dated 13-2-96 issued by 1st respondent.

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CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.325/96

Tuesday, this the 18th day of November, 1997.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR SK GHOSAL, ADMINISTRATIVE MEMBER

1. AK Paul,
Machine Assistant(Offset),
Government of India Press,
Koratty.

2. AL George,
Machine Assistant,
Government of India Press,
Koratty.

- Applicants

By Advocate Mr MR Rajendran Nair

Vs

1. The Manager,
Government of India Press,
Koratty.

2. The Director of Printing,
Ministry of Urban Development,
Government of India,
Nirman Bhavan,
New Delhi.

3. Union of India represented by
Secretary to Government,
Ministry of Urban Development,
Department of Printing and Stationary,
New Delhi.

- Respondents

By Advocate Mr S Radhakrishnan, ACGSC

By Advocate Mr N Nagaresh, Court Commissioner

The application having been heard on 18.11.97
the Tribunal on the same day delivered the
following:

O R D E R

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

The applicants seek to quash A-11, to declare that they are entitled to get their appointment as Machine Assistants(Offset) with retrospective effect from 1.11.89 and to refix their pay accordingly with all consequential benefits.

2. The applicants commenced service as Machine Inkers on 1.3.73. They were latter redesignated as Machine Attenders in the year 1976. They were promoted as Machine Assistants in the Letter Press with effect from 10.10.83 on ad hoc basis as per order dated 23.3.92, the appointments of applicants along with certain others were regularised with effect from 10.10.83. The Letter Press was kept idle with effect from 1986. Consequent to this, the Machine Assistants in the Letter Press were asked to work in the Offset Press. Applicants along with certain others were deputed for training in the offset technology and on successful completion of the training they were directed to perform the duties attached to the post of Machine Assistants(Offset). The applicants for redressal of their grievances had to approach this

Tribunal on various occasions. The applicants herein and certain other persons filed OA-696/94, OA-1737/94 and OA-1664/94. In the common order in these OAs, this Tribunal directed the second respondent herein, the Director of Printing to take a decision in the matter within four months from the date of the representation.

3. Applicants two in number therein submitted A-9 and A-10 representations in pursuance of the said common order. Those two representations were disposed of by the second respondent as per A-11 impugned order.

4. When the OA came up for hearing, learned counsel appearing for the applicants submitted that at the outset this impugned order A-11 is not sustainable and is liable to be set aside and the second respondent is to be directed to pass a fresh order after a proper consideration in the light of the directions contained in the common order in the above said OAs and also for the reason that all the grounds raised in these representations have not been looked into by the second respondent.

5. In the common order in the said OAs it has been stated that:

"The situation that has now arisen namely alleged grant of wrong promotion and alleged denial of rightful promotion, has to be examined carefully. Respondent Director of Printing, Ministry of urban Development, Government of India should consider the whole issue afresh. He will extend opportunities to all the 'Machine Attendants(Offset)' to put forward their respective claims. Thereafter, the said Director will make promotions to posts of 'Offset Machine Assistants' (with the help of a Departmental Promotion Committee if that is contemplated by the rules). If it is considered necessary, supernumerary posts also may be created to accommodate those who would have obtained promotions but for restructuring."

6. A-11 does not contain any consideration as to the necessity of creating supernumerary posts. So the direction of this Tribunal has not been complied with when the second respondent was directed to take a final decision in the matter. It is not that the second respondent Director can dispose of the representation without touching all the aspects especially leaving the direction of this Tribunal to consider the necessity of creating supernumerary posts and also leaving some of the points raised in the representations A-9 and A-10. It is not enough to give a finding alone. The decision arrived at should be supported by reasons. A party is

entitled to know on what ground his request has been rejected or turned down. A party aggrieved by the order of the refusal to grant the relief sought for will be in a position to challenge that order only where reasons are stated. It cannot be argued for a moment that the administrative authorities are relieved of the responsibility to state reasons while passing an order. The order even when passed by an administrative authority shall not be cryptic or haphazard. It should clearly contain reasons on which the decision has been arrived at. When the direction is given to take a decision by this Tribunal to the second respondent, it goes without saying that the second respondent is bound to consider the matter on merits and to dispose of by a speaking order considering all the aspects. He cannot have the option of ignoring the direction given by the Tribunal and also not to consider some of the points raised in the representations which are necessary for arriving at a correct and proper decision. The second respondent owed a minimum duty to consider all the aspects. Whether he agrees with the applicants or not is a different matter.

7. Mr S Radhakrishnan, Additional Central Government Standing Counsel appearing for the respondents vehemently argued that A-11 impugned order

is not liable to be quashed by stating the reasons for arriving the conclusion contained in A-11. The arguments are quite attractive. But the question is whether the argument advanced by the learned counsel can be taken as substitute for the reasons to be stated in the order.

8. In Mohinder Singh Gill and another Vs The Chief Election Commissioner, New Delhi and other, (AIR 1978 SC 851) it has been held:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J in Gordhandas Bhanji (AIR 1952 SC 16) (at p.18):

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

9. So it is quite evident and clear that the order itself should contain the reasons for the conclusion and it cannot be supplemented by making submissions across the Bar.

10. Professor Wade in his celebrated work on Administrative Law has stated thus:

"Although there is no general rule of law requiring the giving of reasons, an administrative authority may be unable to show that it has acted lawfully unless it explains itself. Thus where the Act empowered licensing justices to refuse a licence on one of several specified grounds, and they refused an application without stating any ground, mandamus was granted to make them state the ground even though they were not obliged to give their reasons for it. Going still further the Privy Council held that a minister who had failed to give reasons for a special tax assessment had not shown that it was correct and that the taxpayer's appeal must be allowed.

And in a series of industrial cases it has been held that industrial tribunals must give satisfactory reasons in order that the losing party may know whether he should exercise his right of appeal on a point of law. The principle of these decisions comes close to recognising a general right to reasoned decisions, since the right of appeal on a point of law is very common; and the same logic might be invoked elsewhere, since there is always a right of recourse to the High Court for error on the face of the record. Yet a further consideration is that the House of Lords has indicated that if a minister fails to explain a decision satisfactorily, it may be condemned as arbitrary and unreasonable." (Fifth Edition, Pages 486 and 487)

11. In Madhya Pradesh Industries Ltd. Vs Union of India and others, (AIR 1966 SC 671), it has been held:

"So it is essential that some restrictions shall be imposed on Tribunals in the matter of passing orders affecting right of parties; and the least they should do is to give reasons for their orders."

12. In T Susanna Vs Postmaster and others, ((1995) 30 ATC 451) this Bench of the Tribunal has held:

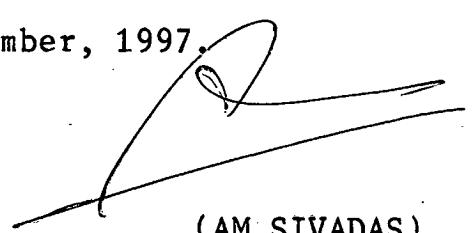
"No authority can reach conclusions without reasons, and that reasons must be discernible on the face of the order as the party against whom an order is made is entitled to know the reasons, upon which an order against him has been made. Likewise, the authority making judicial review, must know the reasons upon which the administrative authority acted. These are elementary requirements of rule of law..."

13. Again in G Rajendran Nair and another Vs Union of India and others, ((1995) 29 ATC 756) this Bench of the Tribunal deplicated a cryptic order passed by an officer and quashing the order directed the officer who passed it to pass a speaking order supported by reasons.

14. In the light of what is stated, the order passed by the second respondent which is communicated as per A-11 as far as the applicants are concerned is liable to be quashed.

15. Accordingly the OA is allowed quashing the A-11, directing the second respondent who has passed the order which is communicated as per A-11 to consider afresh and pass a speaking order supported by reasons. No costs.

Dated, the 18th November, 1997.



(AM SIVADAS)
JUDICIAL MEMBER

trs/2011

16. With due respect to my learned brother, the Judicial Member, I would like to disagree from his AS assessment of what is required to be recorded in the impugned order at A-11 and from his direction based thereon that the impugned order is untenable and is therefore quashed and remanded to the respondent, Director of Printing, Ministry of Urban Development, Government of India, for a fresh consideration of the matter and for passing a more detailed and speaking order. My reasons for this disagreement have been discussed below.

17. The impugned order A-11, which orders certain promotions including those of the two applicants in this OA as Machine Assistants(Offset) with effect from a certain date i.e. 25.11.92 when vacancies were available, has admittedly been passed as a following AS of the directions given by this Bench at A-8 in OA-696/94. There the same applicants with the same substantive prayers were concerned. That OA was decided along with a number of connected cases on 29.5.95 under a common order.

18. The operative portion of that order at A-8, which is contained in paragraph 5 thereof, may usefully be reproduced to understand the back ground



to the passing of the impugned A-11 order. We quote accordingly:

"Respondent Director of Printing, Ministry of Urban Development, Government of India should consider the whole issue afresh. He will extend opportunities to all the 'Machine Attendants(Offset)' to put forward their respective claims. Thereafter, the said Director will make promotions to posts of 'Offset Machine Assistants' (with the help of a Departmental Promotion Committee if that is contemplated by the rules). If it is considered necessary, supernumerary posts also may be created to accommodate those who would have obtained promotions but for the restructuring."

The above order of the Tribunal at A-8 went further to say that it was open to the applicants to place their grievances regarding the date from which they should get promotion before the Director. A final decision in the matter was required to be taken by the Director within a time limit of four months from the date of receipt of the representations.

19. In the present OA, during the stage of hearing, the contentions taken by the learned counsel for the applicants against the impugned order A-11 ^{AS} ~~one~~ that it does not reflect consideration in adequate detail of the various grounds taken by the applicants while making representations for their promotions as Machine Assistants(Offset) with effect from 1.11.89

RJ

and that the said impugned order does not specifically reflect whether any consideration was given to the need or otherwise for creation of supernumerary posts to accommodate their requests. In other words, the impugned order is the result of non-application of mind and is not a speaking order, though the respondent Department was required to pass such a speaking order in compliance with the order of the Tribunal in the earlier OA-696/94, he has argued. Because the impugned order is not a speaking order, according to the learned counsel for the applicants, there has been a failure of natural justice and their right to seek appropriate remedies against the impugned order has been unjustly and illegally jeopardised. Therefore, he has contended inter alia, the impugned order should be held invalid.

20. In this context, I have to observe that the background to the present treatment of the case of the applicants by the official respondents, namely, that because of lack of regular vacancies their substantive prayers could not be granted by appointing them with retrospective effect from 1.11.89, had been placed before the Tribunal in that earlier OA-696/94. It is also on record that the respondents had considered the



question whether to create or not to create supernumerary posts, but had not agreed to do so.

This decision of the respondent Department was also placed before the Tribunal in that same earlier O.A.

Paragraph 4 of the order passed by this Bench at A-8 evidences these facts.

21. The general principles, which should govern the manner of passing of administrative orders, as discussed above by the learned Judicial Member, amply supported by authorities, are doubtless extremely relevant and valid considerations. They are incontrovertible wherever they have been held to be so applicable by the authorities. It is well recognised that these principles clearly apply to all judicial and quasi-judicial orders passed by such officers. They are equally applicable to other administrative orders where *litis inter partes* or even vested or legal rights vis-a-vis the public authorities are involved. However, these principles are neither universal in their application in respect of administrative orders of all kinds, nor are they totally unexceptionable. In administrative matters, other than those mentioned above, the scope of application of these criteria, laid down for valid and fair administrative orders, will have to

S. J.

be examined in the totality of the circumstances of the specific cases. While examining the scope of applicability of one or more of such criteria, which come under the general headings of fairness, reasonableness and principles of natural justice, in a concrete case, where an administrative authority has passed an order, special consideration must be had of the background to the case, the nature of discretion exercised by the concerned administrative authority, the nature of alleged rights involved, the kind of damage or injury that it is likely or is alleged to have been caused.

22. Given the, very nature and quantum of administrative decision-making, it will be totally infeasible to insist that all finally issued administrative orders must contain explicitly all the grounds for and against those final orders. It seems to me, based on my limited knowledge of administrative law, that any number of authorities have endorsed this latter point of view. In my humble opinion, it is too well-settled a rule of law to be supported once again by citing numerous authorities.

23. Further, in my considered view, the relevant questions in this particular context, considering

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the threshold contentions urged by the learned counsel for the applicants, are: (a) whether in the totality of circumstances of the present case, the criterion of a detailed speaking order, explicitly reflecting the grounds urged, ^{As in A-9} the final order, was required to be satisfied by respondent Department; and (b) whether the impugned order can be considered as having been passed meeting the requirement laid down in the A-8 order passed earlier by this Bench. At this stage it will not be necessary for us to consider other substantive grounds urged by the applicants.

24. Without going into the maintainability of the impugned order A-11 on merits, which is not relevant at this stage, it will also be necessary for us to examine whether, *prima facie*, the said order is totally devoid of any reason and is thus arbitrary, unfair and suffers patently from non-application of mind, and is therefore invalid. This is ^{the A-9} main challenge made by the applicants at the present stage of the proceedings against the impugned order A-11.

25. In other words, we will have to apply the test here as to whether the basic reasons for ordering the regularisation of the promotion of the

R.S.

applicants to the post of Machine Assistants(Offset) with effect from 25.11.92, and not with effect from 1.11.89 as claimed by the applicants, who significantly have not claimed any legal rights for promotion arising from specific provisions of the relevant Recruitment Rules, ^{AS} have been mentioned in the impugned order.

26. The impugned order relating to the 1st applicant, Shri AK Paul, states as follows:

"Shri AK Paul, the then Letterpress Machine Assistant, who has been transferred to the post of Offset Machine Assistant with effect from 25.11.1992 on ad hoc basis, is regularised in the same post with effect from 25.11.1992 against the remaining one vacancy of Offset Machineman under GFR-77."

(Underlined by me for emphasis)

27. Similarly, for the 2nd applicant Shri AL George, the impugned order states as follows:

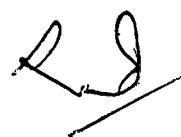
"Shri AL George, the then Letterpress Machine Assistant, who has been transferred to the post of Offset Machine Assistant with effect from 25.11.1992 is also regularised in the post with effect from 25.11.1992 against the transfer/direct recruitment quota vacancy of Offset Machine Assistant in the Augmentation Scheme."

(Underlined by me for emphasis)



28. It is clear that the respondent Department, while passing the above orders contained in A-11, has considered the vacancies actually available and further that in the case of the 2nd applicant has gone beyond the vacancies normally available and given him the benefit of a vacancy arising under the Augmentation Scheme. The crucial issue is whether the respondent Department was required to have gone beyond stating these reasons for the regularisation of the applicants in the posts of Machine Assistants(Offset) with effect from 25.11.92, in the impugned order itself, given the background of the case that we have already observed. To my understanding of the basic principles of administrative law, the respondent Department was not so required. Why I have come to this conclusion is explained below.

29. The domain of purely administrative orders has been distinguished from quasi-judicial and judicial functions, which the administrators are quite often called upon to discharge, for good and adequate reasons by the well-known authorities. According to me, the matters concerning claims for promotion, not based on provisions of recruitment rules and other statutory and constitutional provisions, squarely come under the province of such purely administrative functions.

A handwritten signature in black ink, appearing to read "R J".

30. Here, promotions, have admittedly not been claimed as a legal right, i.e. under the recruitment rules; but have been based on a vague statement infringement of the fundamental right under Article 14 of the Constitution, i.e. equality before law and equal protection of the laws. Under the impugned order A-11, dealing with these claims, promotions have been ordered with effect from a date when vacancies became available. Further, whether or not supernumerary posts should be created is entirely a matter of administrative policy and expediency.

31. Though orders, even in such matters, may still be subject to judicial review, unless there is a clear and prior direction from a competent judicial forum like the Tribunal to consider a particular representation for promotion under these circumstances and then pass a speaking order, the requirement of passing a speaking order cannot be presumed to exist in such cases. The order of the Tribunal at A-8 as quoted above did not specifically mention any such requirement to be complied with by the respondent Department while ordering promotions, which the Tribunal called upon the second respondent to pass and communicate. The second respondent, according to me, has done ~~...precisely~~ what the

A handwritten signature consisting of stylized, cursive letters, likely 'K' and 'J', written in black ink.

Tribunal had ordered, namely, that he considered the matter of promotions afresh for all the concerned employees comprehensively, including the present applicants, assessed their relative position⁴⁹ and decided upon their promotions based on the vacancies available; but found it inexpedient to create supernumerary posts. He, therefore, finally regularised the promotion of the applicants as Machine Assistants(Offset) from 25.11.92 when vacancies were actually available. What the respondent has not explicitly stated in the impugned order is the obvious, that is, that supernumerary posts were not considered necessary to be created by the respondent Department. But that cannot be held, according to me, as act of irregularity. From the background to the present matter and the wording of the impugned order, it can be stated, without any fear of contradiction, that the implication of the impugned order is that no supernumerary posts has ~~As~~ been considered necessary by the respondent Department. I am, therefore, of the opinion that the manner of passing of the impugned order is not violative of the direction issued by the Tribunal in its earlier order at A-8 and is in conformity thereto.



32. The principle of reasonableness of an administrative order does not, and, in my humble opinion, cannot prescribe that all the representations made by interested parties in a matter like promotion, ^{on AD} not based ~~clear~~ legal rights, should be considered and dealt with expressly in the final order itself and that all the grounds for such a final order should be apparent on the face of it. It is without doubt a valid requirement that for passing appropriate administrative orders all relevant considerations must be brought to bear upon the matter at issue. But, it seems to me that it cannot hold as an inflexible rule that the means available at the time of judicial review to ascertain whether an administrative order satisfies the criterion of reasonableness are the very words used in the administrative order itself, particularly when the matter concerned lies within the domain of purely administrative function, like ordering promotions based on creation of supernumerary posts, where policy and expediency are the determining factors. The forum exercising the function of judicial review can certainly call upon the respondent Department to produce the concerned records and examine whether before arriving at the

AS

impugned administrative decisions, reasonable considerations had been had of the relevant and pertinent factors.

33. In my opinion it would still be necessary for the respondent Department to pass the test of reasonableness while recording the impugned order at A-8 in this OA. I do not, at the same time, hold that the test of reasonableness has to be satisfied purely in terms of the express words used in an administrative order itself when it deals with various representations, based, not on legal rights specifically recognised under the recruitment rules, but on grounds of administrative policy and expediency.

34. Under these circumstances, I would with humility differ from the order recorded by my learned brother, the Judicial Member, and would call upon the respondent Department to produce the file where the decision, i.e. the impugned order at A-11, was recorded in order to consider the merits of the substantive grounds urged on behalf of the applicants in this O.A.

Dated, the 18th November, 1997.


(SK GHOSAL)
ADMINISTRATIVE MEMBER

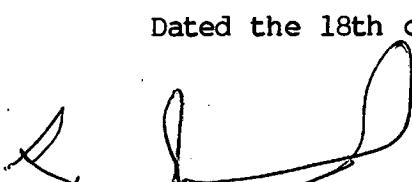
ORDER OF THE BENCH

35. In view of the difference of opinion between us, the Registry is directed to place the case before the Hon'ble Chairman, Central Administrative Tribunal under Section 26 of the Administrative Tribunals Act of 1985 for further action thereunder to decide finally the following points of difference, in the particular circumstances of the present

O.A:-

- (1) Is it not necessary that A-ll order itself should contain the reasons for the conclusion?
- (2) When the direction is given by the Tribunal to take a decision by a respondent, is not that respondent bound to consider the matter on merits and dispose it of by a speaking order considering all aspects and the grounds raised by the applicants and reflecting them in the decision itself?
- (3) Is it legally correct to say that "given the very nature and quantum of administrative decision-making it will be totally infeasible to insist that all finally issued administrative orders must contain explicitly all the grounds for and against those final orders"?
- (4) Is it legally correct to say that unless there is a clear and prior direction from the Tribunal to consider a particular representation and then pass a speaking order, the requirement of passing a speaking order cannot be presumed to exist in all the cases?
- (5) In the absence of detailed re-as ons for the conslusion in A-ll order, is it for the Tribunal to call upon the respondent department to produce the concerned records and examine whether before arriving at the impugned administrative decisions, reasonable considerations had been had of all the relevant and pertinent factors?

Dated the 18th of November, 1997.


S.K. GHOSAL
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER

LIST OF ANNEXURES

1. Annexure A8: Order in O.A.696/94 dated 29.5.1995 by the Central Administrative Tribunal, Ernakulam Bench
2. Annexure A9: Representation dated 14.7.1995 submitted by 1st applicant to the 2nd respondent.
3. Annexure A10: Representation dated 14.7.1995 submitted by 2nd applicant to the 2nd respondent.
4. Annexure A11: Order F. No.16011/43/95/EI dated 13.2.1996 by 1st respondent.

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CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.325/96

Thursday, the 1st day of January, 1998.

CORAM:

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN

1. A.K.Paul,
Machine Assistant(Offset),
Government of India Press,
Koratty.

2. A.L.George,
Machine Assistant,
Government of India Press,
Koratty.

..Applicants

(By Advocate Mr.M.R.Rajendran Nair)

vs.

1. The Manager,
Government of India Press,
Koratty.

2. The Director of Printing,
Ministry of Urban Development,
Government of India,
Nirman Bhavan,
New Delhi.

3. Union of India represented by
Secretary to Government,
Ministry of Urban Development,
Department of Printing and Stationery,
New Delhi.

..Respondents

(By Advocate Mr.S.Radhakrishnan, ACGSC)

(By Advocate Mr.N.Nagaresh, Court Commissioner)

The Application having been heard on 1.1.98, the Tribunal on the same day delivered the following:

O R D E R

K.M.AGARWAL, CHAIRMAN:

This case came up for hearing before me as the third Member on a reference made by the learned Members constituting the Division Bench for resolving their differences on the

following questions framed by them:

- (1) Is it not necessary that A-ll order itself should contain the reasons for the conclusion?
- (2) When the direction is given by the Tribunal to take a decision by a respondent, is not that respondent bound to consider the matter on merits and dispose it of by a speaking order considering all aspects and the grounds raised by the applicants and reflecting them in the decision itself?
- (3) Is it legally correct to say that "given the very nature and quantum of administrative decision-making it will be totally infeasible to insist that all finally issued administrative orders must contain explicitly all the grounds for and against those final orders"?
- (4) Is it legally correct to say that unless there is a clear and prior direction from the Tribunal to consider a particular representation and then pass a speaking order, the requirement of passing a speaking order cannot be presumed to exist in all the cases?
- (5) In the absence of detailed reasons for the conclusion in A-ll order, is it for the Tribunal to call upon the respondent department to produce the concerned records and examine whether before arriving at the impugned administrative decisions, reasonable considerations had been had of all the relevant and pertinent factors?

2. It appears that the applicants were initially working in Letter Press under the respondents. In 1989 the Letter Press was closed and, thereafter, the respondents took steps to absorb the employees of Letter Press in the Off-set Press. Accordingly the applicants and similar other employees were sent for 6 months' training in Off-set Technology, which was

successfully completed by the applicants on 1.11.1989. They also passed the Trade Test in August 1990. In 1994, the applicants and some other employees filed O.A.Nos.696/94, 1737/94 and 1664/94 for their regular appointments as Off-set Machine Assistants from different dates. By a common order dated 29.5.1995,(Annexure A-8), the following directions were made by the Tribunal:

"The situation that has now arisen namely alleged grant of wrong promotion and alleged denial of rightful promotion, has to be examined carefully. Respondent Director of Printing, Ministry of Urban Development, Government of India should consider the whole issue afresh. He will extend opportunities to all the 'Machine Attendants(Offset)' to put forward their respective claims. Thereafter, the said Director will make promotions to posts of 'Offset Machine Assistants' (with the help of a Departmental Promotion Committee if that is contemplated by the rules). If it is considered necessary, supernumerary posts also may be created to accommodate those who would have obtained promotions but for restructuring."

Pursuant to the directions made, the applicants filed representations,(Annexures A-9 & A-10), and, thereafter, the impugned order dated 13.2.1996,(Annexure A-11), was issued by the first respondent at the behest of the 2nd respondent. It is being challenged as a non-speaking order. Both the learned Members found that the order was non-speaking. As a consequence, the learned Judicial Member was of the view that so far as the applicants were concerned, the impugned order was liable to be quashed and that the second respondent deserved to be commanded "to consider afresh and

[Signature]

pass a speaking order supported by reasons". But the learned Administrative Member was of the view that we "would call upon the respondent department to produce the file where the decision, i.e. the impugned order at A-11, was recorded in order to consider the merits of the substantive grounds urged on behalf of the applicants in this O.A."

3. After hearing the learned counsel for the parties and perusing the record, I am of the view that in the peculiar facts and circumstances of the case and for the reasons herein below given, it does not appear necessary to answer the questions framed and referred to me:

i) The direction of the Tribunal in the order dated 29.5.1995, (Annexure A-8), was for careful examination of the alleged grant of wrong promotion and alleged denial of rightful promotion. Next direction was for consideration of the whole issue afresh.

ii) Though there is no direction to give reasons, muchless to "pass a speaking order supported by reasons", the impugned order, (Annexure A-11), indicates that it was passed "after the review of the case of Off-set Machine Assistants and Off-set Machine Attendants as ordered by the Hon'ble CAT, Ernakulam Bench in O.A.No.(1) 696/94, (2) 1737/94, (3) 1664/94, (4) CPC 30/93 in O.A.No. 983/91 and (5) CPC 46/93 in O.A.No.991/91". It further indicates that reasons by necessary implication were also given for regularising the applicants with effect from 25.11.1992 against the posts of Off-set Machine Assistant.

iii) In any of the two representations, (Annexures A-9 & A-10), there is no mention or allegation about grant of wrong promotion to any person, nor any allegation about denial of rightful promotion to the applicants. They were given ad hoc promotions with effect from 25.11.1992, but by their representations, they wanted ante-dating their appointments by showing them as from 1.11.1989, in place of the actual date of their appointments. Further, there

Yours

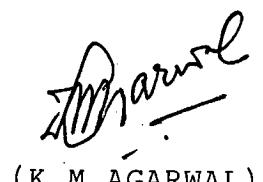
refer the case to the Full Bench to decide :

(i) Whether in the facts and circumstances of the case, it is necessary to resolve the points in difference referred to the third Member ? If so, the Full Bench may resolve the difference,

OR

(ii) Whether the case can be finally decided on the basis of the materials available before the Tribunal ? If yes, the Full Bench itself may finally decide the case after hearing the learned counsel for the parties.

6. Let the papers be placed before me on administrative side for constituting a Full Bench for hearing of the case tomorrow.



(K.M. AGARWAL)
CHAIRMAN

njj/2.1.

LIST OF ANNEXURES

1. Annexure A- 8 : Order in O.A 696/94 dated 29-5-95 by this Tribunal.
2. Annexure A- 9 : Representation dated 14-7-95 submitted by the 1st applicant to the 2nd respondent.
3. Annexure A-10 : Representation dated 14-7-95 submitted by the 2nd applicant to the 2nd respondent.
4. Annexure A-11 : Order F.No.16011/43/95/EI dated 13-2-96 issued by 1st respondent.

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