

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT NEW BOMBAY.

Original Application No. 153 of 1987

Mr. Maula-Ali Ahmed Bujruk

....Applicant

vs.

Union of India & 2 others.

....Respondents.

DATED THIS THE FOURTEENTH DAY OF APRIL, 1987.

Coram: Hon'ble Mr. P. Srinivasan, Member (A)

and

Hon'ble Mr. M.B. Mujumdar, Member (J).

Appearance:

1. Mr. D.V. Gangal, Advocate for the applicant.
2. Mr. P.M. M Pradhan, Advocate for the respondents.

ORAL JUDGMENT: (Per Shri P. Srinivasan, Member(A)).

This application has come up before us today for admission. In this application, the applicant challenges an order dated 28.1.1987 (vide Ex. 'N'), page 50 of the paper book) by which he has been shifted from the post of Office Assistant ('OA') in the Head Record Office of the Railway Mail Service, Miraj, to that of a Sorting Assistant in the same office. On an earlier occasion, the applicant was transferred from the post of OA at Miraj to another post at Ratnagiri and this transfer was challenged in O.A. No. 439/86, which was rejected at the stage of admission itself by this Tribunal by order dated 2.1.1987 after hearing both sides.

*P. Srinivasan*

2. Shri D.V. Gangal, learned counsel for the applicant, contends that the earlier order passed by this Tribunal rejecting O.A. No. 439/86 should not be treated as constituting res judicata, preventing us from admitting the present application. When the earlier application was filed, the applicant could not furnish some information about other officials like him who had been retained in the tenure post of OA not only for the full period of 4 years but even longer, while he was being shifted before the expiry of the period of tenure. No doubt, he had filed an amendment application even then giving the names of those persons vis-a-vis whom he had been discriminated, but in the aforesaid order dated 2.1.1987, this Tribunal had rejected it. In the present application, he had incorporated all these names. He has raised the question of discrimination under Articles 14 and 16 of the Constitution of India, and therefore this Tribunal should admit this application and hear it.

3. We heard both sides at length in view of the decision rendered by this Tribunal in O.A. No. 439/86 referred supra. Mr. Gangal drew our attention to Rule 60 of the P & T Manual Vol. IV and the note appended thereto to show that when a person is appointed to a tenure post, he should not be disturbed from that post till the period

P. D. V. Gangal

of tenure expires. If he was to be disturbed, proper reasons should be given for doing so. He urged that other persons who had been appointed as OAs, and particularly women, have been allowed to hold the posts not only for the period of tenure, but for longer periods, and no reasons had been given in the impugned order for shifting the applicant out of the post of OA. Therefore, the action of the respondents in passing the impugned order was discriminatory and arbitrary. He also pointed out that the applicant was an Office Bearer of an Union, and had not participated in a strike call given by a rival union. The office bearers of the rival union, being a powerful one, had persuaded the respondents to shift the applicant from the post of OA.

4. Shri P.M. Pradhan, learned counsel for the respondents, strongly resisted the contentions of Shri Gangal. Referring to the aforesaid Rule 60, relied on by Shri Gangal, he contended that there was no obligation on the administration to retain an official in a tenure post for the full period of tenure. The said rule only fixes the maximum period for which a person could hold a tenure post. Administration could shift a person out of a tenure post, if it becomes administratively necessary to do so. No right to remain in a tenure post for the full

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period of tenure, can be founded on Rule 60. The question of discrimination under Articles 14 and 16 of the Constitution does not arise. It was purely a matter of discretion of the administration as to how long a person should be retained in a post, whether a tenure post or otherwise. It was not incumbent on the part of the authorities to give reasons to its officials everytime they are transferred from the tenure posts. A vague allegation that a rival union had been instrumental for transferring the applicant cannot be taken into account by this Tribunal. Shri Pradhan pointed out that this very question, namely, the right of the applicant to continue in the very same tenure post, as in this application for the full period of tenure, was considered by this Tribunal in its order dated 2.1.1987 in O.A. No. 439/86 and has been decided against the applicant. Therefore, the applicant could not be allowed to raise the same contention again in this application.

5. After hearing the rival contentions, we are of the view that this application is not a fit one for adjudication by this Tribunal. We see no reason to differ from the view taken in the order dated 2.1.1987 passed by this Tribunal in O.A. No. 439/86, to which one of us was a party. This itself would be sufficient to dispose of

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this application. Moreover, the said rule 60 only provides that a tenure post should not ordinarily be occupied by the same official continuously for more than the period noted against it. It is very clear that the rule does not confer a right on the incumbent ~~to~~ of a tenure post to continue to hold it for the full period of the tenure. The note on which Shri Gangal relies provided that the staff working in the Philatelic Bureau could be transferred before the completion of the tenure for administrative reasons. Shri Gangal argues that this implies that those who are working in the departments other than in Philatelic Bureau cannot be shifted out of tenure posts even for administrative reasons before the completion of the period of tenure. We do not agree with this interpretation, since the language of the rule as explained above is clear and is not amenable to the interpretation sought to be placed on it by Shri Gangal. After all, in the impugned order, the applicant is not being transferred out of Miraj, where he is working. The question of discrimination under Articles 14 and 16 of the Constitution would arise only when a person is denied a right to which he is entitled, and as we have stated earlier, the applicant has no right to continue in the post of OA for the full period

P. L. - 42

of tenure. We are convinced that no right of the kind claimed by the applicant can be read into rule 60, and therefore, no question of discrimination can arise. We are not impressed by the argument of enmity of a rival union being the cause of the applicant's transfer. This application, therefore, is not a fit one to be admitted.

6. In the result, the application is summarily rejected at the admission stage itself under Section 19(3) of the Administrative Tribunals Act, 1985. Parties to bear their own costs.

*P. S. 14/4/87*  
MEMBER (A)

*MP 14-4-87*  
MEMBER (J)

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