

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH

O.A. No. 319/87

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DATE OF DECISION 30.6.1988Mrs. Malini Vasant Taskar PetitionerMrs. P.R. Shetty

Advocate for the Petitioner(s)

Versus

Union of India & 2 ors. RespondentShri Ramesh Darda

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. B.C. Gadgil, Vice ChairmanThe Hon'ble Mr. P. Srinivasan, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal?

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT SITTINGS AT NAGPUR, NAGPUR

O.A. No. 319/87

Mrs. Malini Vasant Taskar
Lower Division Clerk
Office of the Regional Director
Postal Services
Gokulpeth
Nagpur-440010

Applicant

v/s.

1. Union of India
through Secretary
Ministry of Communications
Department of Post
New Delhi

2. Post Master General
Maharashtra Circle
Bombay 400001

3. Regional Director
Postal Services
Gokulpeth
Nagpur 440010

Respondents

Coram : Hon'ble Vice Chairman B C Gadgil
Hon'ble Member (A) P. Srinivasan

APPEARANCE:

Smt. P.R. Shetty
Counsel
for the Applicant

Shri Ramesh Darda
Counsel
for the Respondents

JUDGMENT

DATE : 30.6.1988

(PER: Shri P. Srinivasan, Member (A))

This is an unfortunate case in which the applicant has come before us in a second bout of litigation. The applicant was appointed as LDC in the office of the Post Master General, Central Circle, Nagpur on 6.7.1955. She was confirmed in that post with effect from 1.3.62. In 1965 or there about the Central Circle at Nagpur was bifurcated and staff working in that circle were given

P.S. Srinivasan

M an option to choose between the office of the PMG Bhopal ^{and} or the office of the PMG, Bombay. It appears that the applicant initially exercised her option in favour of the office of the PMG, Bombay. Subsequently she requested the authorities to retain her at Nagpur in the office of the Director of Audit and Accounts, Posts & Telegraphs. This fact is brought out in a letter dated 24.3.1977 addressed by the applicant to the PMG, Bombay, which appears at Exhibit R-1(III) to the reply of the respondents. The office of the Director of Audit and Accounts, P&T Nagpur is stated to be a separate department under M ~~Ministry~~ of the Government of India distinct from the office of the PMG Bhopal or the office of the PMG Bombay and therefore it did not constitute one of the options available to the staff of the erstwhile PMG Central Circle, Nagpur when it was bifurcated. Under Rule 38 of the P&T Manual, Vol. IV, a person seeking a transfer from one administrative unit to another is required to take the bottom position of seniority in the unit to which he seeks transfer. Accordingly the applicant agreed to take the bottom position of seniority in the grade of LDC in the office of the Director of Audit and Accounts Nagpur on the date she joined in or ^{about} ~~around~~ July 1965. Under the terms of transfer she retained her lien in the office of the PMG Central Nagpur till she was freshly confirmed in the office of the Director of Audit and Accounts P&T Nagpur with effect from 8.8.71. Once again in 1977, the applicant sought a transfer on personal grounds to the office of the PMG Bombay i.e., ^a ~~she was transferred~~ to her different unit of Administration. On her accepting once again the condition of being placed at the bottom of the seniority list in the same grade under P. S. ^M

The PMG Bombay. She joined in Bombay on 20.5.1977, that
^{al}
~~thus,~~ ^{Career H} is for the second time in her career losing the
 benefit of her earlier services for the purpose of
 seniority. A further result of this was that being
^{the juniormost, her appointment to the office of the PMG}
^{could be}
 Bombay was only temporary till she was confirmed in
 that charge. Till now she has not been confirmed as
 LDC in the charge of PMG Bombay. In 1979 some vacancies
 of UDC arose in the office of the Regional Director,
 Postal Services, Nagpur and to fill up these posts
 applications were called for from willing and eligible
 LDCs working under the PMG Bombay. The respondents
 state that no permanent or quasi-permanent LDCs in
 the office of PMG Bombay responded to this call. The
 respondents further state that since work at Nagpur
 was suffering because of these posts lying vacant,
 orders of promotions were issued on "local arrangement
 basis" promoting four LDCs including the applicant
 as UDCs on an ad hoc basis and posted ^{ing} them in the
 office of the Regional Director of Postal Services
 Nagpur. The order promoting them clarified that the
 officials were being promoted purely on ad hoc basis
 and would not acquire any right for regular absorp-
 tion in the cadre of UDC. The applicant denies that
 it was a local arrangement, but we shall come to that
 later. However, on 30.7.1981 a certain P.L. Gondane,
 a regular UDC was posted in the office of the Regional
 Director Postal Services ^{thus necessitating} ~~thus necessitated~~ the reversion of
 the applicant from that post, though she was retained
 at Nagpur in the post of LDC. While the applicant was
 thus working as a LDC, she was again promoted on an
 ad hoc and temporary basis as a UDC with effect from

P. S. B.

2.11.1981. She was for the second time reverted from the post of UDC on 28.4.1984. The reason for this reversion was stated to be that one Mr. M.L. Balkheria, regular UDC in the same office, on reversion from the post of Section Supervisor which he earlier held on an officiating basis had to be accommodated in a post of UDC. The applicant who was only officiating as UDC on purely ~~an~~ ad hoc and temporary basis was reverted to the post of LDC with effect from 29.4.1984.

The applicant filed a civil suit before the Civil Judge, Senior Division, Nagpur, in 1985 challenging her reversion from the post of UDC with effect from 28.4.1984. This civil suit on transfer to this Tribunal was registered as Transferred Application No. 26/1986 and was disposed of by this Tribunal by an order dated 10.6.1986. When the said application was being heard by this Tribunal, the Learned Counsel for the respondents, Union of India and its officials, stated that he would recommend to the Department concerned that in view of the long service as LDC put in ^{being} by the applicant and her retirement which was not far away, to promote her once again on an adhoc and temporary basis to the post of UDC and retain her in that post till her retirement. The Bench of which both of us were parties felt that it was a fair offer and learned Counsel for the applicant also sought permission to withdraw the application on the basis of the statement made by learned Counsel for the respondents. As a result in our order dated 10.6.86 we permitted the applicant to withdraw Transferred Application No. 26/1986 with liberty to come back to the Tribunal in the future if it became necessary.

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After Transferred application No. 26/1986 was disposed of on the above terms, the respondents have not so far promoted the applicant as a UDC either on ad hoc or regular basis. The grievance of the applicant is that by not doing so, respondents have not paid heed to the decision of this Tribunal as given in Transferred Application No. ^{26/86} She prays that (i) she be paid salary and allowances for the period from 17.8.81 to 1.11.81 applicable to the post of UDC as her reversion on 17.8.1981 was not by any order communicated to her and (ii) declare the order dated 28.4.84 reverting her for the second time from the post of UDC to be declared illegal, arbitrary and malafide and to direct the respondents to reinstate her ~~to~~ ⁱⁿ the post of UDC with ^{deeming} back wages from 28.4.1984 ~~declaring~~ that the applicant ~~should have~~ is officiating ~~to~~ continued in that post without interruption from that date till to date.

Smt. P.R. Shetty, learned Counsel for the applicant, made the following submissions: the applicant had worked as LDC from 1954 for over 30 years and she was promoted as UDC in 1981 not by way of "local arrangements", but because she was found fit for such promotion. Citing a letter dated ~~28~~ 29.4.1984 addressed by the Director, Postal Services, Nagpur to the PMG Bombay (filed at the time of hearing), Smt. Shetty contended that the applicant being eligible and qualified had responded to an office memo dated 29.5.1979 calling for volunteers to work as UDCs in the office of the DPS Nagpur and her name had been approved by the CO at Bombay as well as the DPS at Nagpur for the post of UDC. Her promotion was not by way of local promotion in the Circle Office at Bombay, but in the "de-centralised RD Offices" and a LDC once promoted cannot be reverted thereafter in view of

P.R. Shetty

order dated 14.6.1982 (Annexure V to the application) issued by the Director General P&T, to the DPS Nagpur Division. In that letter it was clearly stated that persons promoted as UDCs on ad hoc basis prior to 3.5.1982 should not be reverted. It may be stated here that in an earlier order dated 3.5.82, the DG, P&T had directed that ad hoc promotions of LDCs to the cadre of UDC should be restricted to their quota i.e., to the extent of 50% of posts of UDCs which were available for promotion from LDC. 20% of posts of UDC were to be filled up, according to the Recruitment Rules, from LDCs on the basis of seniority-cum-fitness. The applicant had been promoted as UDC, even though on ad hoc basis, in the 20% quota available for LDCs for promotion on seniority-cum-fitness basis. In fact, when the applicant was promoted as UDC for the first time by the order dated 2.7.79, three other persons were also promoted with her and they were Time Scale Clerks whose quota for promotion to the post of UDC was 50%. According to Smt. Shetty, all the four posts filled in fell in the quota of LDC and not of Time Scale Clerks and so when one of the regular UDCs promoted on ad hoc basis had to be reverted, one of the three others should have been reverted and not the applicant. On the other hand it was the applicant who was reverted and not any of the others. The respondents were required to maintain an ad hoc promotions register so that reversions could be made in an orderly fashion when necessary, but this was not done. Under the rules, ad hoc promotions of Time Scale Clerks could not continue beyond one year, but the three other promotees, who were promoted as UDC on ad hoc basis with the applicant have been conti-

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nued while the applicant was reverted, in the first instance after two years and in the second after over two years. A person who continues in an ad hoc capacity for a long period cannot be reverted, Smt. Shetty urged.

Shri Ramesh Darda sought to refute the contentions of Smt. Shetty. The promotion as UDC given to the applicant on 2.7.1979 and again on 2.11.1981 was purely on ad hoc and temporary basis, conferring no rights on her for ^{continuation} contention. When the vacancy in which she was promoted had to be filled up a regular UDC, she had necessarily to be reverted. By virtue of her transfer on personal request to the office of the PMG Bombay in 1977 and the conditions attaching to such transfer, she became the junior most LDC in the charge of PMG Bombay as on the date she joined that charge. Therefore, she was too junior for regular promotion. A person promoted on ad hoc basis can be continued in the promoted post only if regular incumbents are not available, for that is the idea of ad hoc promotion. Refuting the contention raised in the application that persons junior to the applicant in the cadre of LDCs had been promoted as UDCs and allowed to continue in that post, Shri Darda categorically denied that ^{stated} no person junior to the applicant had been promoted as UDC in the 20% quota for which promotions are made on the basis of seniority-cum-fitness. If some LDCs junior to the applicant had been promoted in the 30% quota available for those who passed the qualifying test for the purpose, the applicant can have no complaint because she never took that test. The order dated 14.6.1982 of the DG P&T directing that LDCs promoted ^{as} UDCs prior

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to 3.5.82 should not be reverted was only in the context of the earlier order dated 3.5.1982 issued by the DG P&T directing that ad hoc promotion of LDCs to the cadre of UDC should be restricted to their own quota of 50% and should not spill over into the remaining 50% quota which was reserved for Time Scale Clerks. All that the order dated 14.6.82 said was that if any LDC had been promoted prior to 3.5.82 and such promotion was in excess of the 50% quota available to the LDCs he/she should not be reverted. It had nothing to do with the case of the applicant who was reverted because the vacancy had to be given to a regular incumbent in the cadre of UDC. Shri Darda further clarified that the question of confirming the applicant in the cadre of LDC in the charge of PMG Bombay with effect from 1982 was under active consideration and if that happened, the applicant would be considered for promotion as UDC on regular basis in accordance with her seniority.

We have considered the rival contentions carefully. As we have said in the beginning, this is indeed an unfortunate case where a person has stagnated in a post for over 30 years. But as is evident from the facts narrated above, this was due to the intervention of certain peculiar circumstances in the applicant's career, she having sought transfer on personal grounds from one administrative unit to another on two occasions, once in 1965 and again in 1977. The rule requiring persons to take the bottom seniority in their cadre on such transfer has not been challenged in this application. But that rule has been actually framed for the benefit of those who seek such transfer. If the condition of

P. F. G.

bottom seniority were not imposed, officials in the administrative unit to which a person seeks transfer would resist the transfer, as their prospects of promotion would be adversely affected, if the person so transferred gets the full benefit of his or her past service for the purpose of seniority. The choice before the administration was either to reject all such applications for transfer on personal grounds or to impose the condition of bottom seniority which would make such transfers possible and to that extent benefit those seeking such transfers. This being so there is nothing that can be done about the bottom seniority taken by the applicant in the grade of LDC when she was appointed to the charge in PMG Bombay in 1977. If, for this reason the applicant was too junior to be promoted as UDC it is her bad luck about which we can do nothing. She was indeed lucky to get a break between 2.7.1979 and 30.7.1981 and again between 2.11.1981 and 20.4.1984 when she was promoted as UDC on ad hoc basis only because no regular LDC wanted the post. But when a regular incumbent in the grade of UDC had to be accommodated, it was inevitable that the applicant should be reverted. We agree with Shri Darda that the DG P&T's letter dated 14.6.1982 has no application to the case of the applicant. No person can claim ad hoc promotion as of right even if there were vacancies to make such promotion. We have no reason to doubt the assertion of Shri Darda that no person junior to the applicant has been promoted as UDC in the 20% quota to which alone she is entitled. In view of this, we have no choice but to dismiss this application. We would only express a hope in the passing that the respondents themselves will be able to find a way to help the applicant in this matter,

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taking into consideration her long service of over 30 years and the fact that she lost her seniority twice on account of transfers on compassionate grounds. We can do no more than that without violating the service rules which we do not wish to.

ORDER

The application is dismissed.

Parties to bear their own costs.

B.C. Gadgil
(B.C. Gadgil)
Vice Chairman

P. Srinivasan
(P. Srinivasan)
Member (A)