

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(B)

O.A. No. 198
T.A. No. 192 of 1987.

8.8.90
DATE OF DECISION

Shashi Pal Aggarwal

Petitioner

Mr J. Bhat,

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Mr Ramesh Darda

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G. Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : NEW BOMBAY BENCH
NAGPUR.

TR.192/87.

Shashi Pal Aggarwal Applicant.
versus
Union of India and others... Respondents.

(14)

P R E S E N T :

The Hon'ble Sri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Sri I.K.Rasgotra, Member(A).

For the applicant- Mr J.Bhat, Advocate

For the Respondents- Mr Ramesh Darda, Advocate.

Date of hearing - 6.8.90

Date of Order - 8.8.90.

O R D E R :

G.SREEDHARAN NAIR, VICE CHAIRMAN:

This relates to Writ Petition No.1048/80
in the High Court of Bombay, received on transfer.

2. The applicant was appointed as Lower Division Clerk in the Defence Services. With effect from 27.3.1974, he was promoted to officiate as Assistant Cashier, and on 13.7.1978 he was promoted to the post of officiating Cashier. By the order dated 1.4.1980, the said promotion was regularised.

3. The grievance of the applicant is in respect of his redesignation as Upper Division Clerk with effect from 21.4.1980, and the appointment of the 3rd respondent as Cashier. It is alleged that this order has been issued to favour the 3rd respondent who is associated with the Union activities. There is also the plea that the 2nd respondent issued the order on the eve of his transfer from the post of General Manager.

4. The applicant prays for quashing the order appointing the 3rd respondent to the post of Cashier and re-

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designating him as Upper Division Clerk.

5. In the reply filed by the respondents 1 and 2, it is stated that the applicant was promoted to the post of Cashier purely on adhoc basis when the incumbent of the post was promoted as Office Superintendent on adhoc basis. It is pointed out that, at that time, there were 12 Upper Division Clerks senior to the applicant. It is stated that the regularisation of the services of the applicant against the post of Cashier with effect from 1.4.1980 was the result of a bona fide mistake, since the fact that the claims of the other Upper Division Clerks senior to the applicant were not considered, was not taken into account, inadvertently. According to the respondents 1 and 2, the senior Upper Division Clerks are appointed as Cashiers, the pay scale of both the posts being identical, and that the change of designation is made as a result of movement from one to the other post. However, it is admitted that the post of Cashier carries a special pay of Rs. 30/- per month in view of the arduous nature of duties attached to the post. It is pointed out that the seniormost Upper Division Clerk gets the first claim for the post of Cashier, and as 9(nine) Upper Division Clerks senior to the 3rd respondent who were offered the post declined to accept the post, the post was offered to the 3rd respondent and consequent upon his acceptance he was appointed. The allegation of favouritism is denied.

6. The applicant joined the service of respondents 1 and 2 as Lower Division Clerk. While so, he was promoted purely on adhoc basis to the post of Assistant Cashier. It is admitted that Upper Division Clerks and Assistant Cashiers form feeder category for promotion to the post of Cashier (vide para 9 of the reply of respondents 1 and 2). While

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working as Assistant Cashier, the applicant was promoted on adhoc basis to the post of Cashier against the existing vacancy with effect from 13.7.1978, and this adhoc promotion to the post of Cashier was regularised with effect from 13.7.1978 itself by the order dated 1.4.1980. It is thereafter that on 18.4.1980, the 3rd respondent was appointed as Cashier and simultaneously the applicant was redesignated as Upper Division Clerk. This order is sought to be supported by the respondents 1 and 2 on the ground that it is the seniormost Upper Division Clerk who has the first claim for appointment to the post of Cashier, and as there were many Upper Division Clerks senior to the applicant, the adhoc promotion of the applicant to the post of Cashier should not have been regularised. It is to be noted that the order dated 1.4.1980 regularising the adhoc promotion of the applicant has not been cancelled. Nor can it be cancelled without affording the applicant an opportunity of being heard. Instead of cancelling the regularisation of the adhoc promotion, what the respondents 1 and 2 ^{done} have is to deprive the applicant of the benefit of the order, by re-designating him as Upper Division Clerk and appointing the 3rd respondent, as Upper Division Clerk against the post of Cashier. Assuming that the 3rd respondent has seniority in the cadre of Upper Division Clerk, when once it is admitted that both the Upper Division Clerks and Assistant Cashiers form the feeder category for promotion to the post of Cashier, and the applicant who was working as Assistant Cashier was duly promoted to the post of Cashier, there is no question of re-designating him as Upper Division Clerk and divesting him of the post of Cashier just to accommodate an Upper Division Clerk against the post. It is to be noted, in this context, that while working as Lower Division Clerk, the applicant was directly promoted to the cadre of Assistant Cashier. There is nothing on record to indicate that the applicant was promoted to the cadre

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of Upper Division Clerk. As such, it has to be inferred that the applicant was the only person in the feeder category of Assistant Cashier for consideration for promotion to the post of Cashier, and hence when he was so promoted, and such promotion was regularised, his re-designation as Upper Division Clerk ~~was~~ cannot be accepted. At any rate, when the adhoc promotion of the applicant to the cadre of Cashier was regularised, the appointment of the 3rd respondent against the post cannot be sustained.

7. In the result, we quash the order dated 18.4.1980 by which the 3rd respondent has been appointed as officiating Cashier and the applicant has been re-designated as Upper Division Clerk.

8. The application is allowed as above.

I.K.Rasgotra
(I.K.Rasgotra).
Member(A) 8/8/90

G.Sreedharan Nair
(G.Sreedharan Nair)
Vice Chairman.

S.P.Singh/
7.8.90.