

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. YR-388 of 1987
T.A. No. OA-249 of 1988 198

DATE OF DECISION 7.2.90

Digamber Tukaram Shingade Petitioner (In TR-388/87)
Shantilal Lakhamichand Bapna (In OA-249/88)

Mr.S.L.Kapse(In TR-388/87) Advocate for the Petitioner(s)
Mr.C.B.Kale(In OA-249/88)
Versus

Union of India & others Respondent

Mr. S.R.Atre for Mr.P.M.Pradhan Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G.Sreedharan Nair, V.C.

The Hon'ble Mr. M.Y.Priolkar, Member(A)

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

(G.Sreedharan Nair)
Vice-Chairman

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

(1) Registration No. TR-388 of 1987

Date of decision 7.2.1990

Digamber Tukaram Shingade .. Applicant

- versus -

The Union of India and others .. Respondents

Counsel for the applicant : Mr. S.L. Kapse.

Counsel for the respondents : Mr. S.R. Atre
for Mr. P.M. Pradhan

(2) Registration No. O.A. 249 of 1988

Shantilal Lakhamichand Baphna .. Applicant

- versus -

Director, Postal Services (H.Q.), Bombay
and others .. Respondents

Counsel for the applicant : Mr. C.B. Kale.

Counsel for the respondents : Mr. S.R. Atre
for Mr. P.M. Pradhan.

CORAM: Hon'ble Shri G. Sreedharan Nair, Vice-Chairman

Hon'ble Shri M.Y. Priolkar, Member (A)

ORDER

G. Sreedharan Nair, Vice-Chairman :- These two applications were heard together and are being disposed of by a common order. The applicant in TR-388 of 1987 is the third respondent in O.A. 249 of 1988.

2. The applicant in TR-388 of 1987 joined the Postal Department as Time-Scale Clerk and was confirmed with effect from 18.7.1977. He belongs to the Scheduled Tribe.

He was promoted to the Lower Selection Grade in a reserved vacancy with effect from 14.4.1978, and to the next higher post of Deputy Manager, R.L.O., Bombay by the order dated 21.12.1981. He is aggrieved by the order passed by the third respondent on 2.9.1983 reverting him to the grade of Time-Scale Postal Assistant on the ground that he is ineligible for promotion to the Lower Selection Grade. It is urged that the order is illegal and violative of the principles of natural justice as it has been passed without giving notice or opportunity of showing cause. It is also alleged that it is violative of clause (2) of Article 311 of the Constitution of India in as much as it amounts to reduction in rank with stigma. The applicant prays for quashing the aforesaid order.

3. In the reply filed by the respondents, it is stated that for promotion to the Lower Selection Grade, 10 years' service in the Time-Scale is essential. The applicant had not the requisite qualifying service when he was promoted to the Lower Selection Grade and that it was inadvertently made. It is further stated that the promotion to the Higher Selection Grade was also the result of the said mistake, and that the Departmental Promotion Committee reviewed the case and decided that the applicant was wrongly promoted. It is contended that the impugned order of reversion was passed by way of correcting and remedying the mistake that was committed and as such, it is perfectly legal.

4. The applicant in OA-249 of 1988 was confirmed as Clerk on 5.7.1957 and was appointed on 14.4.1980 in the Lower Selection Grade. He was promoted to the Higher Selection Grade as Deputy Manager on 15.5.1984, but was reverted to the Lower Selection Grade by the order dated 15.1.1988. He prays for a declaration that the said order is null and void and for restoration of his status. It is urged that as he was appointed against a clear vacancy in the post of Deputy Manager, R.L.O., Bombay, which was the solitary post in the Higher Selection Grade in the Unit and as he continued without break for more than three years, the order of reversion is bad. It is stated that though the promotion was made on ad hoc basis, the respondents in violation of the relevant instructions, did not confirm him in the post. It is further urged that the third respondent, who was appointed in the post of Deputy Manager on his reversion by the impugned order, though was irregularly promoted to the Lower Selection Grade and thereafter to the Higher Selection Grade, was ~~reverted~~ actually reverted when the irregularity was brought to light and as such, his reversion to accommodate the third respondent in the post of Deputy Manager is illegal and unsustainable.

5. In the reply filed by the respondents 1 and 2, it is stated that as the applicant was promoted to the post of Deputy Manager on purely ^{temporary} ad hoc basis, he is not entitled to question the reversion. It is stated that the promotion of the third respondent to the Lower Selection Grade and thereafter to the Higher Selection

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Grade was granted as per the rules in force. It is pointed out that the third respondent as he belongs to the Scheduled Tribe, had become eligible to be promoted to the post of Deputy Manager having put in three years of service in the Lower Selection Grade. It is contended that it is not open to the applicant to challenge the promotion granted to the third respondent in the year ~~1983~~¹⁹⁸¹.

6. The first question that arises for determination is whether the order dated 2.9.1983 issued by the Director of Postal Services reverting the applicant in TR-388 of 1987 is sustainable. It is not in dispute that he was promoted to the Lower Selection Grade with effect from 16.4.1978 and, subsequently, to the higher Selection Grade and posted at the R.L.O., Bombay with effect from 1.11.1981 and that these promotions were made on regular basis. The order dated 2.9.1983 has been passed on the premise that he is ineligible for promotion to the Lower Selection Grade. Though in the reply filed in TR-388 of 1987 it is contended that the promotion to the Lower Selection Grade was inadvertently done, in the reply filed in OA-249 of 1988, it is very clearly stated that ¹¹⁵promotion to the Lower Selection Grade as well as the further promotion to the Higher Selection Grade were granted as per the rules in force and that there was no irregularity ~~in~~ⁱⁿ the same. That apart, when he was promoted regularly as early as in 1978 to the Lower Selection Grade and was even promoted to the next higher post of Higher Selection

Grade in the year 1981 and was working in that post, before reverting him to the grade of Time-Scale Postal Assistant, which is two grades below, opportunity of showing cause should have been afforded to him, and the failure to do so is clearly violative of the principles of natural justice. Further, as pleaded by the applicant, the order itself casts a stigma on him for it states about his ineligibility for promotion.

7. It follows that the impugned order in TR-388 of 1987, namely, the order dated 2.9.1983 is unsustainable in law and has to be quashed. We do so. As it was stated at the time of hearing that the applicant in TR-388 of 1987 has since been appointed to the Higher Selection Grade and posted as Deputy Manager, R.L.O., Bombay by the order dated 15.1.1988, the only direction that is called for to the respondents 1 and 2 is to treat the applicant as having continued in the said post despite the order dated 2.9.1983 reverting him from the same. He shall be allowed consequential benefits on this basis except the difference in the pay during the period he had not worked in the higher post.

8. Evidently, it was to accommodate the applicant in TR-388 of 1987 that the applicant in OA-249 of 1988 was reverted from the post of Deputy Manager, R.L.O., Bombay to the Lower Selection Grade. Though counsel of the applicant in O.A.249 of 1988 urged that the said reversion is bad in law as the applicant therein

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had worked in the post for well nigh three-and-a-half-years, on a consideration of the facts and circumstances, we are unable to accept the submission. Admittedly, there is only one post in the Higher Selection Grade in the Unit. There is no case for the applicant in O.A.249 of 1988 that the applicant in TR-388 of 1987 is junior to him. The promotion of the applicant in TR-388 of 1987 to the Lower Selection Grade as well as to the Higher Selection Grade was before the promotion of the applicant in O.A.249 of 1988. Moreover, while the applicant in TR-388 of 1987 was promoted on a regular basis, the promotion of the applicant in O.A.249 of 1988 to the Higher Selection Grade was purely on temporary and ad hoc basis. So much so, when the applicant in TR-388 of 1987 was to be accommodated in the post, there is nothing wrong in the reversion of the applicant in O.A.249 of 1988 to his substantive cadre. Though he had worked in the higher cadre for three-and-a-half-years, in the circumstances it cannot be said that he had acquired a legal right to the post so as to continue in the same, keeping the applicant in TR-388 of 1987 outside.

9. It was submitted by counsel of the applicant in OA-249 of 1988 that there is no question of ~~reversion~~ *reservation* so far as appointment to the Higher Selection Grade is concerned since there is only one post in the Unit. Even accepting the submission, since the applicant in TR-388 of 1987 was regularly promoted to the post as early as in the year 1981, which promotion has not been challenged by the applicant in O.A.249 of 1988 till the filing of that application in the year 1988, the attack at this stage cannot be countenanced.

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10. It follows that the declaration prayed for by the applicant in O.A.249 of 1988 that the order dated 15.1.1988 reverting him to the Lower Selection Grade cadre is null and void cannot be allowed and that the applicant therein is not entitled to any of the reliefs prayed for.

11. In the result, TR-388 of 1987 is allowed as indicated in paragraph 7 above. O.A.249 of 1988 is dismissed.

M.Y. Priolkar
7.2.90

(M.Y. Priolkar)
Member(A)

G. Sreedharan Nair
7.2.1990

(G. Sreedharan Nair)
Vice-Chairman

Order dt. 7.2.90
Sent to parties
on 8.2.90.

Subedi

Order dt. 7/2/90
Served on R.No. 2 & 3
on 8/3/90 (A.D. attached
in OA 249/88)

B
17/3/90