

22

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

~~Original Application No.~~

Transfer Application No: 468/87.

DATE OF DECISION 11.2.1993

Shri D.K.Udgir.

Petitioner

Shri D.V.Gangal

Advocate for the Petitioners

Versus

Union of India & Anr.

Respondent

Shri V.G.Rege.

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri S.K.Dhaon, Vice-Chairman,

The Hon'ble Shri Usha Savara, 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 ?

NO

Sd/-
(S.K.DHAON)
VICE - CHAIRMAN.

NS/

23

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH,
B O M B A Y

Tr. Application No.468/87.

Shri D.K.Udgir.

... Applicant.

V/s.

Union of India & ~~Ans.~~

... Respondents.

Coram: Hon'ble Mr.S.K.Dhaon, Vice-Chairman,
Hon'ble Ms.Usha Savara, Member(A).

Appearances:-

Applicant by Shri D.V.Gangal.
Respondents by Shri V.G.Rege.

Oral Judgment:-

[Per Shri S.K.Dhaon, Vice-Chairman] Dated: 11.2.1993.

This Writ Petition has been transferred from the High Court of Bombay.

2. Initially, the petitioner filed a writ petition in the Bombay High Court with the grievance that the seniority list published on 6.5.1980 was illegally prepared. During the pendency of this petition before this Tribunal, it appears that the Delhi Bench on 21.11.1986 quashed the above mentioned seniority list and directed that a fresh list should be drawn. Accordingly that was done and on 11.3.1988 a fresh seniority list was published. The applicant still felt dissatisfied and therefore, he sought amendment to this petition, which was allowed. Now this petition is confined to the legality of the seniority list published on 11.3.1988.

3. The applicant was working as a Section Controller. On 5th May, 1971 an order was passed appointing him and four others as Senior Section Controllers. It may be noted that as a Section Controller (the petitioner was in the grade of Rs.270-380 (AS)). He was promoted as a Senior Section Controller in the grade of Rs.335-425. However, the order of promotion clearly provided that the promotion of the applicant and others were purely local arrangements and will not confer on them prescriptive rights for regular promotion over their seniors. The case set out by the respondents is

that on 23.4.1972 the petitioner was reverted from the post of Senior Section Controller to his original post of Section Controller. We feel that if we ultimately come to the conclusion that the petitioner was in fact reverted on 23.4.1972 the petitioner cannot and will not have any grievance even ^{against} ~~in~~ the seniority list published in the year 1988.

4. We ~~have~~ heard this petition on a number of occasions. On 21.10.1992 the service register of the petitioner was presented before us by the learned counsel for the respondents. Upon a perusal of the said register it was discovered that the petitioner was reverted from the grade Rs.250-380 from 23.4.1972. Shri Rege, counsel for the respondents also stated that the said reversion was given effect to insofar as excess amount paid to him ^{was recovered.} Shri Gangal, learned counsel for the applicant pointed out that the order of reversion was neither served upon him nor was any recovery made from him. In these circumstances we permitted Shri Rege to file a supplementary affidavit stating therein the relevant facts and also annexures thereto ~~the~~ the extracts of the relevant documents. Shri Rege ^{was} ~~was~~ also ^{to} ensure the production of relevant record on the next date.

5. A supplementary affidavit has been filed by Shri Pramod Laxman Bankar, the Deputy Chief Personnel Officer (Gaz), Central Railway. The averments made in this affidavit ~~petition~~ are these. The petitioner was promoted to the post of Section Controller carrying the scale of Rs.335-425(AS) on purely temporary and ad hoc basis as local stop gap arrangement. He was reverted to the post of Section Controller carrying the pay scale of Rs.250-380(AS) w.e.f. 23.4.1972 as there was no vacancy available in the scale of Rs.335-425(AS) for his further

continuation therein. In support of this averment in paragraph 2 certain documents were filed (four in number).

6. The original record is also before us and we have perused the same. We find that in the Service Book there is an entry that the petitioner was reverted to the grade Rs.250-380 from 23.4.1972. We also find a letter dt. 26.3.1974 of the D.S.(P), Bhusawal to the Divisional Office, Personnel Branch, Bhusawal. The relevant portion of the said letter reads:-

"On return from deputation Shri M.D.Puranik and Shri T.N.Meshram having been promoted and posted as DYCs Grade Rs.370-475(AS) at BSL (C) Junior most Offg. SCORs grade Rs.335-425 (AS) in Local arrangements were to be reverted to grade Rs.250-380(AS) from 23.4.1972. Shri Udgir however continued to be passed for payment @ Rs.365 p.m. wrongly upto June 1973 as there was no post then in Gr. 335-425(AS) against which Shri Udgir could be paid.

In view of the above, please arrange to recover from Shri Udgir over payment of Rs.172.50 NPs for the period from 24.4.1972 to 30.6.1973. The party should be advised accordingly."

Then we have the pay sheet before us which goes to show that between May, 1972 and December, 1972 the grade of the petitioner was shown as Rs.250-380. We then find a communication dt. 20th October, 1983 from the DRM(P) BSL to the C.P.O.(T), Bombay showing that certain over payments ^{had} ~~have~~ been made to the applicant between July, 1973 and November, 1973, and these over payments were recovered from the petitioner in instalments.

7. The petitioner himself has filed ~~Ex.A-5~~ Ex.A-5 to the affidavit filed in reply to the supplementary affidavit given by Dr.Bunkar. A perusal of this document indicates that recoveries were made from him between July, 1973 to November, 1973 on the ground that certain over payments ^{had} ~~have~~ been made.

8. Exhibit A-4 to the reply of the petitioner is also relevant. This is a communication dt. 9.12.1974

by the Divisional Superintendent (P), Bhusawal to CPO(T), Bombay V.T. The first paragraph of this communication contains the recitals:-

"He was treated as reverted to grade Rs.250-380 from 23.4.72 since there was no post for him in grade Rs.335-425(AS) at Bsl. Unfortunately, no office order was issued reverting him to the lower grade."

This document also shows that the petitioner had made a grievance that persons junior to him were being paid more and therefore, his pay should be stepped up. This request was however, turned down. We are not concerned with the controversy of the stepping up of pay of the petitioner in this petition. However, it is clear from this document that on 9.12.1974 the department ^{had} ~~have~~ taken ~~up~~ the stand ^{that} ~~that~~ ~~the petitioner~~, was being treated as reverted and the petitioner was aware of the ^{said} ~~stand~~ ~~then taken by~~ ~~the department~~. The next document produced by the petitioner himself as an annexure to the reply is a communication of the petitioner dt. 28.3.1974 addressed to the Divisional Superintendent, Central Railway, Bhusawal. In paragraph 3 of that communication the following is relevant:-

"..... (Note no reversion orders of mine have been issued at that time by the office which would have enabled me to point out the error if office was not aware of it). This I came to know only when a letter regarding recovery of over payment under your letter No.BSL.P.T. 19.1 of 20.6.1973 was received to my surprise like a bolt from the blue."

Thereafter, in the said communication the petitioner pointed out that the payment to him on a lower scale was an anomaly as, according to him, one Shri C.B.D.Agrawal, though junior to him (petitioner) was being paid more in the revised ~~scale~~ grade Rs.335-425. This document also makes it abundantly clear that at least on 28.3.1974 the ^{petitioner} ~~applicant~~ was aware of the fact that he was ~~being~~ ^{higher} treated to have been reverted from the ~~post~~ ^{his} to ~~a~~ substantive post.

9. It is true that no order reverting the petitioner has been produced before us. It is also true that no order has been brought to our notice nor do we find such an order in any corner of the record. The explanation offered on behalf of the department is that the matter being old possibly the record may have been weeded out. However, some plausible explanation is to be offered by the petitioner and we have also to give some cogent reasons for discarding the documents produced before us on behalf of the department. It is not the petitioner's case nor can it be that these documents being from 1974 onwards have been manufactured to defeat the case of the petitioner. Having given our thoughtful consideration to the matter, we are of the opinion that the documents referred to above cannot be discarded or brushed aside lightly. On the whole, we are satisfied that the affidavit filed by Shri Pramod Laxman Bankar has a ring of truth in it and the averments made therein are substantially corroborated by the documents before us. We, therefore, come to the conclusion that, in fact, the petitioner was being treated as being reverted from the higher post w.e.f. 23.4.1972. We have also recorded the finding that in 1974 itself the petitioner was aware of the fact that he was being treated as having been reverted. Therefore, it is now too late in the day to contend that the decision taken by the officer concerned that the petitioner should be treated as having been reverted on 23.4.1972 may be quashed or set aside.

10. A faint argument was advanced before us that, since the grades of Rs.270-380 and Rs.335-425 were merged on 1.1.1973, the alleged reversion of the petitioner will

have no impact on the merits of this case. This argument cannot have any force as we have found that, in fact, the reversion was treated to have come into force w.e.f. 23.4.72 i.e. a date posterior to the date when a decision was taken to merge the two grades.

11. The last submission made by the learned counsel is that the list drawn up in the year 1988, in pursuance of the direction given by the Principal Bench on 21.11.1986, insofar as it relates to the petitioner is not in conformity with the directions given by the Bench. Reliance is placed on the following directions:-

"We have no doubt in our mind that the TA's should not suffer because of wrongful delay in their promotion and for reckoning length of officiation in the higher scale or date of appointment to the scale, for the purpose of seniority, they should count the date of actual nonfortuitous promotion (ad hoc temporary or substantive) or the date on which the aforesaid conditions were satisfied by them whichever is earlier. In other words, if they were wrongfully deprived of their promotion even after they became eligible, they should count the date of wrongfully deprived promotion for their seniority"

12. We have already indicated that the terms of the appointment of the petitioner were clear that it was purely stop gap local arrangement. Therefore, it cannot be said that the appointment of the petitioner was nonfortuitous. More importantly, we have already recorded the finding that the petitioner was, in fact, reverted from 23.4.1972. Therefore, the question of laying principle of reckoning the length of officiation in the higher scale does not arise in the case of the petitioner. It cannot be said that the petitioner had been wrongfully reverted. Assuming he has been wrongly reverted, that order having been passed in the year 1972, the same cannot be subjected to a challenge in the writ petition filed in the year 1982. The aforesaid observation therefore

have no application to the case of the petitioner.

We are satisfied that the petitioner is not entitled to any relief.

13. The petition is dismissed without any order as to costs.

Usha Savara
(USHA SAVARA) 11.2.93
MEMBER (A)

S.K. Dhaon
(S.K. DHAON)
VICE-CHAIRMAN.

B