

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.
T.A. No.

804 of 1987 198

DATE OF DECISION

07.10.1991

Mr. V. Chandrasekharan Nair Petitioner

Sri K.U. Nagarkatti

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

R.K. Shetty.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C. Srivastava, V.C.

The Hon'ble Mr. M.Y. Priolkar 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 in needs to be circulated to other Benches of the Tribunal ? ✓

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH.

....

Registration D.A. No. 804 of 1987

Mr. V. Chandrasekharan Nair (Foreman High Explosives Factory, Kirkee, Pune) Applicant.

Versus

The Chairman/Director General, Ordnance Factory Board Calcutta and another Respondents.

Coram:- Hon'ble Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. M.Y. Priolkar, Member (A)

Appearances: Counsel for the applicant Sri K.U. Nagarkatti,
Counsel for the Respondents Sri R.K. Shetty.

Oral Judgment:-

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.) Dt. 07.10.1991

Being aggrieved from the fixation of seniority, the applicant who was appointed as Foreman in High Explosives Factor, Pune has approached this Tribunal with a prayer that his seniority may be refixed with due regard to his date of joining the various grades of Chargeman-II, Assistant Foreman & Foreman and his continuous officiation in the same.

2. The applicant joined the services of Ordnance Factories as Supervisor Grade-B on 13.8.1958. He was promoted to the post of Supervisor Grade-A on 1.9.1961 and thereafter to Chargeman Grade-II and further to the post of Assistant Foreman on 30.10.1972 and presently he is designated as Foreman since 19.12.1979. A dispute between the direct recruit and the promotees in the matter of seniority arose and the matter was taken of the very same dispute to the Bombay High Court. The Bombay High Court vide its judgment dated 1.12.1981 held that the seniority of all Class-III employees is governed by Rule-10 (iv) of the Rules of 1956 which states that, "Temporary seniority in a given grade will be reckoned from the date from which the officer concerned has been

34

- 2 -

occupying it continuously, irrespective of whether he has a substantive appointment in some lower grade". Accordingly the Bombay High Court directed that the seniority of the applicant before it be calculated on the basis of their continuous officiation on the post of Assistant Foreman and quash the existing seniority list and directed the respondents to make a fresh seniority list on the basis of the continuous officiation in connection to his grade and against the judgment of the Bombay High Court, the matter was taken before the Hon'ble Supreme Court and the Hon'ble Supreme Court dismissed the S.L.P. filed against the said judgment. The contention of the applicant is that the judgment of the Bombay High Court which was a 'judgment in rem' and as the Bombay High Court quashed the entire seniority list and laid down a criteria for determination of seniority, with the result, the seniority of all those who were in the list was required to be refixed and refixation could not have been done in the matter of counted few excluding others. This itself according to the application required the respondents to fix seniority of every one accordingly and similarly other placed employees and not of their juniors making them junior to those who were earlier junior to them. The respondents have opposed the application and has made a reference to the judgment passed in the High Court of Madhya Pradesh in Writ Petition No. 1719 of 1987 in which the executive instruction of 1961 were held applicable in the matter of seniority. The Bombay High Court made the following observations;

" The learned counsel for the petitioner contends before us that the office memorandum dated 6.1.1961 does not contain rules framed under Rule 309 of the Constitution and the Memorandum is merely an executive Instruction. We are not impressed by this argument.

The memorandum is issued by the Govt. of India, there is no specific form in which the rules are framed. Simply because Art. 309 is not mentioned in this memorandum, it

can not be said that the rules framed under Article 309. The rules are referred to in the Annexure-3 for the non gazetted and gazetted officers of the Indian Ordnance Factories. The rules have been held to be rules under Article 309 of the Constitution. In this view of the matter, the rules contained in SRO 4 and 1956 stands superceded The petitioners can not get any relief on the basis of 1956 rules."

According to the respondents, such type of similar view has been taken by another High Court and the petition was dismissed. The respondents have stated in view of the Madhya Pradesh High Court's judgment that they have not committed any illegality in giving effect to the instructions of 1961 which superceded rules of 1956. The Madhya Pradesh High Court has taken the view that the instructions of 1961 were framed by the appropriate authority and consequently the same will be deemed to be the rules under Art. 309 of the Constitution of India. The rules under Art. 309 of the Constitution of India are framed by the competent authority empowered to do the same i.e. with the approval of the president merely because rules have been framed by the appropriate authority or instructions have been issued by it, the same can not be equated to rules under Art. 309 of the Constitution of India. Unless the same are framed as provided in the said Articles, otherwise, the instructions so issued will be an instruction under the authority under Art. 162 of the Constitution and can only supplement the rules under Art. 309 of the Constitution of India, but can not supercede the same. The instructions of the year 1961 were merely executive instructions and as such the same can not vary or supercede the rules of 1956. The Bombay High Court has rightly taken the view that the instructions of 1961 were only executive instructions and can not supercede the statutory rules framed under Art. 309 of the Constitution of India. We thus respectfully disagree with the view which has been taken by the Bombay High Court, referred to above.

3. The Bombay High Court did not quash the seniority list, so far as the petitioners before it are concerned. As the matter of

fact, the entire seniority list was quashed which was thus, known to each and every persons whose name was included in the seniority list and no one challenged the same. The judgment of the Bombay High Court was thus 'judgment in rem' applicable to all. Now the Bombay High Court after quashing the seniority list laid down the criteria and directed the respondents to refix the seniority of the petitioners. It can not be taken to mean that the judgment created 2 clauses for fixation of seniority after quashing the entire list, i.e. petitioner before it and those who were not petitioners before it. In the matter of fact, that when there was no seniority list, a criteria laid down by it was made application to every employee including the petitioner before it. The seniority of all such employees was to be fixed in accordance with the criteria i.e. continuous officiation. It could not have been taken to mean that the benefit of continuous officiation was to be given only to some and not to the others. Now the Hon. Supreme Court dismissed the S.LP. filed by the Union of India against the Bombay High Court's judgment. The Bombay High Court's judgment get a seal of affirmation by it in this manner and the said criteria should have been deviated by Union of India that there would not have been any Supreme Court's judgment to the contrary but no such judgment has been pointed out to be in existence, as such the seniority of the applicant whose name also found in the seniority list quashed by the Bombay High Court, has wrongly been fixed by the respondents and enblock has been made junior to their juniors. The list so made can not legally stands and the same stands quashed and accordingly the respondents ^{one} had directed to fix the seniority of all the employees whose names found place in the seniority list in accordance with the criteria laid down by the Bombay High Court.

(12)

- 5 -

4. In the result, the application of the applicant is hereby
dismissed with the above directions. There will be no order as
to the costs. Let the seniority be fixed expeditiously say within
6 months.


Member (A)


Vice-Chairman

Bombay Bench.

(n.u.)

Corrections carried out vide order in RP 39192
26/3/92

dat 3-4-92


S/—
415—

Hon'ble
on return