

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 822/87

Transfer Application No:

DATE OF DECISION 22.1.82

Shri George Benjamin Petitioner

Shri D.V.Gangal Advocate for the Petitioners

Versus

Union of India and ors. Respondent

Shri P.R.Pai Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri JUSTICE 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.

U. Savara
22.1.82
(USHA SAVARA)
MA

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO: 822/87

Shri George Benjamin
Working as High Skilled Fitter,
Grade-II under Chief Workshop
Engineer, Kalyan Power House,
Thakurli.

... Applicant

v/s

Union of India
and ors.

CORAM : HON'BLE JUSTICE SHRI S.K.DHAON, Vice-Chairman
HON'BLE USHA SAVARA, MEMBER (A)

Appearance :

Shri D.V.Gangal, Adv.
for the applicant.

Shri P.R.PAI, Adv.
for the respondents.

JUDGEMENTDATED : 27.1.93.

(PER: USHA SAVARA, M/A)

The application was filed with the prayers that the applicant's reversion on 6.12.1986 be declared as illegal and the chargesheet dated 11.7.1987 be also declared as illegal. During the course of arguments, the learned counsel Shri.Gangal, restricted his arguments only to the first prayer.

2. The applicant was holding the substantive post of High Skilled fitter Gr.-II, when he was promoted to the post of Maistry on 6.12.1985 after due selection in the trade test. He was reverted on 6.12.1986, though his work and conduct was satisfactory. The post was lying vacant, and was denied to him with malafide intention. A counter

was filed by the respondents denying the charge of malafide intention. The applicant's promotion was on purely temporary basis on 5.12.1985 vice Shri Chavan, Maistry, who was promoted as Chargeman 'B'. Since this was a work-charged post, on its expiry, the applicant was reverted back as High Skilled Gr-II Fitter with effect from 1.4.1986. Shri B.V. Narayan F.O.'A' reported sick, and the officiating arrangement was continued upto 5.12.1986. When Shri B.V. Narayan resumed duty, the officiating arrangement came to an end. There was no other reason for reverting the applicant. Thereafter, there was no vacancy available till 1.2.1987. A vacancy arose on 1.2.1987, when Shri P.B. Chawan was promoted as Chargeman 'B' on retirement of Shri Almuddin. But, by then, several changes were envisaged because of the Fourth Pay Commission's Report. Fresh classification of non-gazetted posts as selection/non-selection was to be made, and therefore, the Railway Board had given instructions on 25.9.1986 that where two or more existing scales of pay had been merged into a single scale of pay, selections and promotions from the existing lower scale to the existing higher scale should not be made. It is submitted by Shri Pai that it was in these circumstances, that the vacancy, which arose on 1.2.1987 was not filled up. Subsequently, the avenue of promotion for filling up the posts of Maistries and Chargeman 'B' Gr. Rs. 1400-2300 was revised, and made effective from 29.9.1987. This was done after discussion with the organised labour ~~and~~ ^{and} special joint meeting.

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Henceforth, High Skilled K.Grade-II could seek promotion to the post of H.S.K.-Gr-I and thereafter as Maistry, and not directly as Maistry. It is clarified by Shri Pai, that the applicant's reversion had nothing to do with the charge sheet issued to him, and he was reverted only because there was no clear vacancy available after 6.12.86. In the circumstances, the applicant is not entitled to any relief, and the application should be dismissed.

3. We have heard both the learned counsel, and perused the annexures at length. Though the applicant has not filed his promotion order, from the annexures filed by the respondents, it is clear, that his initial promotion was made when Shri Ghanshyam Gopal Chargeman 'A' went on leave and Shri P.B.Chawan was promoted to officiate in his place, thereby leaving vacancy in the post of Maistry for the applicant. On the return of Shri G.Gopal, Chawan was reverted to his post, necessitating the reversion of the applicant to his post of H.S.K. Gr-II on 6.12.1986 (Office order dated 12.12.1986). Thereafter, there was no vacancy in the post of Maistry till 1.2.1987, but, by then, due to the report of the Fourth Pay Commission, some changes were to be made in the classification of non-gazetted posts, and it was ordered that where two or more existing scales of pay had to be merged into a single scale of pay, selections and promotions from the existing lower scale to the existing higher scale should not be made. The post of 'Maistry' was identical to that of Chargeman 'B', and

therefore promotions to this post were not made in the period under question, i.e. after 1.2.1987. It is not denied by the respondents that Shri Benjamin had been trade tested and found suitable for the post, but because of the peculiar circumstances prevailing in the period following the Fourth Pay Commission's report, and its implementation, he could not be promoted. There was no malafide reasons/intention for his non promotion.

4. In the circumstances, we are of the opinion that the application has to be dismissed being without merit. The application is so dismissed, with no order as to costs.

Usha Savara
27.1.93
(USHA SAVARA)

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(S.K.DHAON)
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