

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 146/88

Transfer Application No: ---

DATE OF DECISION 3-2-1993

Yadav Anada Krishna

Petitioner

Mr. B.W. Vaidya

Advocate for the Petitioners

Versus

Union of India and ors.

Respondent

Mr. V.S. Masurkar

Advocate for the Respondent(s)

CORAM:

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

The Hon'ble Shri Ms. 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 ?

Advocate for the Respondent(s)

(S.K. DHAON)

VC

MD

NS/

The Hon'ble Shri

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.146/88

Yadav Anada Krishna,
C/o.B.W.Vaidya,
2nd Floor, 41/42 Meadows Street,
Fort,
Bombay.

.. Applicant

-versus-

1. Union of India
through
Secretary
Department of Posts,
Dak Tar Bhavan,
Parliament Street,
New Delhi - 110 001.

2. Senior Superintendent,
RMS Air Mail Sorting
Division,
A.P.Sorting Bldg.,
Bombay - 400 029.

.. Respondents

Coram: Hon'ble Shri Justice S.K.Dhaon,
Vice-Chairman.

Hon'ble Ms.Usha Savara,
Member(A)

Appearances:

1. Mr.B.W.Vaidya
Advocate for the
Applicant.
2. Mr.V.S.Masurkar
Counsel for the
Respondents.

ORAL JUDGMENT: Date: 3-2-1993
(Per S.K.Dhaon, Vice-Chairman)

The order dt. 29-4-1986 passed
by the Sr.Supdt. of RMS, reverting the applicant
from the post of Caretaker to the post in
Class IV cadre is being impugned in the present
application. A reply has been filed on behalf
of the respondents. Counsel for the applicant
and Mr.V.S.Masurkar for the respondents have
been heard.

2. On 29-1-1979 the ^{same} Sr.Superintendent
of RMS issued an order stating therein that the

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applicant had been approved for appointment to the post of Caretaker and he was therefore being appointed as such on purely temporary basis. It was also made clear that his appointment to the post was purely on temporary basis and his services could be terminated by a month's notice under the provisions of Rule 5 CCS(TS) Rules as amended from time to time.

3. The first argument advanced in support of this application is that the applicant having been appointed and not promoted the question of his reversion did not arise. Shri Masurkar, learned counsel for the respondents, has very fairly stated that even the original files discloses that an order appointing the applicant had been passed. He, however, states that, in fact, the applicant had been promoted. He has shown to us the original record wherein the proceedings of the DPC had been held to test the suitability of the applicant and others. There is also internal evidence to show that the applicant was given deputation allowance. Such an allowance could not be given to a fresh entrant. Therefore the respondents case appears to be correct that the order dt. 29-1-1979 was passed mistakenly.

4. Reverting to the order dt. 29-4-86, we find that the basis of the same is certain instructions contained in the letter dt. 19-3-86 from the Post Master General, Maharashtra Circle which in turn had been issued in pursuance of OM dt. 15-7-1980 issued by the Govt. of India Ministry of Finance, Department of Expenditure,

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The contents of the said OM have been extracted in paragraph 6(i) of the application. It runs into three paragraphs. The substance of the said office memorandum is that the post of Caretaker should be treated as ex-cadre one. ~~it is clear~~ However, it is ^{made} clear that the post of Caretaker should be treated as ex-cadre in future. Therefore, the office memorandum could have no application to the appointments made prior to the issue of the same namely 27-2-1980. In the instant case, the applicant had been promoted, as is the case of the respondent, on 29-1-1979 i.e. prior to the date of issue of office memorandum. The impugned order, therefore, is based upon the office memorandum which had no application. This shortcoming is enough to vitiate it.

5. Learned counsel for the respondents further urged that the applicant had earlier approached this Tribunal by means of an O.A. No.6/86, with identical prayers. We have seen the records of O.A. No.6/86. It ^{contained} ~~contained~~ two prayers. The first was that the applicant should be confirmed as ^{as} Caretaker and the second was that this Tribunal may restore all the payments in the grade of ^{as} Caretaker. The said OA was presented on 10-1-1986 and dismissed for default on 10-4-1986.

6. The grievance of the applicant in the present application is that the order of reversion is bad and should be struck down. That was not and could not be the prayer in O.A.6/86. In that O.A. the applicant proceeded on the assumption that he had a right to continue in that post. Therefore, he claimed confirmation thereof. In any view of the matter, no decision

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on merits had been given by this Tribunal in the said O.A. No.6/86. As already indicated, it was dismissed in default of appearance. Therefore, the dismissal of the earlier O.A. will not operate as res-judicata or estoppel as against the applicant.

7. This application succeeds and is allowed. The impugned order dt. 29-4-86 passed by the Sr.Supt. of RMS is quashed. The applicant shall be entitled to all the consequential benefits.

8. There shall be no order as to costs.

Usha Savara
(USHA SAVARA)
Member(A)

S.K. Dhaon
(S.K.DHAON)
Vice-Chairman

MD