

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 543/88
T.A. No.

198

DATE OF DECISION 25.4.1991.

Shri Jiya fudding M. Shaikh Petitioner

Shri S.R. Atre Advocate for the Petitioner(s)

Versus

Union of India & Other. Respondent

Shri P.M. Pradhan. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C. Srivastava, Vice Chairman.

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

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

U.C. Srivastava
(U.C. SRIVASTAVA)
VICE CHAIRMAN.

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
NEW BOMBAY

ORIGINAL APPLICATION No. 543/88

Shri Jiya fuddin Mohiuddin Shaikh
residing at New Satara, Near
Urdu School, Bhusawal,
Dist. Jalgaon - 425201

.... Applicant.

Vs.

Union of India and others.
through the Director General
of Inspection, Department
of Defence Production,
Ministry of Defence.
New Delhi-11.

.... Respondents

CORAM : HON'BLE SHRI U.C.SRIVASTAVA, Vice-Chairman,
HON'BLE SHRI M.Y.PRIOLKAR, Member (A)

Appearance

Shri S.R.Atre,
Advocate for the applicant

Shri P.M.Pradhan, Adv.
for the respondents.

ORAL JUDGMENT
(PER: U.C.Srivastava, Vice-Chairman)

DATED: 25.4.1991

The applicant was appointed as Viewer 'D'
in G.S.Wing, Bhusawal, by the Inspectorate General Stores,
Bombay in the month of March 1964. He became Junior examiner
in the year 1971. As a result of recommendations of the

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Establishment Study Team, the applicant was deemed to be surplus and other few employees were also declared surplus and their services were terminated. The applicant preferred representation after representation, thereafter, to the various authorities authorities including General Manager, Ordnance Factory requesting them to absorb him as a Junior examiner in the Ordnance Factory. The General Manager, Ordnance Factor, Bhusawal, is under direct control of the respondent No.1. Ultimately the respondent No.2 i.e. Senior Inspectorate, General Stores, requested General Manager, Bhusawal to absorb the applicant as a Junior Examiner in Ordnance Factory at Bhusawal and take necessary steps in this behalf, but nothing was done. Thereafter the applicant was informed by the respondent No.2, on 4.11.1985 that, at present, there is no vacancy of Junior Examiner and it is likely to become available in the month of June. Reference was also made that one of the surplus Junior Examiners Mr.P.R.Baviskar's services also were similarly terminated. Mr. Baviskar was ultimately reinstated, the writ petition was ultimately allowed. To get relief the applicant filed a representation through one local M.L.A., who was informed by letter dated 26th March, 1987 that the applicant's re-employment has not been possible due to want of fresh vacancy in the Department. This application has been opposed by the respondents who have came forward with the plea that an option was offered to the affected individual for similar appointment in other DGI establishments or to accept appointments in the lower grade, but the applicant, did not exercise any option and only represented his case of posting at Ordnance Factory, Bhusawal, saying that he has been in service

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for the last 17 years and in case he is posted at Bhusaval he will become junior to other persons though he was aware under the rules that there was no way to protect his seniority as such he requested for his retention in the department. The letter referred to above nowhere contains any word from which refusal to accept the option can be inferred. It was only a sort of request again for retention in department and for preservation of his seniority. It was only a request in the alternative. The department wrongly imported the word refusal in his letter and drew a wrong conclusion by giving a wrong meaning to the contents of his letter. The departments plea taken subsequently that vacancies were not available is unjustified and can not be sustained.

2. The applicant has made reference the case of one Shri Baviskar in the Tr.9/91 which O.A. come up for hearing before the Bench and termination order dtd. 6.5.1981 was set aside and the respondents were directed to reinstate him with consequential benefits. The said Shri Baviskar was junior to the applicant in service. Of course there is some difference in the case of applicant and Baviskar and circumstances have also changed by lapse of time. But so far as the termination and its grounds are concerned they are rather parallel to each other. The termination order terminating the services of the applicant was uncalled for and illegal. Consequently the termination order deserved to be set aside. Accordingly this application is allowed. The termination order dtd. 6.5.1981 is quashed and the respondents are directed to give appointment to the applicant

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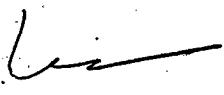
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within a period of 3 months on the first available vacancy under them. After being posted it will be deemed that the applicant will be in continuous service from the date of termination order and will be entitled to other benefits including pensionary benefits but will not be entitled for wages from the date of termination upto date of reinstatement.

In case he is not reinstated within 3 months from the date of this order he will be paid salary as a regular employee every month by the Respondents and will be deemed to be in service with continuity as observed later ~~earlier~~.

There will be no order as to costs.


(M.Y. PRIOLKAR)
MEMBER(A).


(U.C. SRIVASTAVA)
VICE CHAIRMAN.