

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.364/86

Udaram Dayaram Gedam,
Peon/MPO,
Ordnance Factory Ambazari,
NAGPUR - 440 021. ... Applicant

vs.

General Manager,
Ordnance Factory,
Ambazari,
NAGPUR - 440 021. ... Respondents

Coram: Hon'ble Member(A)J.G.Rajadhyaksha
Hon'ble Member(J)M.B.Mujumdar

Appearance:

1. Mr.S.W.Patil,
Advocate(for
Mr.N.S.Badhe)
for the applicant.
2. Mr.S.R.Atre
Advocate(for
Mr.P.M.Bradhan)
for the respondent.

ORAL JUDGMENT

Date: 30-9-1987

(Per M.B.Mujumdar, Member(J)

This application is filed under Section 19
of the Administrative Tribunals Act, 1985 under the
following circumstances:

2. The applicant who has passed the SSC examination and is a member of a Scheduled Caste was initially appointed as a Messenger Boy in 1972. It was a Group'D' post. Sometime in 1976 or so he was appointed as a Checker which is a post in Group'C'. When the post was abolished, he was appointed as Lower Division Clerk with effect from 1-6-1980, since the posts of Checker and LDC

were in the same Group 'C'. For irregular attendance in his duties, a departmental enquiry was held against him and he was held guilty. On the basis of the report of the Inquiry Officer the disciplinary authority i.e. the General Manager of the Ordnance Factory at Ambazari passed an order imposing on the applicant the penalty of reduction to the lower grade/post i.e. from Lower Division Clerk to Peon in the pay scale of Rs.196-232 with immediate effect, for a period of two years. The order further stated that in the event of restoration to the higher grade of L.D.C., the past service rendered in the grade of L.D.C. prior to the effective date of punishment would count for seniority in the grade of L.D.C. and he would also earn increments in the grade of peon for the period of currency thereof. However, the period of service rendered in the lower grade of peon was not to count in the higher grade for any purposes of granting increment, promotion or confirmation in the higher grade.

3. About one month thereafter, another order was given to the applicant. That order was dtd. 19-11-83 and it was passed by the Officer-in-Temp-Charge (Shri D. Rajagopal). That order read thus:

"The following is substituted in line 4, after the word "Years" putting coma(,) instead of fullstop(.) of the above Factory order:

"unless found fit by the competent authority to be restored to the higher post of LDC "

4. The applicant had preferred an appeal dtd. 3-1-1984 against both the above orders, but the appellate authority i.e. Joint Director(Vigilance) dismissed the appeal by observing that the procedure prescribed in the rules had been complied with, the findings were justified, the penalty imposed was adequate and the appeal was time barred. Neither personal hearing was given to the applicant before disposal of the appeal, nor the order in appeal was a reasoned one. But that point need not detain us.

5. After the period of two years was over, the applicant submitted his representation to the General Manager of Ordnance Factory at Ambazari stating that he had completed two years' penalty period and hence he should be restored to his previous post of LDC. To that the Asstt. Works Manager(Administration) on behalf of the General Manager replied on 28-12-1985. The reply stated that there was no provision in the order of penalty imposed upon the applicant on 21-12-1983 as amended by the order dtd. 19-11-1983 for automatic restoration as LDC after completion of the penalty of two years. By the same reply, the applicant was further informed that unless he appeared for the next selection test for LDC, as and when conducted, and found fit, he could not be restored to the post of LDC. On 28-1-1986, again the applicant submitted another representation requesting that as the period of two years was over he should be restored to the post of LDC. However, that representation was also rejected on 20th February, 1986 pointing out that unless he appeared for the next selection for LDC as and when it would be conducted

and found fit he could not be restored as LDC.

6. Being aggrieved by the stand taken by the above respondent the applicant filed this application on 16-10-1986 praying that the order of penalty dtd. 19-11-1983 passed by the Officer-in-Temp.-Charge modifying the initial order of penalty dtd. 21-10-1983 passed by the General Manager should be quashed and set aside. He had further requested that the direction given by the respondents in their letter dtd. 20th February, 1986 mentioned above should also be quashed and set aside. Lastly he had requested for restoring him to the post of LDC with effect from 21-10-1985 as he had completed the penalty period of two years on the previous day and for arrears of salary from that date.

7. We have heard Mr.S.W.Patil(for Mr.Badhe) the learned Advocate for the applicant and Mr.S.R.Atre (for Mr.P.M.Pradhan)counsel for the respondents, and seen the relevant documents. It is our considered view that the order dtd. 19-11-1983 cannot be sustained. We have already quoted the initial order dtd. 21-10-1983. That order appears to be complete in itself. If the respondents wanted to amend that order for one reason or another, they should have issued a show cause notice to the applicant and heard him before passing the order dtd. 19-11-1983. It may be pointed out that the order dtd. 19-11-1983 seems to have been passed as an "addendum" and not as a "corrigendum" to the order dtd. 21-10-1983. We, therefore, feel that the order dtd. 19-11-1983 is illegal and invalid.

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8. In view of the order dtd. 21-10-1983, the applicant should have been restored to his original post of LDC after the expiry of the penalty period of two years. That period expired on 20-10-1985. Hence the applicant should have been restored to his previous post of LDC with effect from 21-10-1985.

9. There is another aspect of this case. We have already quoted the order dtd. 19-11-1983. If it is to substitute in line 4 after the word "Years" as mentioned in that letter, then it yields to no sensible meaning at all. Apart from this even that order does not say that the applicant should have appeared for a test for the LDC after the period of two years was over. We are told at the Bar that no such test is ever held so far. In result the applicant is unnecessarily required to work as a Peon.

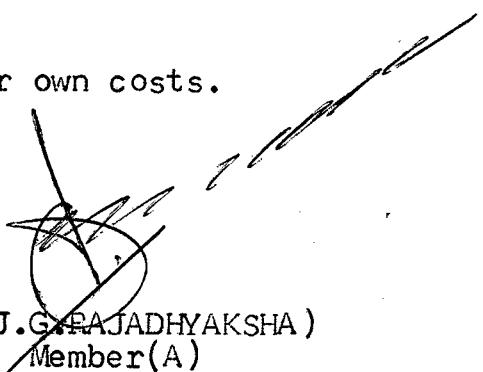
10. Hence viewed from any point of view we feel that the order dtd. 19-11-1983 is liable to be quashed. In result the applicant shall have to be restored to his previous post of LDC with effect from 21-10-1985 with all the arrears due to him.

11. We, therefore, pass the following order:

- (1) The order dtd. 19-11-1983 passed by the Officer-in-Temp-Charge (Shri D.Rajagopal) is hereby quashed and set aside.
- (2) The applicant shall be restored to his previous post of LDC with effect from 21-10-1985 with all the arrears due to him according to the rules.

(3)

Parties to bear their own costs.


(J.G. RAJADHYAKSHA)
Member(A)


(M.B. MUJUMDAR)
Member(J)