

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 492/89

~~Transfer Application No:~~

DATE OF DECISION: 24.8.94

Sopa Waman Yadav Petitioner

Advocate for the Petitioners

Versus

Dy. Director Training
R.V.T.I. and others. Respondent


Shri V.S. Masurkar Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri M.R. Kolhatkar, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. Hegde)
Member (J)

(6)
CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 492/89

Sopan Waman Yadav

... Applicant.

V/s.

Dy. Director
Training/Principal
Regional Vocational Training
Institute, Veer Savarkar Marg.,
Dadar, Bombay.400029.

Union of India
Ministry of Labour
Sharma Shakti Bhavan,
Rafi Marg, New Delhi.

... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)
Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearance:

None for the applicant.

Shri V.S.Masurkar, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 24.8.94

¶ Per Shri B.S. Hegde, Member (J)¶

None for the applicant. We have heard the learned counsel for respondents and dispose of the case on merits.

2. The applicant in this O.A. has challenged the order of the respondents dated 17.10.88 wherein his services have been terminated because of the abolition of the post. It is also stated that necessary steps had been taken to report his name to the "Central Surplus Cell" for making efforts for redeployment as per the Rules and orders in force. After abolishing the posts the respondents vide their letter dated 17.10.88, in pursuance of Rule 39 of the Central Civil Services (Pension), Rules 1972 terminated the services of the applicant, Shri S.W. Yadav, Mechanic (Dress Making Machines & Equipments) with effect from 22.12.88. The respondents in their reply have given the reasons for delay in terminating the services after a lapse of six months of the

abolition of the post. They further contend that the abolition of the post is not by any arbitrary order. It is on the basis of the recommendations made by the SIU, Ministry of Finance, that the post was abolished in May 1988. The order was suspended and not brought into effect on the representation made by the applicant. The applicant's name was sent to the surplus cell Department of Personnel & Training for re-deployment immediately. Delay in giving effect to the order was due to the process involved in finding a suitable place for the individual in any other department in the Government and to the anxiety to avoid the retrenchment of the applicant. In fact the applicant has already been relieved from R.V.T.I. Bombay with effect from 20.7.1989, after he has been re-deployed at the office of the Principal, Lal Bahadur Shastri Nautical & Engg. College, Bombay through the Surplus Cell, Department of Personnel & Training. Learned counsel for the respondents has stated that the respondents have re-deployed the applicant in the same scale and in any case the applicant has not suffered any monetary loss. The counsel for the respondents further states that the applicant had given an option vide Annexure III stating that " I volunteer myself for being surrendered to the Central (Surplus Staff) Cell in preference to my juniors. I understand that my transfer to the Central (Surplus Cell) is subject to all attendant consequences of such transfer. "

3. The only contention of the applicant is that in the representation dated 6.10.88 he had stated that he worked as a Mechanic and he should be given a suitable post in accordance with his experience.

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: 3 :

Despite the same an offer was made by the respondent in the year 1989 and he opted for service in the re-deployment category and has worked there for the last 5 years without any complaint.

4. He has not made out any case against abolition of the post on the basis of the recommendations of the SIU of the Ministry of Finance. It is now well settled that even in the case of a permanent post, Article 311 (2) of the Constitution is not attracted, simply because abolition of a post for administrative exigencies could not be said to be a punishment for some misconduct and also because the creation and abolition of a post is the exclusive concern of the Executive. However, the Executive order is subject to Judicial Review on grounds of malafides or unconstitutionality. Such is not the case in the present case.

5. Therefore, we see no case for interfering with the abolition of the post by the respondents. In the circumstances, O.A. is dismissed. However, we direct, the respondents that if there is any vacancy in respondents's office suitable to his qualifications and experience, it is open to them to offer him a suitable post by relaxing the age. Subject to this direction, OA is dismissed. There is no order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde
(B.S. Hegde)
Member (J)

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