

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1027/96

Transfer Application No.

Date of Decision 6.3.92

Mrs. Sobha A. & Anr.

Petitioner/s

Shri S.P.Saxena

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri R.K.Shetty

Advocate for
the Respondents

CORAM :

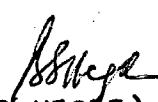
Hon'ble Shri. B.S.Hegde, Member (J)

Hon'ble Shri. P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?


(P.P.SRIVASTAVA)
MEMBER (A)


(B.S.HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA. NO. 1027/96

4/11 this the day of March 1997

CORAM: Hon'ble Shri B.S.Megde, Member (J)
Hon'ble Shri P.P.Srivastava, Member (A)

1. Mrs. Sobha A,
Assistant Foreman,
Armament Research Development
Establishment, Pashan, Pune.
2. Ramkrishna Shankar Waghmare,
Assistant Foreman,
Armament Research Development
Establishment, Pashan, Pune.

By Advocate Shri S.P.Saxena ... Applicants
V/S.

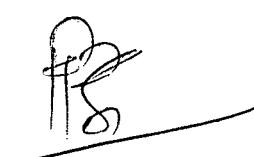
1. Union of India
Through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi.
2. The Scientific Advisor,
Ministry of Defence,
New Delhi.
3. The Director,
Armament Research Development
Establishment, Pashan, Pune.

By Advocate Shri R.K.Shetty ... Respondents
C.G.S.C.

ORDER

(Per: Shri P.P.Srivastava, Member (A))

Both the applicants in this OA. are working as Assistant Foreman, Applicant No. 1 from 15.3.1993 and Applicant No. 2 from 18.8.1990. Applicant No. 1 was directly recruited as Charge man Grade-II and joined on that post on 14.6.1984 and then she was promoted to the post of Charge man Grade-I on 15.9.1988 from and is holding the post of Assistant Foreman/21.3.1993.

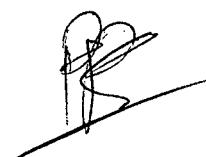


.. 2/-

Applicant No. 2 joined the service as Grinder in 1970 and was promoted to the post of Chargeman Grade-II from 15.10.1985 and Chargeman Grade-I from 15.3.1990 and then as Assistant Foreman from 1.8.1993. Through this OA. the applicants have challenged their reversion order dated 11.9.1996 by which the Applicant No. 1 has been reverted to the post of Chargeman Grade-I w.e.f. 15.9.1993 and Applicant No. 2 has been reverted to the post of Chargeman Grade-I w.e.f. 15.9.1993. The applicants have also challenged the order dated 25.9.1996 by which the applicants have been promoted to the post of Senior Technical Assistant in Grade Rs.1640-2900 which is of a lower grade than the post to which they were entitled as Assistant Foreman.

2. The order dated 11.9.1996 has been issued for implementing the judgement of CAT Bangalore Bench in OA.NO.600/91 filed by Shri R.Ambalagan & Ors., OA.NO. 245/92 filed by Shri M Subrarayalu & Anr., OA.NO.128/93 and OA.NOs. 179 to 202/93 filed by Shri K.Srinivasan & Ors.

3. Learned counsel for the applicant has submitted that the [redacted] judgement which was rendered by Bangalore Bench in different OAs. cited in the reversion order were decided at Bangalore for a unit which has no relationship with the applicants and the applicants were not party in those OAs. and therefore the decision in those OAs. cannot be binding on the applicants. The Learned Counsel for the applicants has further argued that respondents would be at liberty to implement this judgement in the case of Bangalore

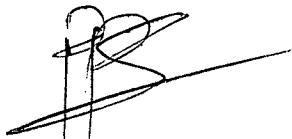


unit which has a separate seniority unit, in fact, a separate department and the respondents have no right to implement this judgement in the case of the applicants as the judgement does not cover the cases of the applicants.

4. Learned counsel for the respondents on this point has argued that it was decided by the ~~respon~~ dent administration to implement the judgement of the Bangalore Bench in OA.NO.600/91 and others as brought out in the above para in all the departments and the Government of India has issued letter dated 11.4.1994 which is placed as Exhibit 'R-0' to the written statement. Para 3 of this letter reads as under :-

- o "3. The question of implementing the judgement of Central Administrative Tribunal, Bangalore Bench to the applicants and to extend the benefit to the similarly placed Precision Mechanics in Defence Research & Development Organisation as on 12 Sep 81 has been under consideration of Government. President is now pleased to decide that the Precision Mechanics as were in the pay scale of Rs.425-700 (pre-revised) on 12 Sep 81 will be considered for promotion to Chargemen Grade I and above if found suitable and they will reckon their seniority on proforma promotion basis between 12 Sep 81 and 28 Jan 92 as per SRO 246/81. The financial benefits of arrears of pay and allowances will however be granted with effect from 28.1.90 as per CAT Bangalore Bench judgement in OA.Nos. 128, 179 to 202/93."

The Ministry of Defence on receipt of Government of India decision issued @etailed instructions vide their letter No.16490/RD/Pers-1 which is also dated 11.4.1994 to all the units including the unit to which the applicants belong. This letter reads as under :-



" Reference Govt. of India, Ministry of Defence letter No.16490/RD/Pers-1/741/D(R&D) dated 11 Apr.94 (enclosed).

2. Govt. orders have been issued to implement the Hon'ble CAT Bangalore Bench judgement in OA.Nos.600/91 filed by Shri R. Anbalagan and others, 245/92 filed by Shri M. Subbarayalu and another, 128 & 179 to 202/93 filed by Shri K Srinivasan and others, vide Govt. letter under reference.

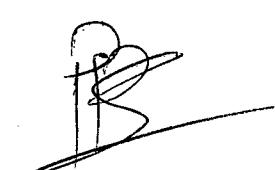
3. In order to implement the above judgement a combined eligibility list may please be prepared in the following manner and review DPCs be conducted on that basis:-

(a) All chargemen Grade II existing on 15.12.79 i.e. the date of issue of SRO 356/79 by which the post of Technical Supervisor Grade II has been deleted from promotion to the grade of Chargeman Grade II will rank enblock senior to Technical Supervisor Grade II redesignated as Chargeman Grade II.

(b) Following the same analogy as at (a) above, all the Chargeman Grade II existing on 12.9.81, i.e. the date of publication of SRO 246/81 through which Precision Mechanics in the pay scale of Rs.425-700 (pre-revised) with three years' regular service in the grade were made eligible for promotion to the grade of Chargeman Grade I will rank enblock senior to Precision Mechanics in the pay scale of Rs.425-700 (pre-revised). The eligibility of the Precision Mechanics will, however, be counted from the date they were placed in the scale of Rs.425.700 (pre-revised) viz. 01.3.77 or the date they were promoted/appointed in the pay scale of Rs.425-700 (pre-revised), whichever is later.

(c) The seniority already fixed in respect of those Technical Supervisors Grade II whose seniority has been fixed based on the various CAT judgements should not be disturbed.

4. The above guidelines are issued in consultation with the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions."



5. Learned counsel for the respondents has further submitted that in terms of the guidelines issued by these letters, revised seniority list was prepared which was dated 11.5.1994. The applicants name appeared in the revised seniority position list which shows their new ~~rank~~ in the grade of Chargeman Grade-II. The name of the applicants appeared at S.No. 113 and 118.

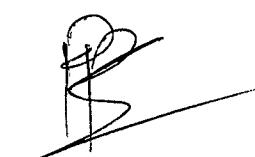
6. Learned counsel for the respondents has further argued that the validity of the Govt. of India and the Ministry of Defence orders dated 11.4.1994 placed at Exhibit 'R-4 & R-5' came for consideration before Full Bench in O.As.No.18/95, 1477/95 & 1679 to 1687/95 and 1712/95 & 1776/95 to 1798/95. The reference made before the Full Bench reads as under :-

" We are, therefore, of the view that the matter needs consideration by a larger Bench for deciding whether the guidelines laid down for preparing a combined eligibility list as contained in para-3 of the Ministry of Defence, Defence R&D Organisation circular dated 11th April, 1994, as at Annexure-A6 are in order."

The Full Bench after considering all the arguments has held in Para 18 as under :-

" 18. In view of the foregoing, we answer the reference by stating that the guidelines given in para-3 of the letter dated 11.4.1994 issued by the Defence, R & D Organisation are in order."

In view of the fact that the validity of the guidelines laid down by the administration have been found valid by the Full Bench, this Divisional Bench would not have jurisdiction to reconsider the matter.



7. We find considerable force in the argument of the learned counsel for the respondents and we are of the view that in view of the Full Bench judgement dated 19.12.1996 validating the order dated 11.4.1994 issued by the Ministry of Defence, the validity of this order cannot be questioned before the Divisional Bench and we are obliged to follow the decision given by the Full Bench. Therefore, the argument of learned counsel for the applicants that the orders of the Ministry of Defence dated 11.4.1994 would not be applicable to them as they were not party to the Bangalore Bench decision does not survive. We are of the opinion that the guidelines laid down in the Ministry of Defence letter dated 11.4.1994 would be fully applicable to all the departments under Defence organisations including the department to which the applicants belong.

8. The next question raised by the learned counsel for the applicant is that the reversion order has been issued without giving them any opportunity to represent against their reversion order. The learned counsel for the applicant has also argued that the reversion order has been made with retrospective effect and therefore it is illegal void ab initio and bad in law. The learned counsel for the applicant has also argued that the reversion is resulting into civil consequences to the applicants and any action which results into civil consequences is not valid unless opportunity or show cause notice given to the concerned person.



9. The Learned Counsel for the applicant has also argued that the applicants cannot be reverted suo-moto without following the Article 311 of the Constitution.

10. The Learned Counsel for the applicant has also brought out that as a result of implementation of judgement of Bangalore Bench, none is reverted even in their own discipline, the reversion of the applicants cannot be justified under any principles of natural justice.

11. Learned counsel for the respondents has argued that no notice is required to be given in case the reversion is ordered for implementing the courts' orders and in this case the respondent administration is implementing the Bangalore Bench judgement and is, therefore, not required to give any notice before reverting the applicants.

12. The learned counsel for the respondents has also argued that although the applicants have been reverted but their pay is being protected and the applicants will not be in financial loss by reversion as there is no reduction in their pay as a result of implementation of the judgement.

13. After hearing both the parties on this issue, we are of the opinion that the applicants were not the parties to the OAs. in Bangalore Bench and the administration's action in issuing the general guidelines for implementing those judgements although in order, cannot be made applicable without giving notice to the applicants as the implementation of those guidelines has resulted into civil consequences to the applicants. We, however, do not agree with the



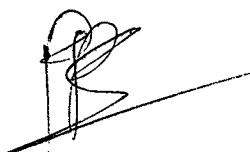
learned counsel for the applicants that provisions of Article 311 are attracted in this case as this reversion is not as a result of punishment.

14. The learned counsel for the applicant has also brought on record the letter from Ministry of Defence dated 11.7.1994 which is placed at Exh. 'A-5'. Para 2 & 3 of this letter reads as under :-

"2. This Hqrs has received proposals from some labs/estts for creation of supernumerary posts in order to avoid reversions while implementing above mentioned judgements. In this regard it is clarified that in the present case supernumerary posts are not required as it has been decided to adjust the promotions of Precision Mechanics as a class in the higher grades against the lower grade of Tradesman 'A' or whatever post held by them at present and while doing so the para 2 of this Hqrs letter dated 11. Apr 94 and para 3 of the Govt. of India letter dated 11 Apr 94 may please be taken into consideration.

3. This issues in consultation with the Department of Defence Research & Development and their Associated Finance."

The Learned Counsel for the applicant has argued that in view of this letter the reversion of the applicants was not contemplated as the promotions of Precision Mechanics were to be adjusted as a class in the higher grades against the lower grade of Tradesman 'A' or whatever post held by them.



15. We are, therefore, of the view that the applicants are required to be given a show cause notice as to why they are being reverted from their post and they should be given an opportunity to represent against the reversion. Since this has not been done, the reversion order cannot survive as it is against the principles of natural justice.

16. In the result, we quash the reversion order qua the applicants dated 11.9.1996 at Exhibit 'A-1' and we also quash the order dtd.25.9.96 placed at Ex. 'A-2'. The respondent administration would be at liberty to give a show cause notice to the applicants and invite their representation on the same and after considering the same, they may pass a speaking order. The applicants would be required to file their reply to the show cause notice within a period of one month from the date of receipt of show cause notice. The applicants would be at liberty to approach the Tribunal if they are aggrieved by the final order passed by the respondents, if so advised. The OA. is disposed of with the above directions with no orders as to costs.


(P.P. SRIVASTAVA)
MEMBER (A)


(B.S. HEGDE)
MEMBER (J)

mrj.