

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1103/96

Date of Decision: 22.7.97

Shri T.R. Gholap

.. Applicant

Shri Suresh Kumar.

.. Advocate for
Applicant

-versus-

Union of India and others.

.. Respondent(s)

Shri V.S. Masurkar.

.. Advocate for
Respondent(s)

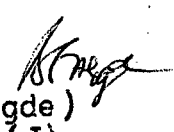
CORAM:

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 ? p


(B.S. Hegde)
Member(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 1103/96.

Pronounced the 22nd day of July 1997.

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

T.R. Gholap
Education Officer (Science & Maths)
Dept. of Education
Dadra Nagar Haveli,
Silvassa.

... Applicant.

By Advocate Shri Suresh Kumar.

V/s.

Union of India through
Administrator
Union Territory of Daman &
Diu & Dadar Nagar Haveli,
Silvassa.

The Development Commissioner
Secretariat Dadar Nagar Haveli
Silvassa.

The Collector
Dadar Nagar Haveli Silvassa.

Union of India through
Ministry of Home Affairs
Personnel Dep. Section.
New Delhi.

... Respondents.

By Advocate Shri V.S. Masurkar.

ORDER

¶ Per Shri B.S. Hegde, Member (J) ¶

In this O.A. the applicant is challenging the impugned order dated 18.3.96 and 4.10.96. Wherein the applicant has been shown at Serial No.20 below some of his juniors. The applicant and others have been promoted from the date of order whereas applicant's juniors have been promoted from the date shown against each. Thereby the respondents discriminated the applicant and other persons in granting seniority.

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2. Heard Shri Suresh Kumar counsel for the applicant. Shri V.S.Masurkar, counsel for the respondents. The main thrust of the argument is that the applicant was promoted as Head Master by the DPC held on 29.5.1979 in accordance with rule and the order of promotion was given effect with effect from 29.6.1979. The applicant has been appointed as Asstt. Teacher vide order dated 2.11.69. On 14.5.84 notification was issued by the respondents and upgraded the post of Head Master to Group B post , Gazetted and accordingly the applicant alongwith others were upgraded to the post of Group 'B' post in the pay scale of Rs.650 - 1200. As per the seniority list dated 25.6.87 published by the respondents , the name of the applicant was shown at serial No. 4. Again the respondents has issued seniority list of Head Masters as on 1.1.89 vide letter dated 4.6.90 wherein the applicant's name was shown at serial No.3 wherein it is stated that Confirmed as Asstt. Teacher, High School with effect from 1.3.80. Again the respondents published further seniority list on 18.8.92 wherein the applicant's name is shown at Serial No.2 and stated that the applicant was on deputation to Novodaya Vidyalaya at Maharashtra State with effect from 1.7.91. Again the respondents vide order dated 20.8.92 placed the applicant at the disposal of Novodaya Vidyalaya Samiti and consequent upon repatriation of the applicant from Jawahar Novodaya Vidyalaya. Dist Yavatmal, Maharashtra posted as Education Officer (Academic) on newly created post under the Education Department of the Union Territory of Dadra and Nagar Haveli. Thereafter, the applicant has been deputed for the training of intensive curricular work at the National Institute of Educational Planning and Administration, New Delhi. vide order

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dated 23.10.92. The respondents vide order dated 25.2.93 stated that on the recommendations of the DPC held on 23.12.92, the following Head Masters of Secondary Schools working in the pay scale of Rs. 2000 - 3500 are hereby sanctioned senior pay scale of Rs. 2200 - 4000. The applicant was shown at Serial No.4 and the pay scale of the applicant has suitably modified.

3. The respondents vide letter dated 20.9.93 stated that Shri V.B. Shukla, Head Master has been looking after the work of Assistant Director of Education for the last two years and this is a sole and single post of Assistant Director Education in the entire Department of Education in Dadra and Nagar Haveli and the post falls according to the roster on Reserve post for SC officers. Shri Shukla has retired from service on superannuation with effect from 31.1.94. Thereafter the respondents directed the applicant to look after the post Assistant Director of Education, Dadra and Nagar Haveli with effect from 1.2.94 vide their letter dated 31.1.94. Thereafter the applicant has made a representation dated 28.9.95, stating that since the Administration could not fill up the post in time. He further states, that he is the only senior most Gazetted Officer working in the Department who came from the community belongs to Scheduled Caste and working in the senior scale of Rs. 2200 - 4000 since 5.7.91. The respondents vide their order dated 18.3.96 stated that the transfer is of reversion to the post of Education officer from Assistant Director of Education, as one Shri K.M. Thakore is being taken as Asstt. Director of Education is patently unjust and illegal.

4. In the reply the only stand taken by the respondents is pursuant to the Review DPC met on 24.7.96, the respondents No.1, in supersession of all previous orders issued on the subject, made the revised promotions to the post of Head Master, High School in the pay scale of Rs. 2000 - 3500. vide order dated 4.10.96 one Smt. U.N. Panwala was given the looking after charge for the post of Assistant Director of Education on purely temporary basis until further orders and therefore the said order is an independent order and it cannot be challenged in the present original application because that will amount to violation of Rule 10 of CAT procedure Rules 1987. However it is stated that the applicant has not been reverted to lower post but as a result of revised seniority list as per directives of the Tribunal in O.A. 604/90 dated 12.8.94 the position of the applicant's seniority in the grade of Head Master has been changed at lower stage than his earlier position. Granting of senior scale is not a promotion but it is as per his length of service in the existing grade and he has been allowed senior scale sanctioned by the Central Government. The respondents further states that the person now holding the post of Assistant Director of Education is senior to the present applicant and thereby no point of imagination, the applicant can claim the right over Smt. U.N. Panwala. The applicant has not impleaded her as party respondent. According to the prescribed roster point, the post was reserved for Scheduled Caste Candidate. As per the procedure laid down for filling up the reserved post, against one post only 5 officers to be considered as per the specification of zone of consideration. If no candidate for reserve category is available then the zone of consideration is to be

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extended to 5 times of the vacancy. As there was only one vacancy the extension of zone will come to 5 only. The applicant was not within the zone of consideration and therefore his selection to the post was contrary to the established procedure prescribed.

5. In OA 604/90 decided on 12.8.94 one Shri Solanki has challenged the order of the Collector of Dadra and Nagar Haveli, confirming the private respondents Nos 4 to 9 with effect from a date earlier than that of the applicant, which adversely affects his seniority. Considering the rival contention of the parties, the Tribunal had observed that the action of the administration in confirming the applicant from a date later than the private respondents is violative of the statutory rules. Accordingly, the impugned order dated 27.2.89 is quashed. Also directed the administration to issue a fresh order of confirmation which should be in conformity with the Recruitment Rules 1966. The applicant has been found fit for confirmation by the DPC, he should be confirmed with effect from a date earlier than that of the private respondents and the seniority list to be prepared as laid down in Rule 7(d) of 1966. Recruitment Rules should reflect the correct position, where the applicant should rank senior to the private respondents. As Shri H.P. Solanki who will be junior to the applicant as per the Recruitment Rules, seems to have been promoted on regular basis as Head Master in 1990 the applicant should also be considered for such promotion with effect from the same date and if found fit. The applicant should be promoted to this level with effect from the date Shri H.P. Solanki was regularly promoted etc...

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6. In the light of the above, no where it is stated that the selection made by earlier DPC is required to be changed. In that case though the applicant has shown as senior he has been overlooked, therefore, the Tribunal directed the respondents to issue fresh order of confirmation which should be in conformity with the Recruitment Rules 1966 from the date of his juniors were promoted. In our view, Review DPC for earlier promotion made prior to 1989 is not warranted in accordance with the directions of the Tribunal. It is understood that the applicant was duly promoted in 1979. Thereafter, he has given senior scale etc. However, the date of promotion to the post of Head Master of the applicant is shown as 4.10.96 whereas Mrs. Panwala who was junior to the applicant for all these 18 years and the applicant was writing her ACRs were made senior to the applicant, which is contrary to Rules of Natural Justice and Statutory Rules. The Tribunal vide order dated 28.10.96 stayed the operation of the order of the respondents which was continued till today. Admittedly, the applicant was senior most Head Master and shown junior to one of his colleague. The applicant has been promoted to senior pay scale right from 5.7.91. Further, the selection made in 1991 has not been challenged by any one till today and the applicant is holding selection grade. No where, the Tribunal directed the respondents to review the promotion of the Head Masters or the Asstt. Teachers prior to 1989. In our view, the impugned order dated 4.10.96 and 15.3.96 are contrary to rules and not in accordance with recruitment rules.

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7. In support of the contention the learned counsel for the applicant has drawn our attention to the decision of the Supreme Court in the case of The Director Recruit Class II Engineering Officer's Association and ors. V/s. State of Maharashtra and others 1990(2) ATJ 35 wherein the Apex Court held that Where a person is not appointed according to Rules but continued in post uninterruptedly till the regularisation of his service in accordance with the Rules. The period of officiating service i.e. from the date of appointment till regularisation of his service will be counted towards seniority. The learned counsel for the applicant also relied on another decision of the Supreme Court in the case of M.S. Usmani and others V/s. Union of India and others (1995) 29 ATC 289. Wherein it is held that Reversion on the ground of illegality of selection. Appointment in promotional post after selection through a competitive merit examination followed by regularisation and further promotion to even a higher grade on the basis of suitability test. Although appointment in the first promotional post was not challenged, the department, after a lapse of a long period (six years from the date of select, five years from the date of appointment and two years from the date of promotion in higher scale), reverting such appointees to their original posts with bottom seniority without affording any opportunity. In such circumstances, the order of reversion, held, is unjust and illegal. The Apex Court in the case of K.C. Joshi V/s. Union of India held that the proposition 'B' postulated that if the initial appointment to a substantive post or vacancy was made deliberately, in disregard of the rule and allowed the incumbent to continue on the post for well

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over 15 - 20 years without reversion and till the date of regularisation of the service in accordance with rules, the period of officiating service has to be counted towards seniority. Again the Full Bench of this Tribunal in the case of Ashok Mehta V/s. Regional Provident Fund Commissioner have taken the same view as taken by the Supreme Court in the case of K.C. Joshi V/s. Union of India.

8. Considering the rival contention of the parties we are of the view that since the applicant has been promoted to the post of Head Master right from 1979, thereafter consequent upon repatriation the applicant has been posted as Education Officer(Academic) on newly created post under the Education Department. The respondents have made mistake in revising the seniority list of Asstt. Teacher prior to 1989. The applicant has been ~~admittedly~~ confirmed as Head Master in 1980. The respondents vide their order dated 4.10.96 revised the order by which the applicant has been shown promoted to the post of Head Master which is violative of Article 14 ~~and~~ 16 of the Constitution.

9. In the result, we, hereby quash and set aside both the orders of the respondents dated 18.3.96 and 4.10.96 and direct the respondents to consider the case of the applicant for promotion to the post of ^{Asstt. Director} ~~Head Master~~ from the date of regular DPC and also the post of Asstt. Director of Education as per seniority and regularise in accordance with Rules. No order as to costs.

M. R. Kolhatkar
(M.R. Kolhatkar)
Member(A)

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

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P. NO.: 83/97 IN O.A. NO.: 1103/96.

Dated this Friday, the 19th day of September, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

T. R. Gholap ... Applicant

V/s.

Union Of India & Others ... Respondents.
(Review Petitioner).

TRIBUNAL'S ORDER BY CIRCULATION :

{ PER.: SHRI B. S. HEGDE, MEMBER (J) }

This review petition is filed by the respondents seeking review of the judgement dated 22.07.1997 which has been received by the respondents on 08.08.1997 and therefore, the review petition has been filed within time.

2. The contention of the Learned Counsel for the respondents is that the confirmation order has been revised pursuant to the direction of the Tribunal in O.A. No. 604/90 vide dated 12.08.1994 wherein the Tribunal had observed that "the action of the administration in confirming the applicant from a date later than the private respondents is violative of the statutory rules, and accordingly quashed the impugned order dated 27.02.1989 and directed the administration

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to issue a fresh order of confirmation which should be in conformity with the Recruitment Rules, 1966, etc. The applicant should be promoted to this level from the date Shri H.P. Solanki was regularly promoted; etc."

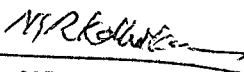
3. In O.A. No. 1103/96 the applicant has challenged the impugned order dated 04.10.1996 wherein the applicant's promotion is treated as w.e.f. 04.10.1996 and he has been shown below his juniors. After hearing both the counsel, the Tribunal was of the view that since the applicant has been promoted to the post of Head Master right from 1979, thereafter, consequent upon repatriation the applicant has been posted as Education Officer (Academic) on newly created post under the Education Department. It is observed that the respondents have made mistake in revising the seniority list of Assistant Teacher prior to 1989. In the earlier O.A. No. 604/90 the impugned order dated 27.02.1989 has been challenged, therefore, only thereafter the confirmation of seniority could be modified and not earlier than that. Admittedly, the applicant has been confirmed as Head Master in 1980 whereas the Respondents vide their order dated 04.10.1996 revised the order by which the applicant has been shown promoted to the post of Head Master, which is considered as violative of Articles 14 and 16 of the Constitution. Since the applicant has been confirmed as Headmaster in the year 1980, the impugned order showing the applicant as being confirmed as




Headmaster in 1996 is patently found to be illegal and contrary to the procedure in vogue. Considering his confirmation as Headmaster in the year 1980 and his seniority, direction was given to the respondents to consider the applicant to the post of Assistant Director after convening a regular D.P.C. and as per seniority, etc. It is true that no time limit has been given in the judgement regarding implementation of the direction to the respondents.

4. We do not find any new grounds made out by the respondents to review our judgement. The parties are well aware that the power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, etc. That is not the scenerio in the present case. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

5. In the light of the above, we find neither any error apparent on the face of the record has been pointed out nor any new fact has been brought to our notice to review our judgement. The grounds raised in the review petition are more germane for an appeal against our judgement and not for review. The Review Petition is, therefore, dismissed by circulation.


(M. R. KOLHATKAR)
MEMBER (A)


(B. S. HEGDE)
MEMBER (J).