

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 471/96

Date of Decision: 30/4/97

A.N. Maundekar

.. Applicant

Shri D.V.Gangal

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar

.. Advocate for
Respondent(s)

CORAM:

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

The 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. 471/96

30th this the 25th day of April 1997

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

Anil Naraynrao Maundekar
Working as Head Clerk in
the Office of Assistant
Engineer, 18, Sasoon Road,
S.C.Rly. Pune.
Residing at Rly. Quarter No. 218/8,
Railway Colony, Ghorpadi, Pune.

By Advocate Shri D.V.Gangal ... Applicant

v/s.

1. Union of India through
The General Manager,
S.C.Rly, Secunderabad (A.P.)
2. The Divisional Railway Manager,
S.C.Rly, Hubli.
3. The Assistant Engineer,
S.C.Rly, 18 Sasoon Road,
Pune.
4. Shri L.Srinivasulu Reddy
Senior Clerk,
Office of Junior Engineer
(Permanent Way) S.C.Rly. Hotgi.

By Advocate Shri V.S.Masurkar ... Respondents
C.G.S.C.

ORDER

(Per: Shri B.S.Hegde, Member (J))

By this OA, the applicant is challenging the reversion orders issued by the respondents vide dated 14.3.1996 (Annexure-'1') and order dated 9.5.1996 (Annexure-'2'). He also prays that his appointment/promotion to the post of Senior Clerk ought to be treated as a regular Senior Clerk w.e.f. 16.8.1991 instead of 13.3.1992 and his promotion to the post of Head Clerk as on 1.8.1994 to be treated as legal and valid.

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2. To appreciate the merit of this case, it is necessary to give a certain background. The applicant filed this OA. on 13.5.1996 and on the basis of submission made by the counsel for the applicant, the Tribunal passed an ex-parte order on 14.5.1996 stating 'Status quo as on today' and if the applicant has not been reverted, he should not be reverted till the next date of hearing. Accordingly, the case was listed for further hearing on 27.5.1996 and issued Dasti notice. Though Shri Masurkar, counsel for the respondents appeared on 27.5.1996 sought time to file reply stating that the concerned respondent is situated at Hubli. Accordingly, time was granted and interim order of status quo was allowed to continue as the counsel for the applicant did not furnish proof of service to Respondent No. 4 till 17.6.1996, who is the affected party. The respondents filed their reply on 26.6.1996 and the applicant took time for filing rejoinder and filed the same on 5.8.1996 and when the matter came up on 12.8.1996, the respondents took time to file sur-rejoinder and time was granted. Accordingly, the matter was put up for admission/hearing on 23.8.1996 and I.R. was allowed to continue.

3. The applicant filed Contempt Petition No. 75/96 on 29.8.1996 which was listed for hearing on 13.9.1996 and directed to issue notice to respondents to file reply to C.P. The respondents filed their reply on 22.11.1996 and the C.P. was heard on 10.12.1996. The respondents in the reply to C.P. submitted that the C.P. is based on the surmises and conjectures and the said C.P. is filed with a view to bring undue pressure on the administration and since the OA. has not been admitted so far, it is not appropriate on the part of

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the Tribunal to decide the C.P. at this stage. After hearing both the parties the Tribunal had passed the order stating that they do not see any reason for interference at this stage as the OA. itself has not been admitted and directed that the C.P. could be disposed of along with the OA. and directed the case to be listed for admission/hearing on 10.1.1997. The OA. was admitted on 10.1.1997 and I.R. was continued till further orders and for completion of pleadings before the Registrar and thereafter to be listed in Sine-die list.

4. The main challenge in the application is with regard to promotion to the post of Head Clerk. Despite the Sine-die order passed by the Tribunal on 10.1.1997, the applicant filed an M.P.66/97 on 28.1.1997 praying for direction to the respondents restraining from reverting the applicant and also sought for ad-interim order which came up for hearing on 29.1.1997. The counsel for the respondents submitted that the M.P. was received at 4.00 p.m. on 28.1.1997 and his clients respondents are situated at Hubli and therefore sought for time. The time prayed was not granted and the matter was heard. The Tribunal after hearing the counsel for the applicant and on the basis of submissions allowed the M.P. by stating that the applicant is entitled to ex-parte ad-interim relief as prayed in the M.P. and directed the respondents to restrain from implementing the order dated 20.1.1997 for 14 days. It is further observed that in view of the ad-interim order dated 14.5.1996 which has been confirmed by the Division Bench at admission stage, the applicant is required to be allowed by the respondents to the post of Head Clerk, etc. and listed for hearing on

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11.2.1997 before the Division Bench for continuation or otherwise of today's ad-interim relief. Dasti notice was issued. Thereafter, though the matter heard for some-time, in the facts and circumstances of the case, and with the consent of both the parties, the OA. is listed for final hearing on 23.4.1997.

5. During the course of hearing, the learned counsel for the applicant Shri Gangal vehemently urged that the reversion order passed by the respondents was not communicated to him before passing the ex-parte ad-interim relief on 14.5.1996 and on the basis of the Tribunal's order 'Status quo as on today', since he has not been relieved from the post of Head Clerk to Senior Clerk, he continues to hold the post of Head Clerk. Therefore, the order passed by the respondents of reversion is illegal and not valid in law. Since they did not comply with the order of the Tribunal, they committed contempt of the Tribunal, therefore, he was perforce to file a C.P. against the respondents.

6. Initially the applicant was appointed as Junior Clerk on 16.8.1989 and he was promoted to the post of Senior Clerk on regular basis on 13.3.1992 whereas the Respondent No. 4 was appointed as Senior Clerk against direct recruitment quota on 3.10.1991. The applicant was promoted to the post of Head Clerk on adhoc basis on 3.10.1993 and regularised along with others as Head Clerk on 1.8.1994. The contention of the applicant is that he did not receive the reversion order of the respondents dated 9.5.1996 although he was working till 10.5.1996 and thereafter he was on sanctioned leave from 13.5.1996 to 25.5.1996, therefore, the reversion

order passed by the respondents has not been received by him. Thus, as per the order of the Tribunal he cannot be reverted subsequent to 14.5.1996 etc.

7. Counsel for the respondents Shri Masurkar in reply has drawn our attention to various correspondence in this respect so as to see whether the respondents have committed any contempt and not adhered to the direction of the Tribunal. Further, he urged that in both the occasions, i.e. initial stage of OA. before admission and after the matter was kept in Sine-die list, the applicant filed M.P., the orders of the Tribunal were passed on the basis of submission of the counsel for the applicant and passed ex-parte order without hearing the opposite party. The respondents on the basis of representation received from Respondent No. 4 and after consideration of the same found out that Respondent No. 4 is senior to the applicant and thereby issued a show cause notice vide dated 14.3.1996 stating that his unit was erroneously promoted him as Head Clerk on adhoc basis in the scale of Rs.1400-2300 vide letter dated 4.10.1993 and regularised vide Memorandum dated 1.8.1994 overlooking his senior Sri L.Srinivasulu Reddy (ST) and proposed to promote Shri Reddy as Head Clerk and revert the applicant and accordingly he was advised to make representation, if any, in this regard before 25.3.1996. Pursuant to this letter, the applicant made representation vide dated 24.3.1996 stating that they cannot revert him to the post of Senior Clerk after a lapse of 18 months etc. but he did not dispute in the representation as to whether Respondent No. 4 is senior to him.

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8. In this connection, learned counsel for the applicant submitted that in so far as merits of the OA. is concerned, he does not have any case to advance, because the applicant cannot express his ignorance that before the order of the Tribunal ^{i.e. 14.5.1996} he is unaware of the orders passed by the Tribunal especially the Telegram dated 9.5.1996 which he himself has annexed to the OA. and further, before issuing the Telegram, he has been given a show cause notice vide dated 14.3.1996 in which he did not question the seniority of Respondent No. 4 and further Telegram of the respondents is an order of the department and does not require any further notice or order in this behalf. In the Telegram, it is clearly stated that office order will follow. It indicated that the applicant has been reverted as Senior Clerk. Nevertheless, he did not challenge the seniority of Respondent No. 4, that itself shows the conduct of the applicant and tries to take undue advantage of the two ex-parte interim orders passed by the Tribunal. The orders of the Tribunal were received by the respondents on 16.8.1996. The letter of the respondents dated 9.5.1996 is annexed to C.P. which clearly shows that the applicant is reverted to the post of Senior Clerk from 10.5.1996 along with another employee. He also taken us to the written statement of the respondents showing that against the show cause notice he made representation dated 24.3.1996 and the competent authority while rejecting the representation and reverted the applicant vide order dtd. 9.5.1996 w.e.f. 10.5.1996. The said decision was conveyed to the applicant ^{on} 11.5.1996 which was admitted by the applicant in Para 4.5 of the OA. Therefore, the respondents order dated 14.3.1996 reverting the applicant is valid in law since his promotion

was passed on erroneous seniority which deprived the Respondent No. 4's legal and legitimate rights of promotion since both the applicant as well as Respondent No. 4 are belonging to ST category. Further, the seniority of Senior Clerks was published in 1994 calling for representations if any against seniority, in which the applicant's name is appearing at Sl.No. 55 and the Respondent No. 4 is shown at Sl.No. 36. Applicant has not made any representation against that seniority and accepted that seniority. By virtue of seniority Respondent No. 4 was rightly eligible for promotion as Head Clerk against ST quota in the place of the applicant. It is further contended that the contention of the applicant that the reversion order is without process of law is illegal in view of the Railway Board letter dated 21.5.1956 stating that "any person who is permitted to officiate beyond 18 months cannot in future be reverted for unsatisfactory work, without following the procedure prescribed in the Discipline and Appeal Rules", whereas in the instant case, the applicant was reverted not on account of unsatisfactory work but by virtue of erroneous promotion granted to him which was rectified.

9. Heard the rival contentions of the parties and perused the record carefully. It is an admitted fact that the case was placed in Sine-die list after admission. Further, M.P. filed by the applicant, in our view, was unwarranted and making incorrect submissions and obtained an ad-interim order restraining the respondents treat him as Head Clerk, which is in modification of our earlier order, i.e. "Status quo as on today" will be determined on the date of that order. It is true that the meaning of 'Status Quo as on today' means if the applicant is not reverted till that date, he shall not be reverted

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or not to take any action thereafter. But in the instant case, the applicant was served with show cause notice much earlier and reversion order was communicated to him before the order, i.e. 14.5.96 and his OA. itself indicated that he was shocked to receive the proposed order of reversion. The telegram only states that 'Office order will follow'. That can be issued subsequently. There is no pre-condition that the office order should accompany telegram. The question here is whether the applicant is informed of the reversion order before approaching Tribunal or not. For the reasons stated above, and in view of the pleadings, we are of the view, that the fact of reversion was brought to the notice of the applicant before the date of the Tribunal's orders, i.e. 14.5.1996. Therefore, when he filed C.P. before admission of the OA. having considered the matter, we thought it proper that it is not proper to dispose of the C.P. and C.P. will be heard along with the OA. Thereafter, the OA. was admitted and the case was listed before the Registrar for completion of pleadings and then kept in Sine-die list.

10. In our view, both these interim orders were passed ex-parte without hearing the opposite party and on the basis of submissions made by the learned counsel for the applicant. Needless to mention that instead of challenging the seniority list, the applicant challenged the reversion order. In our view, the applicant has received the reversion order before the Tribunal's order of Status quo, as the Telegram is treated as communication to applicant which he annexed to OA. He got further interim direction asking the respondents not to revert the applicant from

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the post of Head Clerk. On perusing the record, it is seen, that he has already been reverted much prior to the earlier order of the Tribunal. Therefore, in our view, there is no contempt committed by the respondents and C.P. is accordingly discharged.

11. With regard to the affidavit filed by the respondents, we find that the language used by them is harsh and when we asked them why they have used such a harsh language, the learned counsel for the respondents tendered an unconditional apology for using harsh words which we accept and do not wish to proceed further.

12. Regarding merits of the case, the respondents have brought that Respondent No. 4 was appointed directly as Senior Clerk much before the applicant was regularised as Senior Clerk. Though the seniority list of Senior Clerk was published in 1994, the applicant has not challenged the same. The only argument that the applicant advanced in this OA, challenging the merit of the case is that he has not been communicated the seniority list circulated by the respondents. However, it is seen that the respondents have given notice to applicant and sought his representation on the question of proposed reversion. The point raised in his representation is that he cannot be reverted after a lapse of 18 months. The counsel for the applicant argued that reversion order cannot be issued in terms of Railway Board's instructions after a lapse of 18 months without taking disciplinary action. The counsel for the respondents on this point argued that the said circular is not applicable in the present case. The said Circular is meant for reversion for "unsatisfactory work," in the case the applicant has not been reverted for unsatisfactory

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work, hence the Circular is not applicable. The applicant in this case is reverted to rectify the mistake in seniority after giving due notice to him.

13: After hearing both the parties, we are of the view that Respondent No. 4 is senior to applicant and the Railway Board's Circular referred to by the applicant is not applicable to applicant's case. Therefore, in our view, there is no merit in the challenge raised by the applicant. The OA. is, therefore, liable to be dismissed. Accordingly, we dismiss the OA. as well as the C.P. No orders as to costs.



(P.P. SRIVASTAVA)
MEMBER (A)



(B.S. HEGDE)
MEMBER (J)

mrj.