

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

C.P.No.69/96 & M.P.No.600/96 in
O.A.No. 574/96

DATED: THIS 25th DAY OF SEPTEMBER 1996

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

S.Z. Jagtap ..Applicant

V/s.

U.O.I. & Orgs.

..Respondents

ORDER

Heard Mr. G.S. Walia, Counsel for the Applicant and Mr. V.S. Masurkar, Counsel for the Respondents. The Tribunal vide its order dated 15.7.96 granted an ex-parte ad-interim order after hearing the submissions of the Ld. Counsel for the Applicant to the effect that status quo as of that date to be maintained. The Ld. Counsel for the Applicant has also drawn our attention to the earlier order passed on 24.3.95 in O.A. No. 107/95. The Tribunal while disposing OA No. 107/95 has passed the following order:

" It is apparent that the action taken by the order dated 23.1.1995 reverting the applicant in the guise that he had been erroneously extended the benefit of double ad-hoc promotion was taken without giving an opportunity to the applicant to show cause against that action, though it was prejudicial to the applicant. The order dated 23.1.1995

Contd.:

is quashed. Liberty to the Respondents to take action, if so advised, after giving an opportunity to the applicant to show cause against the intended action"

Pursuant to the direction of the Tribunal the Respondents vide their letter dated 1.4.96 issued a show cause notice stating why he should not be reverted to the post of Janitor scale Rs.950/-1500(RPS) as the double ad hoc promotion is not permissible within the extant rule, and asked him to give his representation within 10 days of receipt of the same. The Applicant made a representation on 12.4.96 urging that the reversion order passed by the respondents is not valid in law and sought for certain particulars from the Respondents. After considering the representation of the applicant the respondent has passed the final order on 22.6.96 stating that Shri S.Z. Jagtap, Janitor Scale Rs.1400-2300(RP) under CWM-PL who was erroneously extended the benefit of double ad hoc promotion is now reverted with immediate effect to Janitor Scale Rs.1200-2040(RP) on pay Rs.1320/- and retained under CWM-PL, vide Shri Mayabhai P. Janitor (Ex.Sr.Clerk under CWM/PL).

2. The Applicant has filed this O.A. on 12.7.96 and obtained ex-parte ad interim order on 15-7-96. The Respondents have filed their reply on 2.9.96 contending that the O.A.No.107/95 was disposed of at the admission stage itself on 24.3.95 and

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the Tribunal had granted liberty to the respondents, to take action, if so advised, after giving an opportunity to the applicant to show cause against the intended action. The applicant has been given (a) show cause notice. He made detailed representation replying the contention of the show cause notice. Respondents after considering the reply of the applicant passed the final order on 22.6.96. According to the said order the applicant stands reverted on 22.6.96 itself, and the ad-interim relief or interim relief will not come to his rescue and since there is no merit in the application of the applicant the same is required to be dismissed. Respondents further submitted that they have followed the direction of the Tribunal in its true spirit and passed the final order on 22.6.1996. (The) applicant (has) furnished the impugned (order) dated 22.6.96 as Exhibit A-1 to the O.A. and the contents of which do not tally with the order dated 22.6.96 annexed by the Respondents (to) their reply as (Exhibit) R-VI referred to above. The Respondents further submitted that the order dated 22.6.96 was served on the very day itself to the applicant and therefore the applicant (stood) reverted on the same date, therefore the present application filed on 12.7.96 will not come to his rescue. Id. Counsel for the respondents brought to our attention that the applicant cannot claim this post as a matter of right because he does not belong to the category of the post of Janitor, as he was appointed as Hospital Attendant and thereafter he was promoted to officiate

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as Junior Clerk. He was posted as Janitor purely on ad-hoc basis from 3.7.84 based on his own request made through his application dated 15.5.84. Therefore it is contended that he cannot claim this post as a matter of right, as he was initially appointed in the scale of Rs.260-400(R) as Janitor on 3.7.84 and subsequently promoted as Janitor in the scale of Rs.330-560(R). Again on ad hoc basis on 24.10.86 he was promoted as Janitor in the pay scale of Rs.1400-2300 and all these ad hoc services do not confer any right or benefit on the applicant.

3. The applicant has filed a M.P.No.610/96 urging that the order passed by the respondents vide 9.8.96 be stayed. The Tribunal after hearing the parties had observed that the status quo as on 15.7.96 is required to be maintained. Whether the order dated 9.8.96 violates the status-quo, would be a matter of contempt petition which will have to go before an appropriate Division Bench. Accordingly he has filed C.P. No. 69/96 in OA No.674/96 stating that the respondents have violated the ex-parte interim order passed by the Tribunal. The Tribunal after hearing the parties passed order dated 19.8.96 that the M.P. and C.P. would be heard together.

4. The question to be considered here is whether the C.P. filed by the applicant is sustainable in law. His main contention is that the order passed by the Respondents on 9.8.96 contrary to the ad-interim

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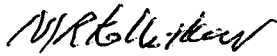
order passed by the Tribunal, vide dated 31.7.96 whereby he has per-force file the C.P. The fact that remains to be determined is whether the department has passed that order pursuant to the direction of the Tribunal. However, the respondents order dated 22.6.96 was not brought to the notice of the Tribunal at the time of passing the ex-parte ad interim order. The Tribunal had only granted 'status quo' as of that date. Since the applicant had already been relieved from the said post, the question of status quo-ante does not arise.


5. In the circumstances we are of the view, that there is no contempt on the part of the respondents. In the result both the C.P. as well as M.P. are disposed of.

Ex-parte ad-interim order also stands vacated.

O.A. ADMITTED.

List the case before Registrar on 26-11-96 for completion of pleadings and thereafter keep in sine die list.


(M.R. Kolhatkar)
M(A)


(B.S. Hegde)
M(J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO.100/96 in OA.NO.674/96

14th this the day of November 1996

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

S.Z.Jagtap ... Applicant
V/S.
Union of India & Ors. ... Respondents

Tribunal's Order by Circulation

The applicant has filed this application seeking review of the judgement dated 25.9.1996 and has also prayed that the status-quo order passed on 15.7.1996 be restored.

2. The main contention of the applicant is that the applicant has not been relieved pursuant to the impugned order dated 22.6.1996 and the interim order of status-quo dated 15.7.1996 has been vacated merely on the ground that the petitioner has been relieved on the day it is passed. The respondents have not produced any documents that he has been relieved, therefore, the disposal of the M.P. as well as C.P. is not justified. The respondents pursuant to the order of the Tribunal after giving a show cause notice to the applicant passed the speaking order on

[Signature]

22.6.1996 reverting the applicant to his earlier position and thereby the interim order passed on 15.7.1996 stands vacated.

3. It is well settled, that the power of review can be exercised by the Tribunal 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. Such is not the situation in the present case. In the guise of filing the review petition, the applicant is challenging the order of the Tribunal dated 25.9.1996 by which both M.P. and C.P. had been disposed of and we do not find fresh material on record for reconsideration.

4. In the result, we do not find any merit in the Review Petition and it is dismissed by circulation.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.S. Hegde

(B.S. HEGDE)
MEMBER (J)

mrj.

order/Judgement despatched
to Applicant/Respondent (s)
on 19.11.96

19/11/96

Central Administrative Tribunal, Mumbai Bench

O.A. No. 674 of 1996

Mumbai this the 13th day of September, 2001

Hon'ble Mr. B.N. Bahadur, Member (A)

Hon'ble Mr. Kuldip Singh, member (J)

S.Z. Jagtap

working as Jaintor

Under Chief Woirkshop Manager,

Western Railway's Parel,

Workshop,

Parel,

Mumbai.Applicant

By Advocate Shri G.K. Masand.

Versus

1. Union of India through,
General Manager,
Western Railway,
Headquarters Office,
Churchgate;
Mumbai-400 020.
2. Divisional Railway Manager,
Bombay Division,
Western Railway,
Bombay Central,
Mumbai-400 008.
3. Chief Workshop Manager,
Western Railway's
Parel Workshop,
Parel;
Mumbai.

...Respondents

By Advocate: Shri V.S. Masurkar.

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

By filing this OA under Section 19 of the Administrative Tribunal's Act, 1985, the applicant has impugned an order dated 22.6.1996 allegedly received by the applicant on 10.7.1996 vide which the applicant has been reverted to the post of Janitor in the scale of Rs.950-1500 (RP). By the same order keeping in view

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that certain juniors to the applicant are working in the scale of Rs.1200-2040 (RP) on regular basis; the applicant was promoted to officiate as Janitor in the scale of Rs.1200-2040 (RP) and it was stated that he was not allowed to continue in the scale of Rs.1400-2300 (RP).

2. The facts, as alleged by the applicant in brief are that the applicant had joined the Railway Administration as a Class-IV employee somewhere in the year 1960 and with the passage of time he had made progress in his career and had become Junior Clerk in the scale of Rs.260-400. Thereafter, he was posted as Janitor in the same pay scale of Rs.260-400 vide Exhibit-B. The post of Janitor has got three scales and from the lower scale to the middle scale the applicant was promoted on 27.4.1985 in the scale of Rs.1200-2040 (RPS) from where he was again given a promotion to the scale of Rs.1400-2300 (RPS) in the year 1987.

3. The applicant alleges that his appointment as a Janitor in the lower scale equivalent to that of Junior Clerk was neither a new appointment nor a promotion and the same was made in the interest of administration as the applicant was posted in the identical pay scale and post, so the seniority of the applicant should have been regulated and the applicant should have been allowed to carry the seniority of his erstwhile cadre of Junior Clerk.

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4. The applicant further submits that his promotion in the middle scale of Rs.1200-2040 on 27.4.1985 was also based on seniority basis and the competent authority had given him promotion after finding him fit for promotion and as such the promotion was not ad hoc since it was given in accordance with the rules and it cannot be otherwise ad hoc because the applicant had been working for more than 11 years and had never been found unsuitable.

5. Similarly he alleges that next promotion to the scale of Rs.1400-2300 (RPS) was given sometime in the year 1987 and since it was a selection post and applicant being seniormost eligible and suitable candidate, had a right to be considered and promoted to the said post.

6. It is further submitted that it is only in such a case when the applicant is not found suitable, then he can be reverted, but such a situation had never arisen in the present case as the respondents have not conducted selection for the last 10 years so the applicant cannot be reverted at the post against which he is working for the last 10 years which is regular and permanent and he is continuing on the same post without even a break.

7. Besides that it is also submitted that applicant cannot be

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replaced by another employee on ad hoc basis. Thus the impugned action of the respondents in reverting the applicant from the said post in the scale of Rs.1400-2300 (RPS) is arbitrary, harsh and cannot be sustained.

8. It is also stated that the applicant has been given promotions and there had never been any break and he had also been drawing his increments regularly. The applicant further submits that vide order dated 29.3.1989, Exhibit-C, he had been regularised as Janitor but this order has been passed only with a view to regularise the selection of the applicant for the post Janitor but it has nothing to do with seniority and once he is found suitable, his seniority relates back to the period of promotion as a Junior Clerk and the post of Janitor is a post which is available for promotion to Junior Clerks and the applicant was accordingly considered and transferred as Janitor.

9. It is also submitted that once an employee is absorbed as Janitor then for the purpose of his seniority, his regular service is to be recognised vis-a-vis others taking into consideration the services rendered in the identical scales and thus the seniority of the applicant has to be counted on the basis of his service rendered in the identical grade in the post of Junior Clerk and not from the date his name was included

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in the list and since the applicant is the seniormost Janitor, he cannot be reverted on the extraneous reasons, as given by the respondents.

10. The applicant further submits that as far the post of Janitor in the pay scale of Rs.1200-2040 (RPS) is concerned, that is filled on the basis of seniority-cum-suitability and the applicant was, therefore, promoted on 27.4.1985 on the basis of seniority and also on the basis that he was the only person available at that time and, therefore, the applicant cannot be considered junior to those persons who had been selected in the pay scale of Rs.950-1500 (RPS).

11. The respondents who are contesting the OA have taken a stand that in the year 1984 while the applicant was working as Junior Clerk he applied for the post of Janitor in the pay scale of Rs.260-400 (R) vide his application dated 15.5.1984 (Exhibit R-II) and it is as per his own request that he was posted as Janitor in the same scale purely on ad hoc basis, so it is submitted that the contention of the applicant that he was posted as Janitor in the interest of administration is false.

12. The applicant was further promoted to officiate in the pay scale of Rs.330-560 (R) on ad hoc basis from 27.4.1985 vide Exhibit R-IV. Thus it is clear that the applicant, who was

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working on ad hoc basis was given further promotion, that too on ad hoc basis within a span of 3 months thus it was an erroneous promotion in the pay scale of Rs.330-560(R) which was required to be rectified and set right in future as per the extant rules governing promotion. However, again ad hoc promotion was given to the applicant as Janitor in the pay scale of Rs.1400-2300 (RP) vide order dated 24.10.1986 (Exhibit R-V) which was again on ad hoc basis and the applicant joined the post on 6.1.1987 and continued upto 21.6.96. Thus two ad hoc promotions had been given to the applicant which was against the rules and it required rectification and he was correctly reverted to the post of Janitor in the pay scale of Rs.950-1500 (RP).

13. It is further submitted by the respondents that keeping in view that his juniors were working as Janitor in the pay scale of Rs.1200-1320(R), he was promoted as Janitor in the pay scale of Rs.1200-2040. They further submitted that since the applicant was regularised as Janitor in the pay scale of Rs.260-400 (R)/Rs.950-1500 (RP) w.e.f. 25.11.1988 so his seniority in the Janitor cadre has to be counted from the date when he was regularised and it is being maintained as such from 25.11.1988, therefore, it is submitted that the reversion from the post of Janitor in the pay scale of Rs.1400-2300 (RP) to the post of Janitor in the pay scale of Rs.950-1500(RP)/Rs.1200-2040(RP) is

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totally correct and this has been rectified as per the instructions/rules governing the promotion.

14. We have heard the learned counsel for the parties and gone through the records of the case.

15. The learned counsel appearing for the applicant submitted that since the applicant had been working as Janitor right from 1984 so his seniority should be considered from 1984 and he could not be treated as an ad hoc Janitor. The learned counsel for the applicant also submitted that the applicant had already been confirmed in the same scale as Junior Clerk and since he was transferred as Janitor in the same scale, so there was no question of the applicant being kept on ad hoc basis as Janitor.

16. To meet the argument of the applicant that he had been regularised from 25.11.1984 as Janitor in the pay scale of Rs.950-1500 (RP), the learned counsel for the applicant submitted that if the department does not hold the regularisation for pretty long period, then the applicant cannot be made to suffer because of the fault of the department. It is also submitted that the persons who are junior to the applicant but had joined the post of Janitor on compassionate grounds after the applicant had been appointed in the cadre of Janitors, they cannot be given

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seniority over the applicants and the applicant who was working in the cadre of Janitor earlier should have been given seniority before giving seniority to those Janitors who were appointed on compassionate grounds.

17. In reply to this, the learned counsel for the respondents submitted that appointment to the post of Janitor is done from amongst the Clerks and the applicant chose to become Janitor on his own application and he was not transferred as a Janitor in the interest of Railway Administration and once he had chosen to opt for a career in the cadre of Janitors, so he had to be kept as ad hoc Janitor till the time he was regularised in accordance with the rules and since for the first time he was regularised on 25.11.1988, so his seniority is to be reckoned from 25.11.1988.

18. It is further submitted that as regards the ad hoc promotions are concerned, since the applicant had been given twice promotions on ad hoc basis which is against the Railway Board instructions, so that could not be maintained and as such the applicant had to be reverted back to his substantive post of Janitor in the pay scale of Rs.950-1500 (RP). Learned counsel for the respondents further argued that keeping in view that his juniors were placed in the pay scale of Rs.1200-2040 (RP), so the applicant was allowed to continue in the pay scale of Rs.1200-2040.

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19. After going through the rival contentions, we had also asked the department to produce the relevant rules for appointment of Janitors.

20. As regards the filling up of the post of Janitor in the various grades are concerned, the relevant portion is being reproduced hereinbelow:-

"(a) Janitors in scale Rs.260-400(R)

To be filled in by seniority-cum-suitability (Suitability to be judged by Written Test) by inviting applications from amongst the clerks in scale Rs.260-400 (R) of the Division and the Workshops located in the respective division. Despatch Riders will also be eligible to apply for this post.

(b) Janitor Scale Rs.330-560 (R)

By promotion of Janitors in scale Rs.260-400(R). On the units where there are no pots in scale Rs.260-400(R), these pots will be filled in by a Suitability Test (Written Test) by inviting applications from amongst the clerks in scale Rs.260-400(R) of the respective units.

(c) Janitor Scale Rs.425-700 (R)

Selection post. To be filled in by holding Written Test and Viva Voce Test from amongst the Janitors in scale Rs.330-560 (R) wherever there are no Janitors in Scale Rs.330-560 (R) these posts may be filled in by inviting applications from the.....(not legible)

(d) Janitor Scale Rs.550-750(R)

The post is to be filled in by Seniority-cum-Suitability (Suitability has to be

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judged by service records and Conf. Reports) on the basis of combined seniority of Janitors in scale Rs.425-700 (R) on the whole Railway:
(emphasis supplied)

21. A perusal of these rules suggest that appointment to the post of Janitor in the scale of Rs.260-400/Rs.950-1500 can be made by seniority-cum-suitability from amongst Clerks and the suitability is to be judged by written test and for which purpose the applications are to be invited from Clerks in the same scale of Rs.260-400 (R). Though the applicant in the OA claims that he was transferred in the interest of Railway Administration to the post of Janitor but this fact is belied, as the respondents have placed on record a copy of the application vide which the applicant had applied to the Railway Administration for being appointed to the post of Janitor in the scale of Rs.260-400/Rs.950-1500. Since the applicant had himself voluntarily applied for the said post, as such till his suitability was judged by holding a written test as per the rules, he could not be regularised as Janitor. His appointment as a regular Janitor without undergoing the suitability test as per rules would have been de hors the rules, so it is only after his test was held and he was found suitable he was given a regular post of Janitor in the pay scale of Rs.260-400/Rs.950-1500 w.e.f.25.11.1988 when he was regularised as Janitor in the above scale and till then admittedly the applicant was working as ad hoc Janitor and was given twice ad hoc promotions which were contrary to the Railway Board instructions. Thus the erroneous

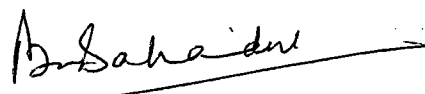
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promotions given to the applicant twice on ad hoc basis was required to be rectified, which the respondents had done vide impugned order.

22. As regards the plea of the applicant that some juniors to him who had joined later than the applicant have been shown senior to him to which the respondents submitted that certain persons were appointed directly as Janitor on compassionate grounds and their appointment as Janitor were regular and by that time the applicant had not been subjected to suitability test and could not have been made regular. The seniority of the applicant can be reckoned only from the date when he was regularised after the holding of the suitability test, i.e. from 25.11.88. To our mind also the applicant can hold a substantive post only after he had been subjected to suitability test and had qualified the same as per the Recruitment Rules. Since the applicant was declared fit only in the year 1988 from which date he was regularised, so the persons who had been regularly appointed though on compassionate grounds before his regularisation, would rank senior to him. As such we find that this contention of the applicant also has no merit.

23. From whatever angle we may examine the case of the applicant, we find that the OA is devoid of merit and it does not call for any interference by the Tribunal and the same is accordingly dismissed. No costs.


(Kuldeep Singh)
Member (J)


(B.N. Bahadur)
Member (A)

Rakesh