

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:327/96

DATE OF DECISION: 11-1-2001

Shri M. Joykutty Applicant.

Shri D.V. Gangal Advocate for  
Applicant.

Versus

Union of India and others Respondents.

Shri V.G. Rege Advocate for  
Respondents

CORAM

Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

(1) To be referred to the Reporter or not? } 70

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

(3) Library.

*K.S.*  
(Kuldip Singh)  
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 327/96

the 11th day of JANUARY 2001.

CORAM: Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

M. Joykutty  
Stenographer Gr. II  
O/o the Chief Engineer,  
Central Training Unit,  
Central Water Commission  
CW&PRS Campus  
Khadakwasla, R.S. Pune.

...Applicant.

By Advocate Shri D.V. Gangal.

V/s

1. The Union of India through the  
Secretary to the Government  
Ministry of Water Resources  
Shram Shakti Bhavan,  
Rafi Marg, New Delhi.
2. The Central Water Commission  
through its Chairman  
Sewa Bhawan, R.K. Puram,  
New Delhi.
3. The Central Water Commission  
through its Chief Engineer  
Central Water Commission  
CW&PRS Campus,  
Khadakwasla R.S. Pune. ... Respondents

By Advocate Shri V.G. Rege.

O R D E R

{Per Shri Kuldip Singh, Member (J)}

The applicant in this OA claims the following reliefs:

- a) That the Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same issue a writ of certiorari quashing and setting aside the order dated 3.11.92 (Annexure -I)
- b) To hold and declare that the said order at Annexure I is illegal.
- c) To hold and declare that the applicant is entitled to grant the post of Sr. P.A. in the pay scale of Rs. 2000 - 3200 /3500.

d) To hold and declare that the pay of the applicant of Rs. 2765/- to be protected by Central Water Commission as his basic pay.

e) To hold and declare the entire service right from 1974 upto date to count for all purposes, such as seniority, promotion, pay fixation, leave, pension and all service benefits.

f) To hold and declare that the applicant is entitled to grant of deputation allowance in terms of President of India's decision conveyed vide letter No. 11/2/70-Adm.IV dated 8.5.1982 erstwhile Min. of Irrigation & Power, from 1974 till 1991.

g) The Chukha Project Authority is no more in existence as it has wound up due to completion works. Therefore, to hold and declare that Central Water Commission has to make payment of deputation allowance to the applicant.

h) To hold and declare that the applicant has always been an employee of Govt. of India from 1974 to upto date.

i) To grant the cost and any other and further relief in the nature and circumstances of the case with interest and for which act of kindness the judiciary is in duty bound shall ever pray.

2. Facts in brief are the applicant claims to have been appointed to the post of LDC in the year 1974 by respondent No.2/ Immediately on joining he worked for Chukha project authority Bhutan (herein after referred as project authority).

3. After joining the service as LDC he got promotion and had reached to the post of Steno grade I in the pay scale of Rs. 2700 - 65 - 3675. Then after the completion of the project he was retrenched (terminated) and was also paid gratuity plus exgratia payment towards retrenchment benefit.

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4. The applicant ~~further~~ claims that he has been unauthorisedly retrenched. Since he was an employee of Govt. of India he was entitled to be repatriated to C.W.C. and should have been given a post of Sr. P.A. and his pay should have been protected.

5. The applicant had filed an OA 2213/90 at Principal Bench which was decided on 24.7.1991 vide Annexure A -2 whereby the direction were also given to respondent to absorb him as Steno Grade I.

6. The respondent expressed its inability to provide job of Steno Grade I and rather forced him to accept the job of Steno grade II in the pay scale of Rs. 1400 - 40- 1600 - 50 -2300 -EB- 60 - 2600.

7. The applicant submits that if the post of Steno grade I was not available he should have been given the post of Sr. PA, but respondent forced him to accept the post of Steno grade II and that is how impugned letter dated 3.11.1992 has been issued.

8. The applicant further claims that he being a weak party had no option but to accept the job otherwise he would have been on road. Now he is willing to refund the retrenchment amount and that letter dated 3.11.1992 should be quashed and he should be given the post of Steno grade I. His pay has also not been protected and he had been granted the minimum <sup>of the</sup> scale of Rs. 1400 - 2600 as Steno grade II.

9. He further claims that his status from Govt. of India to the project should have been treated as on deputation.

10. In the background of these facts he has ;asked for the reliefs as stated above in para 1.

11. Respondents are contesting the petition. It is submitted as per the direction of the Tribunal in OA 2213/90 and relief has been granted therein. Applicant was not given the relief to be treated as in the service of the Central Water Commission (CWC). The contention of the applicant that he was an employee of CWC was not accepted. Only an effort was to be made that applicant is given employment in some of the office under CWC.

12. It is also stated that application is barred by principle of res-judicata. It is submitted in difference to the directions of Hon'ble Tribunal in earlier OA, the applicant has been given appointment in the post of Steno grade II and now there is no cause of action for the present OA.

13. We have heard learned counsel for the parties and have gone through the record.

14. The main contention of the learned counsel for the applicant is that applicant was appointed by respondent and continued to be an employee of respondent. His service was unauthorisedly terminated that is why applicant had filed OA and

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respondent was directed to absorb the applicant as Steno grade I. But respondent gave appointment as Steno grade II that is why the applicant had to file fresh OA. If the post was not available his pay should have been protected.

15. In reply to this learned counsel for respondent submitted that applicant was locally recruited employee of the project. On completion of the project his service has been retrenched and he had been paid retrenchment compensation. So applicant cannot claim that he was employee of CWC or that of Govt. of India. Otherwise throughout his stay at project he would have also claimed deputation allowance etc.

16. In our view the document A-3 which is a discharge certificate of applicant from the project makes it clear that applicant was an employee of the project only. Otherwise on completion of project he would have been automatically repatriated to CWC as it is quite clear from para 2 of the judgement in earlier OA.

17. The Tribunal had further come to the conclusion that the appointment letter issued to the applicant on 2.12.1974 is by <sup>Bhutan b</sup> Superintending Engineer, Chukha Hydro Electric Project <sup>Bhutan</sup> ~~Bhutan~~. The letter also shows that the rules framed by the Royal Govt. of Bhutan would apply in his <sup>case</sup> <sup>in</sup> sense.

18. Thus these observations of the Tribunal in the earlier OA makes it clear that applicant was never an employee of respondents. Rather he was employee of Chukha Project Bhutan. He cannot challenge his termination / retrenchment. Nor it was so accepted by Tribunal in earlier OA.

19. In view of these circumstances we are of the considered opinion that applicant cannot ask for the relief claimed by him.  
*as he was never the employee of Govt of India or*

20. The OA is devoid of any merits and same is hereby dismissed.

21. No order as to costs.

*Shanta S-*

(Ms. Shanta Shastry)  
Member (A)

*Kuldeep*

(Kuldeep Singh)  
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO: 17/2001 in  
ORTGNAL APPLICATION NO: 327/96

CORAM: Hon'ble Shri Kuldip Singh, Member(J)

Hon'ble Ms. Shanta Shastry, Member(A)

M. Joykutty ...Applicant.

v/s

Union of India and others. ...Respondents.

ORDER ON REVIEW PETITION NO:17/20001 BY CIRCULATION

{Per Shri Kuldip Singh, Member(J)} DATED: 26-4-2001

This is a Review Petition filed by the applicant for review of the order in OA No. 327/96 dated 11th January 2001.

2. The main ground for review is that documents A -2 to A -5 (annexed now) were not available with the applicant for which he applied on 22.2.2001 to Principal Bench.

3. On the basis of which he wants to impress that observation of this Tribunal in the decision of present OA " that the applicant was never an employee of respondent" has been wrongly recorded. So there is an error apparent on the face of record.

4. The applicant has also referred to an order of earlier OA filed by him at Principal Bench (OA 2213/90). We have considered all his submissions made in the Review Petition.

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5. But even now the observation of the Tribunal which the applicant relies on show that the applicant was appointed by Chukha Project, through the Central Water Commission may have been acting on behalf of Government of Bhutan.

6. The observations of the Tribunal made in earlier OA itself had been quoted by Applicant in the Review Petition.

7. These also make it clear that though initially applicant may have been recruited by CWC but CWC may have acted only for Government of Bhutan.

8. So our observations also show that applicant was never regularly appointed by Government of India. Meaning thereby applicant may have been recruited by CWC for Chukha Project but had not been regularly employed by Government of India.

9. Hence in these circumstances we do not find any error on the face of record which may call for the review of the order as no grounds for review has been made.

10. The Review Petition is therefore rejected.

*Shanta S*

(Ms. Shanta Shastry)  
Member (A)

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*Kuldeep*

(Kuldeep Singh)  
Member (J)