

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 756/99

Date of Decision : 04-03-04.

Dr.B.C.Pathak Applicant

Shri G.K.Masand Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents


Shri R.K.Shetty Advocate for the
Respondents

CORAM :

The Hon'ble Shri A.K.Agarwal, Vice Chairman

The Hon'ble Shri Muzaffar Husain, Member (J)

- (i) To be referred to the reporter or not ? ✓
- (ii) Whether it needs to be circulated to other ✓
Benches of the Tribunal ?
- (iii) Library ✓


(A.K.AGARWAL)
VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.756/99

Dated this the 4th day of March 2004.

CORAM : Hon'ble Shri A.K.Agarwal, Vice Chairman

Hon'ble Shri Muzaffar Husain, Member (J)

Dr.B.C.Pathak,
Reader in Sanskrit,
Government College,
Daman.

...Applicant

By Advocate Shri G.K.Masand

vs.

1. Union of India
through the Secretary,
Ministry of Human Resource
Development, Shastri Bhawan,
New Delhi.
2. The Administrator of U.T.
of Daman and Diu & Dadra
Nagar Haveli Secretariat,
Moti Daman, Daman.
3. The Secretary (Education),
Administration of Daman & Diu
Collectorate, Daman.
4. Shri S.Om Kumar,
Lecturer in Physics,
Government College,
Daman.

...Respondents

By Advocate Shri R.K.Shetty

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O R D E R

{Per : Shri A.K.Agarwal, Vice Chairman}

This OA. has been filed by the applicant Dr.B.C.Pathak against the order issued by the Administration of Daman & Diu dated 30.6.1999 whereby Mr.S.Om Kumar, a Lecturer in Physics was asked to look after the work of Principal, Government College, Daman in addition to his own duties until further orders. This order was issued by the Administration on account of the suspension of the then Principal Dr.L.M.Jatwa of the Government College, Daman.

2. The contention of the applicant is that he has been designated as Reader and should therefore be considered senior to Respondent No.4 Mr.Om Kumar. In view of this, it is the claim of the applicant to look after the work of Principal.

3. The facts of the case in brief are as follows. In a Government College, as per the Recruitment Rules the post of the Lecturer is in the grade Rs.2200-4000. There is also a post of Principal having the pay scale higher than Lecturer. Thereafter, a pay scale for Selection Grade Lecturer has also come into being in the Government Colleges, although, no provision as yet has been made in the Recruitment Rules for Selection Grade Lecturers. The seniority of the officers is maintained in the cadre of Lecturer. The applicant in the seniority list is placed at No.

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3 while Mr. Om Kumar who has been given the charge of Principal in addition to his own duties is at Sr.No.2. However, the contention of the applicant is that after the implementation of the Career Advancement Scheme, he has been designated as Reader and therefore should be considered as senior to Respondent No. 4.

4. The Govt. of India issued fairly detailed instructions on revision of pay scales of teachers in Universities & Colleges on 17.6.1987. This was modified vide Ministry of Human Resource Development's letter dated 22.7.1988 and it also contained a Scheme on career advancement. The Career Advancement Scheme has a provision whereby those Lecturers who are Ph.Ds. or have equivalent published work can be designated as Readers. Incidentally, the pay scale of Reader is the same as that of a Selection Grade Lecturer. The dispute relating to the seniority of Lecturer in the College of Daman & Diu has been a matter of rather protracted litigation. In 1997 an OA. was filed by Dr. Diwakar Tripathi, a Selection Grade Lecturer in the college praying that he should be designated as Reader in view of the Career Advancement Scheme. The Tribunal vide its order dated 24.9.1997 directed the respondents to complete the process of selection and issue order expeditiously. In compliance thereof, the Administration vide its order dated 29.10.1998 promoted and designated 7 Selection Grade Lecturers as Readers. This order further mentions that in view of para 15 of the Career Advancement Scheme, the post held by these 7 incumbents will stand upgraded in situ to the post of Reader in the pay scale of Rs.3700-5700 (pre-revised). It was further mentioned that seniority of these 7 persons be maintained in the cadre of Reader.

5. Now, in such circumstances, a dispute arose that when the pay scales of Selection Grade Lecturer and Reader are the same and some have been given the designation of Reader with the condition that their seniority will be maintained as Reader in a separate cadre without affecting the seniority of Lecturer then who should be considered senior. Whether a person who was junior in the cadre of Lecturer but has been designated as Reader will stand senior to a person who was senior to him in the cadre of Lecturer and has not been designated as Reader. A similar question was raised in the case of National Defence Academy, Khadakwasala. Teachers of that Institute also came up before the Tribunal. The CAT, Mumbai Bench vide its order dated 22.9.1997 passed in OA.NO.578/96 and 896/96 directed the respondents to consider the claim of the parties and frame the scheme within a period of six months from the date of the order. In compliance of this, Ministry of Defence issued a letter dated 23.2.1998 conveying its decision that on grant of designation of Reader under Career Advancement Scheme, there will be no change in the interse seniority of the civilian academic officers recruited as per SRO 1968 as the placements are personal and notional. Thus, the Ministry of Defence has taken a decision for the Lecturers working under its Institution that getting of designation of Reader under Career Advancement Scheme, will not change the interse seniority. In other words, a person selected as Reader will not have any advantage in the seniority vis-a-vis a person who was considered not fit to be designated as Reader.

6. The learned counsel for respondents mentioned that in view of the decision of Govt. of India, Ministry of Defence that the inter se seniority of Selection Grade Lecturers and Readers by virtue of CAS will not undergo any change, the OA. deserves to be dismissed. We, however, do not agree with this view. Firstly, because the decision taken by the Ministry of Defence on the directions given by CAT, Mumbai Bench in order dated 22.9.1997 (OA.Nos.578/96 and 896/96) is not a verdict of any Bench of CAT or High Court on the issue of inter se seniority. The decision taken by the Ministry is of executive nature and has no force of law. Secondly, the issue of inter se seniority is already a subject matter in another OA.No.32/99 which is going to be decided by this Tribunal separately.

7. In this case, the order of giving the additional current charge of the Principal to Respondent No. 4 has been challenged. There is another OA. under consideration of the Tribunal wherein the principal issue for adjudication relates to inter se seniority between Selection Grade Lecturer and Reader. A copy of an interim order passed in OA.No.32/99 on 4.6.1999 has also been filed in this case. The Tribunal by this order, keeping in view the complexity of the issues involved had refused to stay the impugned order but had directed that the further promotions etc. shall be subject to the final order which will be passed in the OA.No.32/99. While order dated 29.10.1998 has been challenged in the earlier OA.NO.32/99, in this OA., i.e.756/99 a copy of that order of 29.10.1998 has been filed by the applicant in support of

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his contention that he has been promoted and designated as Reader while the person who has been given the current charge of Principal was not considered fit for such promotion. As far as the issue relating to the inter se seniority between Selection Grade Lecture and the persons who have been selected as Readers under the Career Advance Scheme is concerned, that will be adjudicated upon in OA.NO.32/99. In this OA., the limited issue is whether it was proper on the part of the administration to give the current charge of the post of Principal to the Respondent No.4.

8. It is mentioned by the respondents in the written reply that Mr. Om. Kumar had earlier also worked as Principal of the College. Secondly, he is senior to the applicant in the seniority of Selection Grade Lecturer. Thirdly, the applicant may have been given the designation of Reader under the Career Advance Scheme but he is not senior to respondent no. 4 because the seniority list of Selection Grade Lecturers remained unchanged. Fourthly, because there is no post of Reader in Government College, Daman, there is no seniority list for Readers.

9. We find from the impugned order dated 30.6.1999 that it is not a promotion order in favour of the Respondent No.4 Shri S.Om Kumar. Further, in no way it places him on a senior position vis-a-vis the applicant. He has been asked to continue on his post of Lecturer in Physics and in addition to that has been asked to look after the work of Principal of the Government College. In fact, this type of order, according to us, does not give rise to any cause of action for coming to a Court of Law. The applicant himself has annexed a letter of the Secretary, Education Daman dated 3.11.1998 whereby the applicant, i.e. Dr.B.C.Pathak was asked to look after the work of Principal as a

purely temporary arrangement made during the absence of Dr.Jatwa. There is another order dated 13.11.1998 which was issued by Dr.Pathak with the approval of the Secretary, Education that during the period of his absence Dr.Diwakar Tripathi, Reader in Maths will look after the routine/urgent work of the office of the Principal. Incidentally, during the course of argument, we were informed by the learned counsel for respondents that Dr.Jatwa because of whose suspension, current charge of Principal in addition to his own duties, was given to Respondent No. 4 has rejoined his duties. This was not refuted by the other counsel. In view of this, the impugned order has in fact become infructuous since the Respondent No.4 is no longer looking after the work of the Principal.

10. As far as giving of additional charge in the absence of the Principal is concerned, it is not necessary that it must be given only to the senior most Lecturer, though it is always desirable to give due weightage to the seniority. Sometimes the exigencies of the administrative work may require to entrust the current charge of a higher post to one who is not the senior most. The Supreme Court of India in the case of Ramakant Shripad Sinai Advalpalkar vs. Union of India & Ors. 1992 SCC (L&S) 115 has held that :-

"Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case, he does not get the salary of the higher post; but gets only what in service parlance is called a "charge allowance". Such situation are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement."

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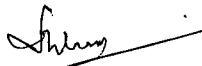
11. In another case, State of Haryana vs. S.M.Sharma & Ors. 1993 SCC (L&S) 1072, the Supreme Court held that the entrustment of current duties does not amount to promotion nor withdrawal of such charge amounts to reversion. Further, in para 12 of this judgement the Apex Court has held as follows :-


"No one has a right to ask for or stick to a current duty charge. The impugned order did not cause any financial loss or prejudice of any kind to Sharma. He had no cause of action whatsoever to invoke the writ jurisdiction of the High Court."

12. The two rulings of the Apex Court cited above clearly lead to two inferences that (i) giving of a current charge of a higher post is not a promotion and even consideration of seniority does not enter into it and (ii) the entrustment of current charge does not give rise to a cause of action since no one has a right to ask for it.

13. After hearing the arguments of both the counsels and going through the facts of the case as well as relevant case law, we hold that the impugned order is not a promotion order warranting a cause of action for adjudication by a court of law. Secondly, after resumption of duties of Principal by Dr. Jatwa, the impugned order dated 30.6.1999 no longer survives. Consequently the main prayer made in the OA. i.e. quashing and setting aside of impugned order dated 30.6.1999 has become infructuous. The issue of inter se seniority between Selection Grade Lecturers and Readers which is being adjudicated upon in another OA.No.32/99 does not have any relevance in this case.

14. In view of the facts indicated above, this OA. is dismissed. No order as to costs.


(MUZAFFAR HUSAIN)
MEMBER (J)


(A.K. AGARWAL)
VICE CHAIRMAN