

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO.323/2000

Dated this, _____, the _____ Day of December, 2000

Shri G.S.Desai Applicant.

(Applicants by Shri Shivramakrishnan, Advocate)
with Shri A.I.Bhatkar, Advocate)
Versus

Union of India & 2 Ors Respondents
(Respondents Shri V.S.Masurkar, Advocate)

CORAM

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

Hon'ble Shri S.L.Jain, Member (J)

(1) To be referred to the Reporter or not? *Yes*

(2) Whether it needs to be circulated to other Benches of the Tribunal? *No*

(3) Library. *No*

B.N. Bahadur
(B.N. Bahadur)
Member (A)

*sj**

THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.323/2000

Dated this Monday the 11th Day of December, 2000.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)
And
Hon'ble Shri S.L. Jain, Member (J)

(Represented by Shri K. Shivramakrishnan, Advocate
with Shri A.I. Bhatkar, Advocate)

1. Union of India through
The Secretary,
Ministry of Home Affairs,
Central Secretariat,
North Block,
New Delhi.
2. Finance Secretary,
Special Secretary Personnel,
Daman, Diu and Dadra & Nagar Haveli,
SILVASSA - 396 230.
3. The Administrator,
Union Territory of
Dadra & Nagar Haveli,
Administrator's Secretariat,
Circuit House,
SILVASSA - 396 230.

(Shri V.S. Masurkar, Adv.)

ORDER

[Per B.N.Bahadur, M (A)]

The Applicant in this case, Shri G.S.Desai, is aggrieved by the impugned order, dated 18.5.1999, (Annexure A.1), through which Order the Applicant, along with another person, have been ordered to be reverted. He thus, seeks the relief in substance,

Bnb

443/-

that this order as also the Order dated 24.3.2000 (Annexure A.2) be declared as null and void. Consequential reliefs as described in Para 8/9 are also sought.

2. The facts of the case, as brought out by the Applicant, are that after entering service on 1.8.1964 and earning promotions, he became due for promotion to a Group B post in 1991. There are 7 regular posts of Group B which are listed in para 4.1. He had ~~earlier~~ ^{AS} been promoted as Head Clerk earlier in 1986 on regular basis and this, entitled him to further promotion in 1991.

3. However, the Applicant alleges that the Respondents have not undertaken regular promotions but has resorted to adhoc promotions for years. The Applicant states that he was one of the persons given adhoc promotion along with three others vide order dated 30.8.1996; he was at Sr.No.3 and one R.B. Rohit who was applicant's junior and who belongs to reserved category, is shown as Sr. No.1. The Applicant goes on to give further details of the seniority positions and other facts in the O.A.

4. Further facts in the matter have come through the rejoinder of the Applicant dated 26th July, 2000, which is filed to the Reply of the Respondents dated 6.7.2000. Here the ground is taken that the posting of UTCS officers to the Administration cannot have any consequence on the Mamlatdar Cadre, except if any of the officiating Deputy Collectors are reverted consequently as Mamlatdar. The Applicant contends that no such reversion have ever been stated to have taken place in the reply statement and hence, the reason given for reversion in the impugned order is wrong. In fact, this argument became the leading argument of the Learned Counsel for the Applicant when he argued the case. We would revert to it at a later stage.

...3/-

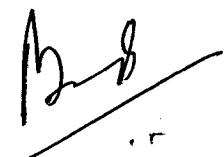


5. In the reply statement of the Respondents dated 6.7.2000, it is stated that there were originally four sanctioned posts of Mamlatdar etc. but through additional sanctions there now exists seven sanctioned posts. It is averred that all sanctioned posts were occupied by eligible Officers according to seniority lists. Some details of different individuals are described in this regard and it is stated that the Applicant Shri G.S. Desai who is at Sr. No.6 in the Seniority list, does not come in the zone of promotion. Other details regarding the posts outside the cadre and the matter regarding deputation etc., as also position in seniority list, have been given. A point is also made about applicant having refused to go on deputation at one stage.

6. An objection is also taken on the legal point that the Applicant has impugned two separate communicated orders, hence the application suffers in legal terms for pursuing multiple reliefs of action.

7. Learned Counsel for the Applicant took us over the facts in detail, during his arguments, and attempted to meet all the points raised in regard to seniority, number of posts sanctioned etc as mentioned above. The salient points of his argument, however, was that the impugned order clearly states that the cause of action of reversion of the Applicant is stated to be the posting of UTCS Officers in the order dated 4th May, 1999. The contention made was that there is no order of reversion made, as a consequence the posting of UTCS Officers. They were in higher grade and should their coming resulted in any reversions, the reversion of the Applicant could perhaps be defended, if at all in terms of seniority. He took the plea of malice in law among other things.

8. Learned Counsel for the Applicant also defended the legal objection relating to multiple reliefs, arguing that the second

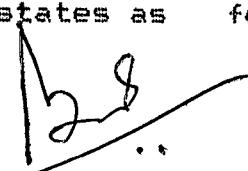


impugned order came as a consequence of the first order. Thus, while making a fervent argument that the reversion was unnecessary, he concluded by saying that even if reversion took place the applicant was not the junior^{most}, and that other vacancies were available.

9. Arguing the case for the Respondents, their learned Counsel Shri V.S. Masurkar, pointed out that the basic case of the Applicant was as made in the Rejoinder. While conceding that no Dy. Collectors were reverted, he contended that the action of reversion was taken because of the seniority position as explained in the Written statement of the Respondents. It was stated that UTCS officers have not been posted against the lower post of Mamlatdar as mentioned in the Additional Sur Rejoinder dated 17.8.2000. There is only one post of Mamlatdar in the Pay Scale of Rs.5,500 -- Rs.9,000/-.

10. We have carefully gone through all the papers in the case especially the rejoinder and sur rejoinder filed, and have carefully considered the arguments made on behalf of learned Counsels on both sides.

11. At the outset we may state that a large number of details have been provided with reference to some seniority disputes and issue of reservation etc. While we have gone through these with reference to the salient point involved we find them largely irrelevant and are, therefore, not going into it. We shall come straight away to the basic issue raised by the Applicant and stressed strenuously by learned Counsel for the Applicant, Shri Shivramakrishnan. His contention is, as pointed out earlier, to the effect that the reason given in the impugned order for the reversion of the Applicant is one of the posting of UTCS Officers. Indeed the Reversion Order dated 18th May, 1999 (A.1) states as follows: "Consequent upon postings of U.T.C.S.

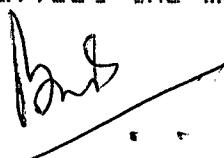


...5/

Officers in the Dadra and Nagar Haveli Administration vide Order No.1-27/99-PER./VOL.1/798, dated the 4th May, 1999, the Administrator, Daman Die and Dadra & Nagar Haveli is pleased to order reversion of following two Officers with immediate effect, to their substantive post of Assistant: 1. Shri R.B. Rohit, 2. Shri G.S. Desai.

Various grounds are taken by Respondents in their defence. However, we will as per settled law have to clearly go by reason given in order of reversion, and cannot stray into irrelevant areas. We will not and need not go into aspects of seniority or discuss the aspect of the rights and wrongs of promotions/made/not made/ or of other issues which are sought to be brought in. It is amply clear that the UTCS Officers have been brought in at a level clearly and distinctly above the level in which the present applicant works i.e. Mamlatdar/equivalent. It has not been controverted, and in fact accepted, that there have been no reversions from that position to the level of Mamlatdar/LRO. In view of this fact, the reason clearly given for the reversion of the Applicant in the impugned Order is wrong in facts. Thus makes the order clearly illegal and bad in law and should need to be remedied to provide justice to the Applicant.

12. Two different reasons have been given by the Respondents, in their pleadings, both written and oral for the reversion. The real test of the reason for reversion, as already stated above will have to be made on the impugned orders where a clear cut reason has been given for reversion. If no reason was given perhaps the justifiability of other reasons could have been gone into. But when it has clear that the reason given is wrong we need not go into other aspects which, even if considered, do not affect the main ground taken by the Applicant.



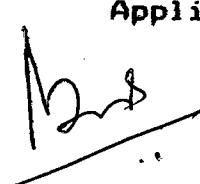
13. Learned Counsel for the Applicant has further raised the point that even after he was to be reverted he was not the junior most. We have held the very reversion to be bad in law on its own. We are thus not examining this aspect of the matter, as there is no need.

14. We now turn to the challenge made by the Applicant against the impugned order dated 24.3.2000 (Annexure A.2). This is a Memorandum asking the Applicant to Show Cause to submit a statement of defence in regard to the Inquiry that the Administration proposes to hold against him. The charge in this relates to the alleged absence of the Applicant in the period beyond 30.11.1999 till the date of issue of the Memorandum i.e. 24.3.2000. It is seen that the reversion Order is dated 18.5.1999. From a reading of Annexure II, it seems that the Applicant resumed duties as Assistant and proceeded on leave from 20.5.1999. Be that as it may, we find that during the arguments this issue was not pressed by either side. It is also not clear from the reply and other papers as to what the full facts in this case are. It is a subsequent cause of action and not a consequential relief. Under the circumstances, we are not going into the second prayer, and leave the matter open to be decided upon by the Govt., first. Needless to say remedy as per law will be available, to either side in the matter subsequently. We are, to repeat, not going into the merits of this relief sought.

15. In view of the discussions above, this O.A. is allowed to the extent and in terms of the following Orders:-

(a) The impugned Order No.1-2(B) (96)/95 ADM-923 dated 18th May, 1999 is hereby quashed and set aside in so far as it relates to the Applicant. Shri G.S. Desai should be posted

.....7/-



back either on the post that he was occupying at the time when this impugned order was made, or an equivalent post as per Rules, forthwith, on receipt of copy of this Order. During the period between date of impugned Order and of his rejoining the same/ equivalent post he should be treated as having served in the Mamlatdar's Pay

AS Scale/ leave etc. in the same scale as the case may be on facts. Since details of the actual position is not available with us, as per records, we direct the Administration to issue an Order within two months, indicating specifically how the period will be treated, following the basic direction as above.

(b) No Orders are made on the second relief sought by the Applicant (para 9 of the O.A.) viz. on his prayer that Memorandum dated 24.3.2000 (A.2) be not acted upon.

16 The O.A. is accordingly disposed of. No orders as to costs.

S.L.Jain
(S.L.Jain)

Member (J)

sj*

B.N.Bahadur
(B.N.Bahadur) 11/12/00

Member (A)