

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.555/2000

FRIDAY, THE 21ST DAY OF SEPTEMBER, 2001

CORAM: SHRI JUSTICE V. RAJAGOPALA REDDY. VICE CHAIRMAN
SMT. SHANTA SHASTRY. MEMBER (A)

Shri Krishna s. Shetty,
resident of Govind Niwas,
Room No.302, Ramakrishna Nagar,
Katemanvili, Pune Road,
Kalyan (E). ... Applicant

By Advocate Shri P.A. Prabhakaran

Versus

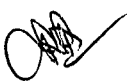
1. The Chief Post Master General,
Maharashtra Circle, G.P.O.,
Fort, Mumbai-400 001.
2. The Chief Post Master,
Kalbadevi Head Post Office,
Kalbadevi, Mumbai-400 002. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R (ORAL)

Shri Justice V. Rajagopala Reddy, Vice Chairman (J)

The applicant was employed in the departmental canteen of Kalbadevi Head Post Office as clerk in 1967. He had been continued in the same post till 1994 for a long period of 27 years. By an order dated 27.5.94 he has been promoted to the post of Manager with immediate effect on adhoc, purely temporary and local basis subject to be reverted to his post at any time without assigning any reason. Thereupon, he has been discharging duties of Manager of Canteen. Surprisingly, by another order dated 27th September, 1994, his order of promotion has been cancelled. But he was asked to look after the work of Manager in the said canteen,



for the grant of benefits under the ACP scheme by the Government, and as and when the decision was taken such benefit would be granted to him.

3. Heard the counsel for the applicant and respondents. The grievance of the applicant are three fold. (1) cancellation of the promotion is illegal (2) he was entitled for the pay in the post of Manager as he has been discharging the functions of the Manager even after his reversion and (3) he was entitled for insitu promotion under 1991 scheme and ACP scheme.

4. We find that the case of the applicant is untenable. the order of promotion merely shows that on the conversion of the co-operative canteen, Kalbadevi Head Post Office into departmental canteen one post of Manager was sought to be filled up by the process of selection. As the said process would take time, he was promoted to that post on purely adhoc/ temporary/ local basis. The order also says he was subject to the reversion to his original post at any time without any reason. The impugned order also makes it clear that the Chief Postmaster General, Bombay in its office memorandum dated 22.9.94 directed that since there was ban on creation of new post/ filling up of vacant post, the question of creation of the post of Manager as well as the question of filing it up did not arise, hence,

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without any additional remuneration. The applicant, thereby continued to work as clerk in the pay for over a long period. The applicant submits that even under the scheme of Assured Career Progression (ACP for short) recommended by the 5th Pay Commission and accepted by the Government of India, the applicant is entitled to the benefits of insitu promotion. He also submits that even in the earlier scheme dated 13.9.91 of the DOP & T the applicant was entitled for the insitu promotion. However, he was not granted any promotion under the above two schemes and as a result, he has been stagnating right from 1967 in the same post and in the same scale of pay. Aggrieved by the above action of the respondents, he has filed this OA.

2. It is stated in the reply that the applicant was promoted on adhoc basis on the conversion of the canteen into departmental canteen. In the process of selection held subsequently, as it was found that the Government imposed the ban on creation of new post/ filling up of the vacant post, his promotion has been cancelled. As he has been treated as Government servant only with effect from 1.10.91 pursuant to the judgment of the Hon'ble Supreme Court by converting the Kalbadevi canteen into departmental canteen, the employees therein were entitled for the benefit of the scheme dated 13.9.91. The applicant's case is under consideration



the applicant's promotion was cancelled. We, therefore, do not find any infirmity in the impugned order of cancellation.

4. In the impugned order dated 27.9.94 as the applicant was directed to look after the work of Manager in the canteen, it is contended that the applicant is entitled for the pay of the post of Manager. The applicant was said to have been paid only the pay of the post of coupon clerk in the canteen. Learned counsel relies upon FR 49. FR 49 contemplates the appointment of a Government servant already holding a post in a substantive or officiating capacity to officiate as a temporary measure in one or more independent posts at one time under the Government. In such case, he is entitled for pay of the higher post in which he was officiating. In this case, the question of officiating or temporary appointment in the higher post did not arise. The post of Manager itself was not in existence, because the order clearly indicates that there was ban on creation and filling up of vacant post. Further, the applicant was only asked to look after the post of Manager. The order also clearly stipulates that he should do so without any additional remuneration. When the order is clear, the applicant should have questioned this order in 1994 if he was not satisfied or if he was aggrieved by the same. It is therefore not open to him to make any grievance out of it at this point of time.



5. The question of granting insitu promotion as per 1991 scheme does not arise. The memo dated 22nd July, 1994 - Annexure R1 shows that the posts in the canteen including that of the applicant's were converted and the applicant was treated as Central Government servant with effect from 1.10.91. Therefore the applicant was a private employees till 1.10.91 and his service prior to 1.10.91 cannot count for the purpose of granting the benefit under the above scheme. The service rendered with effect from 1.10.91 only would count for consideration as per the scheme and hence the applicant did not fulfil any of the conditions for grant of insitu promotion.

6. As it is stated that the applicant's case is under consideration by the Government for grant of benefit under the ACP scheme, we direct the respondents to grant such benefit under the ACP scheme as and when he was found fit.

7. However, we are of the view that as the applicant had been looking after the work of the Manager since September 1994 and as it is now stated that he has not been paid additional allowances for such additional work, the respondents are liable to consider the payment of additional allowances from September, 1994, we direct them to do so within a period of three months from the date of receipt of copy of this order.



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8. DA is disposed of accordingly, in the circumstances without any order as to costs.

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(SMT. SHANTA SHASTRY)
MEMBER (A)

V. Rajagopala Reddy

(V. RAJAGOPALA REDDY)
VICE CHAIRMAN (J)

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