

2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

Stamp Appln. No. 306/91 (OA 349/91)

O.A. XXX No. 6

TxxAxxNxx

198

DATE OF DECISION 13.6.1991

Mr. Kulin M. Joshi Petitioner

Mr. D.V. Gangal Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

--- Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(U.C. Srivastava)
V/C

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

* * * * *

Stamp Application No.306/91 (OA 349/91)

Kulin M. Joshi,
R/o Government Complex,
Block No.E-9(old),
SILVASSA,
Dadra and Nagar Haveli.

... Applicant

v/s

1. The Union of India, through
the Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Administrator,
Dadra and Nagar Haveli,
Camp at Panaji, Goa.
3. The Chief Secretary,
Union Territory of Daman,
Diu and Dadra and Nagar Haveli,
Silvassa.
4. The Collector,
Dadra and Nagar Haveli,
Silvassa 396 230.

... Respondents

CORAM : Hon'ble Vice-Chairman, Shri U.C.Srivastava
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

Mr. D.V.Gangal, Advocate
for the applicant.

None present for the
respondents.

ORAL JUDGEMENT:

Dated : 13.6.1991

(Per. U.C.Srivastava, Vice-Chairman)

The applicant has approached this Tribunal
praying that the Tribunal may:-

(a) hold and declare that the reversion/
threatened reversion of the applicant from
the post of Sanitary Inspector of the post
of the post of B.C.G. Technician is illegal
and should be quashed.

(u)

(b) hold and declare that the action of the Chief Secretary i.e. Respondent No. 3 in ordering reversion of the applicant is arbitrary and malafide.

In the application the applicant has alleged that the applicant was appointed as Senior Inspector in the office of Chief Medical Officer, Department of Medical and Public Health, Silvassa. He was appointed in the year 1975 as B.C.G. Technician. Later-on he was promoted to the post of Senior Inspector. The applicant has stated that at serial No.9 of the seniority list there was one candidate Mr. D.S.Patel who was not considered for promotion by the Departmental Promotion Committee since his diploma of Sanitary Inspector was not from a recognised institution but the applicant was shocked and surprised when he learnt that a move has been launched at the behest of Mr.D.S.Patel and the Chief Secretary is now in the process of undertaking an illegal action of quashing the DPC proceedings on account of the fact that Mr. D.S.Patel was not considered for promotion and is further passing orders of reversion of the applicant and another. No order whatsoever has been yet passed for setting aside the proceedings of the DPC or for reverting the applicant. From these the applicant's apprehensions are that such an order will be passed and that is why the applicant has stated that there are apprehensions in his mind that he will be reverted. Further, any step which may affect the civil right of an employee will be an intrusion on the fundamental right and as such the Tribunal is bound to entertain the application even against the apprehended invasion of such a civil right. The learned counsel contended that reversion from a particular post will also be within the meaning of the

(S)

word civil right.

2. An application under Section 19 of the Administrative Tribunals Act is maintainable against a particular order only and this section does not indicate that it may be maintainable against any order which is likely to be passed in future. Subject to the above provisions of the Act a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal may make an application to the Tribunal for the redressal of his grievance. The said section obviously provides that it is subject to other provisions of the Act that a person who may have aggrieved from any order may approach the Tribunal for redressal of his grievance. The prime objective in any of the provisions of the Act obviously governs the subsequent clause.

3. The learned counsel made reference to the case of Ashok Kumar Gupta & Ors. vs. General Manager, Eastern Railway, ATR 1986 (2) CAT 119 decided by the Bench of CAT, Calcutta. which ultimately dismissed the application. In the said case the applicants, large in number, approached the Tribunal seeking protection against apprehended retrenchment after working for more than 580 days of which 400 days were without break and/or intervention i.e. more than what the Industrial Disputes Act provides. The applicants were volunteers employed by the Railway to assist the ticket checking staff and they claim this to be regular as identity cards were also issued to them. When the declaration for 8th Lok Sabha elections was made certain news item appeared that the services of volunteers and casual labourers

engaged in the Railway will be disbanded and during 1st to 7th January 1985 they were not offered any job. Later on 8th January 1986, after protest, they were engaged and they are still working. There is apprehension in their minds that the Railway authorities are going to disengage their services from middle of February 1986. In the said case it was stated on behalf of the Railway that it was decided by the Eastern Railway to disengage the volunteers from all the Divisions and this was taken by the applicants also as a threat. The Bench after taking into consideration the applicability of Article 226 of the Constitution of India and Section 3(q)(v) and 14(1)(c) of the Act observed that the Tribunal is not bound by any limitation as such but at the same time the Bench observed:-

"However, we are unable to interfere in the normal administrative process in the present case in which no specific act has been committed by the Railway authorities so as to give rise to the apprehension in the minds of the applicants."

The applicant made reference to other case of G.P. Mathur & Ors. vs. State of Rajasthan and others decided by the Principal Bench at New Delhi, 1988 (1) CAT 523 in which the Ashok Kumar Gupta's case also was referred. In the said case the selection to the I.A.S. was challenged after the select list was prepared by the UPSC. The grounds were that the participation of one of the members was illegal as the case of his sister's husband was to be considered whose name has actually been placed in the list. Another ground was that the committee has recommended the names of various State Civil Service Officers against whom there were serious charges and the third ground was that the selection committee did not meet during three

4

years and in the selection that was done the vacancies that arose during the entire period was clubbed together so as to enlarge the zone of consideration and that in one case the committee has taken note of an adverse entry against which representation was filed and which was subsequently expunged. A preliminary objection was also raised that unless there was a final order an application under Section 19 was not maintainable as the charges are against the selection proceedings and select list. The Bench was of the view that in view of the provisions laid down in the regulations, before issue of a notification by Government of India appointing a State Civil Officer to the IAS, his name has to find a place in the select list, which means the list prepared by the selection committee constituted by the Government of India on its approval by the UPSC. The Principal Bench was of the view that when UPSC has approved the list sent by the Government it has to be taken that there is an order because it is on such order of approval the select list was issued. In arriving at this conclusion the Bench made reference to N. Gunavijayan vs. Assistant Director of Census Operations, ATR 1986 (2) CAT 603 in which case the challenge was against a show-cause notice and it was held that if an application is entertained against a mere memo or show-cause notice, everyone will rush to this Tribunal at the initial stage of issue of a memo or a show-cause notice, without waiting for the final order to be passed in the matter and in such case Sections 20 and 21 will become practically otiose.

(8)

Reference was also made to the case of Ashok Kumar Gupta vs. General Manager, referred to above but it appears that it will not satisfy all the observations made above. Thus these cases also do not much support the case of the applicant and the ratio of all these only could be that after the other final stages prior to issue of a formal order are completed or ministerial acts are completed, an order is necessarily to be issued and there is no likelihood of non-issue of the order meaning thereby that if not the actual order but the simplest of an order is in existence, the application can be entertained. In the instant case still it is not known whether any such order will be issued or not or there may be rethinking and the order may not be issued. Obviously, it could be said for practical purposes that no order is deemed to be in existence against such apprehended injury in the absence of any material which may establish that a final decision has been taken and there is no possibility of non-implementation of the decision, only some formal ministerial act remains. Still in such situation obviously even a writ petition may also not be entertained. So far as the Civil Court is concerned that is also undoubtedly a discretion conferred upon the Civil Court but the discretion is to be exercised only when the condition mentioned in order 39, Rules 1 & 2 are satisfied against apprehended injury. In case if against the apprehension of any dismissal, termination, reduction in rank, reversion if applications are entertained the provisions of the Administrative Tribunals will be obligatory and the Tribunal will be flooded with such petitions. Without entering into the question as to whether an actual order is necessary or not and whether cases referred to above require reference to a larger Bench the fact will be same that in this case

(A)

there is no such material from which it could be said that an order is in existence except that it has not seen light of the day but bound to see the light.

Undoubtedly any service matter may affect the civil right to Service ^{✓ though certain protection are available} right but ~~the same~~ is not a fundamental right and the Tribunal is not bound, as contended by the counsel, to entertain every such application at every stage. We are, therefore, of the view that this application is not only premature but is misconceived and incompetent and cannot be entertained and accordingly the same is rejected at this stage.



(M.Y.Priolkar)
Member (A)



(U.C.Srivastava)
Vice-Chairman