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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 192/91

Transfer Application No: _____

DATE OF DECISION: 22.9.1994

A.F.Khan & Ors. Petitioner

Shri G.D.Samant Advocata for the Petitioners

Versus

Union of India & Ors. Respondent

Shri P.M.Pradhan Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S.Hegde, Member(J),

The Hon'ble Shri M.R.Kolhatkar, Member(A).

1. To be referred to the Reporter or not ? X
2. Whether it needs to be circulated to other Benches of the Tribunal ? X

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A).

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH, BOMBAY.

Original Application No.192/91.

A.F.Khan & Others. Applicants.

V/s.

Union of India & Others. Respondents.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicants by Shri G.D.Samant.
Respondents by Shri P.M.Pradhan.

JUDGMENT :-

[Per Shri M.R.Kolhatkar, Member(A)] Dt. 22.9.1994.

In this Original Application under section 19 of the Administrative Tribunals Act, 1985 the applicant has impugned the order dt. 13.8.1989 on the subject of "10% Switch Board Attendant's" upgradation of (SBA) in the pay scale of Rs.330-480 with effect from 16.10.1981. By this order six persons were upgraded, 5 persons were upgraded as SBA H.S.II w.e.f. 16.10.1981 and one w.e.f. 30.3.1982 and correspondingly six persons who are the applicants who were earlier promoted to SBA H.S. II were reverted as SBA SK. It is not in dispute that 5-grade restructuring took place w.e.f. 11.5.1983 and these orders took effect from 16.10.1981. Out of the 5 grades, the grades which are relevant are the following:

Silled Grade : Rs.260-400 subsequently revised to Rs.950-1500.

Highly Skilled Grade: Rs.330-480 subsequently II. revised to Rs.1200-1800.

Some employees had a grievance that fitment done by the department in these various grades were not as per the rules and they had therefore approached this Tribunal

in O.A. No.98/87, 99/87 and 100/87 decided on 12.9.1988.

The operative portion of the order is as follows:-

"Respondents are directed to consider and decide as to whether the applicants are further entitled to be placed in Highly Skilled Gr.II in the Switch Board Attendants category in the pay scale of Rs.330-480 on the basis of their seniority as envisaged by the restructuring scheme, vide Annexure - R2".

2. It was in implementation of the above orders that the impugned orders dt. 13.8.1989 at Annexure 'C' came to be passed. As a result of this impugned order, the applicants who were working in the scale of Rs.330-480 in the HSK Gr.II were reverted to SBA (SK) Grade in the scale of Rs.260-400. The orders under which the applicants were promoted have not been produced and therefore terms ~~on which~~ ^{on which} the promotions were effected are not very clear. The grievance of the applicants is that one of them had worked in the higher grade for 5 years and the rest of them had worked in the higher grade for 3 years and as a result of the impugned orders they have been reverted and not only have they suffered the recurring financial loss of a lower pay scale, but there is also a threat of recovery of over drawn wages from the applicants. The relief claimed by them is to declare the action of reversion as illegal, the proposed action of recovery also as illegal and to declare that they are entitled to continue as SBA HS II in the revised scale of Rs.1200-1800 from the date of their reversion.

3. At the time of hearing, the learned counsel for the applicant confined his contentions to the following. Firstly, that they have been victimized by implementation of an order in an Original Application

to which they were not parties. Secondly, out of the six persons who were promoted from the earlier date there were at least three persons who were no longer in service viz. S/Shri P.M.Vedpathak, V.Gabrial and T.P. Prabhakaran as on 12.11.1988 when the Review DPC was held as a result of which the reversion orders and as were issued on 13.8.1989, when the orders were actually issued. Therefore, the reversion of atleast these three persons could have been avoided.


4. The respondents have stated that, no doubt the applicants were promoted, but the promotions given to the applicants earlier were not in conformity with the rules and regulations as decided by the Hon'ble Tribunal and the Tribunal had directed to review the said position and the Review DPC had considered the said position. It is not disputed that the persons who have been promoted are senior to the applicants who have been reverted. We, therefore, do not find any substance in the contention of the applicants that the Judgment was ~~not~~ directed against the applicants; it only directed ~~the~~ the Respondents to strictly enforce the restructuring scheme and give relief to the applicants in that case if they were entitled. The fact, therefore, that present applicants were not a party to the OA in implementation of which the impugned order was issued cannot be said to have prejudiced the applicants. So far as the second contention of the applicants is concerned, we have seen the minutes of the DPC meeting. In that DPC meeting, the three names of S/Shri Vedpathak, Gabrial and Prabhakaran do not find a place since they were not at that time in service. The fact that their names find place in the impugned order, however, is easily explained, because the orders of upgradation were required to relate


back to the original date of implementation of the scheme when those three employees were in service. Therefore, although the names do not figure in the DPC list, the names were required to be shown in the impugned order.

5. We do not, therefore, consider that there is any merit in the claim of the applicants so far as their reversion is concerned. We finally come to the question of recovery of the over drawn amount. In our order dt. 7.3.1991, we had given an interim relief by restraining the Respondents from making any recovery ~~from~~ ~~xxx~~ the applicants in respect of any over drawn wages pertaining to promotion in dispute. On a subsequent date viz. 27.3.1991 the counsel for the Respondents stated that the respondents have not taken any recovery proceedings and in view of the statement, the order extending the interim order was not passed. However, the applicants are entitled to the relief to the extent of direction to the respondents not to make any recovery of over drawn amount in future so far as the ^{earlier} ~~upgradations~~ and ^{subsequent} ~~down-~~ gradations ordered on 13.8.1989 are concerned. We, therefore, dispose of this application by passing the following order :

O R D E R

The Original Application is dismissed except that the Respondents are directed not to recover in future over drawn wages from the applicants in terms of impugned order dt. 13.8.1989. No order as to costs.


(M.R.KOLHATKAR)
MEMBER (A)


(B.S.HEGDE)
MEMBER (J)