

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 311/91
~~Transfer Application No.~~

Date of Decision : 19.7.95

Shri A.S. Ozarkar Petitioner

Shri G.K. Masand Advocate for the
Petitioners

Versus

Union of India & Anr. Respondents

Shri R.K. Shetty Advocate for the
respondents

C O R A M :

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 ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(B.S. Hegde)
Member (J)

ssp.

(20)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. 311/91

Shri A.S. Ozarkar

... ...

Applicant

v/s

Union of India & Anr.

... ...

Respondents

CORAM: 1) Hon'ble Shri B.S. Hegde, Member (J)

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

APPEARANCE : 1) Shri G.K. Masand, counsel for the
Applicant.

2) Shri R.K. Shetty, counsel for the
Respondents.

JUDGEMENT

Dated:

(Per: Hon'ble Shri B.S. Hegde, M(J)).

19.7.95

1. The Applicant is aggrieved by the order of the Respondents dated 31-12-1990 (Exh. R-6). Surprisingly, the Applicant has not annexed the impugned order in the O.A. Accordingly, he prayed for giving directions to the Respondents to regularise his services as Asstt. Storekeeper w.e.f. 21-4-1986 etc.

2. The undisputed facts are - the Applicant joined the service with the Respondents as an L.D.C. in the Currency Note Press, Nasik w.e.f. November 1965. He was promoted as U.D.C. from 27-1-1975. Thereafter, he was promoted as Head Clerk w.e.f. 2-4-1981 on ad-hoc basis and vide order dated 9-3-1982 he was regularised in the post of Head Clerk w.e.f. 2-4-1981 (A-1). While he was working in the post of Head Clerk, in 1986 a vacancy in the post of Asstt. Storekeeper had occurred.

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The feeder post for promotion to the post of Assistant Storekeeper is U.D.C. In order to become eligible for the post of Asstt. Storekeeper, he made a request to the Respondents to revert him to the post of U.D.C. and accordingly he was reverted as U.D.C. w.e.f. 16-4-1986 and on 20-4-1986 he was promoted as Assistant Storekeeper against a clear vacancy; nevertheless, his posting as Asstt. Storekeeper was titled as ad-hoc promotion. After his promotion to the post of Asstt. Storekeeper, a charge sheet was issued to him on 12-12-1986 which was replied by the Applicant on 28-1-1987 denying the charges. He states that without passing any further orders, the Respondents passed an order dated 24-1-1987 reverting the Applicant as U.D.C. After the reversion, they the Respondents realised their mistake and cancelled the reversion order vide Office Order dated 13-4-1987. Again on 19-9-1987 the Applicant was informed that a revised charge sheet was issued to him in supersession of earlier charge sheet dated 12-12-1986. He replied to the said charge sheet vide his letter dated 30-9-1987 denying the charges levelled against the Applicant and the inquiry is pending. Another charge sheet was issued on 4-1-1989. The Applicant vide his letter dated 13-1-1989 denied the charges. The Respondents appointed Inquiry Officer and the Presenting Officer and though the inquiry is completed, however, no final orders have been passed. On 18-4-1989, another charge sheet was issued; the substance of the charge sheet is narrated in para 5 of the O.A. The Applicant sent his reply on 17-6-1989 denying the charges. The inquiry is still pending. In the meanwhile, some adverse remark is made in the Confidential Report for the year 1987.

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Though the Applicant has made representation for expunging the adverse remarks, the same is not yet disposed of; nevertheless, the Respondents have passed reversion orders reverting the Applicant as UDC w.e.f. 31-12-1990 and this order of reversion is challenged in this O.A.

3. During the course of hearing, the learned counsel for the Applicant was allowed to amend the O.A. allowing him to incorporate the prayer that directions may be issued to the Respondents to post the Applicant as Head Clerk w.e.f. 2-4-1981 and to consider him for further promotion to the post of Section Officer/ Administrative Officer etc. Accordingly, the learned counsel for the Applicant Shri Masand submits during the course of hearing that in case the Respondents are not able to confirm the Applicant in the post of Asstt. Store Keeper, he may be posted as Head Clerk as an alternative remedy. The first contention of the learned counsel for the Applicant raises a plea that the Applicant while he was working as a regular Head Clerk, he was posted as Assistant Storekeeper on his request. For promotion to the post of Asstt. Storekeeper, Head Clerk is not eligible because both the posts are equal in rank; therefore, the Applicant sought reversion to the post of U.D.C. so as to enable him to join the post of Asstt. Storekeeper.

4. While negativig the contention of the Applicant, the Respondents stated that he could not be confirmed in the post of Asstt. Storekeeper as he was holding the post of Head Clerk on regular basis when the DPC met during February 1986; thereby his name could not be included in the zone for consideration. Further,

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the Respondents contend that his performance while working as Asstt. Storekeeper was continuously not good - out of five years he secured 3 as average, one below average and one year 'good', thereby he could not be considered for the post of Asstt. Storekeeper for regularisation. Accordingly, as per the recommendations of the DPC he was reverted to the post of U.D.C. which he originally held.

5. The contention of the learned counsel for the Applicant is that having promoted to the post of Asstt. Storekeeper, the Respondents cannot revert him to the post of U.D.C. except by way of punishment. The Applicant was holding the post of Asstt. Storekeeper on ad-hoc basis which continued from time to time though regular vacancy existed; therefore, he states that there cannot be a long ad-hoc officiation against any permanent vacancy. In this connection, the learned counsel for the Applicant Shri Masand draws our attention to Annexure 'A' vide dated 11-4-1986 wherein the Applicant has stated that due to some domestic difficulties, he volunteered himself to revert to the post of U.D.C. with certain conditions. On the basis of his request, the Respondents have observed that there is an accepted guiding principle that no one seeking reversion will be considered for promotion for a period of six months. At the same time, an effort to fill up the post of Asstt. Storekeeper from UDC/ workmen cadre has not fructified as most of the UDCs prefer to go as AIC. In view of this position, the matter was referred to the General Manager to relax the 6 monthly restriction and permit Shri Ozarkar to be

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appointed as Asstt. Storekeeper subject to the condition that he may not seek reversion again under any circumstances which has been approved by the concerned General Manager. Therefore, he says that having been promoted as Asstt. Storekeeper, it is not open to the Respondents to revert the Applicant to the post of UDC. The learned counsel for the Respondents submits that on the basis of his performance, the DPC did not find him suitable for being confirmed in the post of Asstt. Storekeeper. An interim order was passed on 27-2-1991 which has been vacated on 12-7-1994. During the course of hearing, we have allowed the learned counsel for the Applicant to amend the O.A. and accordingly he has amended the O.A. adding the prayer that in the alternative he should be appointed to the post of Head Clerk w.e.f. 2-4-1981 etc.

6. Heard the argument of both the counsel and perused the record. The Applicant while he was working as Asstt. Storekeeper, more than three charge sheets have been issued against him which are pending consideration and his performance throughout is far from satisfactory; accordingly, the DPC did not consider him fit for promotion and on recommendation of the DPC, the Respondents have no other alternative but to revert the Applicant to the post of U.D.C.

7. The question for consideration is when he has been reverted to the post of U.D.C. from regular post i.e. Head Clerk, can he be appointed on ad-hoc basis for a period of nearly 4 years; the fact that he has been appointed on ad-hoc basis, at no point of time, the said offer has been objected by the Applicant. Considering the performance of the Applicant in the post of Asstt.

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Storekeeper, we are satisfied that the Respondents have not faulted in reverting the Applicant to the post of U.D.C. However, the further question that arises for consideration is that since the Applicant has already been regularised, though not confirmed in the post of Head Clerk - of course, he has been reverted to the post of UDC on his own volition so as to enable him to secure the post of Asstt. Storekeeper. Since he is regularised in the post of Head Clerk and he has been reverted so as to enable him to secure the post of Asstt. Storekeeper which is clear from the notings on the Annexure 'A' as the Respondents did not get any other candidate to fill up the post. Having adopted that stand, it is not open to the Respondents now to say that since he has been already relieved from the post of Head Clerk to the post of U.D.C. he cannot be posted as Head Clerk though he was regularised in that post.

8. In the facts and circumstances of the case, we are satisfied that some injustice has been done to the Applicant while reverting him to the post of U.D.C. and in not considering him to the post of Head Clerk. Since the Applicant has already made a prayer that in the alternative the Respondents should be directed to post the Applicant as Head Clerk, in the facts and circumstances, we hereby direct the Respondents to consider the Applicant for appointment to the post of Head Clerk and further promotional posts from the date his juniors have been promoted. To that extent, the O.A. is allowed. With the above direction, the O.A. is disposed of with no order as to cost.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)