

Obj. 15 OR 12 34/92

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 1234/92, 1236/92 AND 1239/92.

Dated this the 27th day of January, 1998.

CORAM : HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Bhoja Krishnappa Hegde,
Storekeeper,
Income Tax Department
Staff Canteen,
Aayakar Bhavan, M.K. Road,
Mumbai - 400 020.

Applicant in O.A.
No. 1234/92.

Sheena Madhav Moolya,
Cashier,
Income Tax Department
Staff Canteen,
Aayakar Bhavan, M.K. Road,
Mumbai - 400 020.

Applicant in O.A.
No. 1236/92.

Damodar Nakra Poojari,
Counter-Clerk,
Income Tax Department
Staff Canteen,
Aayakar Bhavan, M.K. Road,
Mumbai - 400 020.

Applicant in O.A.
No. 1239/92.

(By Advocate Shri V. G. Rege)

VERSUS

1. Secretary, Ministry of Personnel
Public Grievances and Pensions,
Department of Personnel &
Training, North Block,
New Delhi - 110 001.
2. The Director of Canteen
Department of Personnel &
Training, Loknayak Bhavan,
3rd Floor, Khan Market,
New Delhi - 110 003.

3. Chief Commissioner of Income-Tax (Administration) Mumbai in the capacity of President, Income-tax Department, Staff Canteen, Aayakar Bhavan, M.K. Road, Mumbai - 400 020.

4. Deputy Commissioner of Income Tax (Head quarters) in the capacity of Chairman, Income-tax Deptt., Staff Canteen, Aayakar Bhavan, M.K. Road, Mumbai - 400 020.

5. Hon. Secretary, Income Tax Department Staff Canteen, Aayakar Bhavan, M.K. Road, Mumbai - 400 020.

6. M/s. Philomine Francis, Accountant, Income Tax Deptt. Staff Canteen, Aayakar Bhavan, M.K. Road, Mumbai - 400 020.

7. Bhoja Krishnappa Hegde, Store Keeper, Income Tax Deptt. Staff Canteen, Aayakar Bhavan, M.K. Road, Mumbai - 400 020.

8. Sheena Madhav Moolya, Cashier, Income Tax Department Staff Canteen, M.K. Road, Mumbai - 400 020.

Respondents
in all the
three O.As.

As Respondent No. 7
in O.A. Nos.
1236/92 and 1239/92.

As Respondent No. 8
in O.A. No. 1239/92.

(By Advocate Shri M.I. Sethna alongwith
Shri V.D. Vadhavkar for official
Respondents).

: ORDER :

¶ PER.: SHRI P.P. SRIVASTAVA, MEMBER (A) ¶

All the three O.As. were disposed of by a

common order dated 30.05.1996. The Hon'ble members constituting the Division Bench had a difference of opinion, while Member (A) was inclined to allow the O.A. and Member (J) to dismiss the O.A. The matter was, therefore, placed before the Hon'ble Chairman who has nominated the undersigned as third member for deciding the case in accordance with the majority/^{opinion}. The notice was issued to both the parties but the applicants' counsel Shri M.A. Mahalle, was sick for a long time and the matter could not be taken up for hearing because of his sickness. The applicants, thereafter engaged Shri Rege as the Counsel and the case was finally heard on 15.01.1997.

2. The operative portion of the order passed by the Learned Member (A) reads as under :-

"O.A. is allowed. The impugned order dated 23.04.1992 reverting the three applicants is quashed and set aside. Respondents are directed to reinstate the applicants to their original posts and given them all consequential benefits including backwages after adjusting the salary drawn by them in the lower posts and counting of service for seniority, etc. There will be no order as to costs. "

The operative portion of the order passed by the Learned Member (J) reads as under :-

"In the circumstances, in my view, there is no merit in the O.A. and the same is liable to be dismissed accordingly. The O.A. is dismissed with no order as to costs."

The final order reads as under :-

"Since there is a difference of opinion, one of us, viz., Member (A) being inclined to allow the O.A. and the other viz., Member (J) ordering dismissal, we direct the Registrar to refer this case to the Hon'ble Chairman, Central Administrative Tribunal, Principal Bench, to nominate the third Member so as to resolve the difference of opinion by majority."

3. Although one of the Learned Member has dismissed the O.A. and the other Member has allowed the O.A., no specific issues have been crystallised in the judgement for the third Member to decide. The O.A., therefore, has been heard fully.

4. The applicant in O.A. No. 1234/92 was appointed in the Income Tax Department Staff Canteen

in the year 1969 and he got further promotion as Manager from 01.11.1982. The Income-tax department Staff Canteens have been divided into various categories like type 'A', 'B', 'C' and 'D' and employees using the Canteen. depending upon the number of \angle The canteen in which the applicant is employed is categorised as type 3A. The respondents have brought out that it came to their notice that there is no sanction of the post of Manager in the 3-A Type of canteen and through an audit objection, therefore, it had become necessary to revert the applicant from the post of Manager to the post of a Store-Keeper by their order dated 23.04.1992 placed at annexure 'A'. The reversion order against the applicant was made effective from 01.11.1982, the date on which he was promoted. The applicant in this O.A. has challenged his reversion to the post of Store-Keeper from the post of Manager and has sought relief which reads as under :

- (i) The impugned orders be cancelled and the applicant be reposted as Manager from the date of reversion with all consequential benefits such as salary, etc.
- (ii) Due to imbalance in man powers the respondents should be directed to create relevant post.

5. In O.A. 1236/92, the applicant Sheena Madhav Moolya has approached the Tribunal for quashing his order of reversion which was issued as a result of reversion of applicant in O.A. No. 1234/92. The reliefs sought in this O.A. reads as under :-

- (i) The impugned orders be cancelled and the applicant be re-posted as Store-Keeper from the date of reversion with all consequential benefits such as salary, etc.
- (ii) Due to imbalance in man powers the respondents should be directed to create relevant post.

Since the applicant in O.A. No. 1234/92 was reverted from the post of Manager to the post of Store-Keeper, the applicant in this O.A. had to be reverted from the post of a Store-Keeper to that of Counter-Clerk. This reversion has been made effective from 01.04.1983. The respondents have brought out that the applicant in this O.A. had to be reverted because of the reversion of Shri B.K. Hegde, applicant in O.A. No. 1234/92 from the post of Manager to the post of Store-Keeper and the reversion is as a consequence of reversion of the applicant in O.A. No. 1234/92, as the post in which the applicant was working had to be given to the applicant in O.A. No. 1234/92.

6. The applicant in O.A. No. 1239/92, Damodar N. Poojary, is reverted from the post of Cashier to the post of Counter-Clerk from 11.09.1983. The applicant in this O.A. was reverted as a consequence of reversion of the applicant, Shri Sheena Madhav Moolya in O.A. No. 1236/92, who himself was reverted as a consequence of reversion of Shri B.K. Hegde, applicant in O.A. No. 1234/92. Thus, the applicant in this O.A., Shri D.N. Poojary, has been reverted as a consequence of reversion of Shri B.K. Hegde to the post which was occupied by Shri S.M. Moolya and consequent reversion of Shri S.M. Moolya. The post for Poojary became non-available after reversion of Shri Moolya and he had to be reverted to the post of Counter-Clerk.

7. Thus, the reversion of the three employees is as a result of chain reversion which started with the reversion of Shri B.K. Hegde, who is the applicant in O.A. No. 1234/92. Since the main issue involved is the reversion of Shri Hegde in O.A. No. 1234/92, the details of that case will be taken into account and discussed, as the principle involved in all the three reversion is same.

8. The Counsel for the applicant, Shri Rege, has argued that the reversion without giving notice to the applicant when he had worked for ten years in the post as Manager is hit by the principles of natural justice and it has been held by a series of decisions by the Hon'ble Supreme Court that notice was required to be given to B. K. Hegde, before he could have been reverted, since he had worked for atleast about ten years in the post of Manager. Shri Rege, the Learned Counsel for the applicant, has also argued that the reversion cannot be made effective from the back date and the order of reversion is illegal, as it provides for reversion from the back date.

9. The Counsel for the respondents has argued that the reversion is not as a result of any action against the employee due to his conduct but had to be ordered, as there was no post of Manager in the Canteen on which the applicant had been promoted in the year 1982 and the applicant, by a mistake of the administration has been working on a post which is not available. When the mistake became known as a result of an audit objection, the applicant had to be reverted, as he could not have been continued as

Manager against a non-existing post. The Counsel for the respondents have also argued that since the post which does not exist from the very begining when the applicant was promoted in the year 1982, he had to be reverted from back date and the enhanced salary paid to the applicant is required to be recovered, as there is no sanction for incurring that expenditure since the post is non-existing.

10. After hearing both the counsels, I am of the opinion that there are two issues involved in this O.A. Firstly, the issue concerning reversion of the applicant after ten years without giving notice and secondly, the reversion of the applicant from back date.

11. As far as the second issue is concerned, i.e. reversion from the back date, I am of the view that the applicant was promoted by the administration and has worked on the post of Manager and has discharged the duties of that post. The fact that the post is not sanctioned, cannot be held against the applicant, as the mistake which might have occurred is that of administration and the applicant is not at all responsible for the mistake of promoting him to the post of Manager against a non-sanctioned post. I am,

therefore, of the view that on the merit of the case, the order dated 23.04.1992 cannot be made applicable from the back date.

12. As far as the issue concerning reversion without giving notice is concerned, normally it would be necessary to give notice before a person is reverted and is required to be heard. However, in this case, the reversion is not as a result of any penal action against the applicant, but as a result of the post being non-existent against which the applicant was promoted. In fact it is the case of correction of the mistake committed by the administration. The respondents have shown that the post of Manager is not available in 3-A Type of Canteen. The posts which are sanctioned for 3-A Type of canteen are shown in para 4 of the written statement, from which it will be seen that for 3-A Type of Canteen there is a post of General Manager and Deputy General Manager while there is no post of Manager and Assistant Manager-cum-Store Keeper. It is also seen that the post of Manager is available in Type-A Canteen but not available in Type-3A Canteen. This position of the cadre, is not seriously disputed by the Counsel for the applicant. The only

grievance of the applicant is that he should have been given notice before he could have been reverted, especially from the back date. Since the question of Manager's post not being available, is a question of fact and the respondents have been able to show that the post of Manager is not available in 3-A Type of canteen, obviously, the applicant or anybody else cannot be posted against that post. The Counsel for the respondents have argued that although the issue concerning the reversion of the applicant from the back date would certainly require notice, but since the applicant has been given the hearing now, and all the facts which could have been mentioned in the notice has been disclosed to him during the hearing of this case, the applicant in effect, has been given a hearing and now no purpose will be served if a notice is now ordered to be given on that issue. Non-issue of notice should not come in the way of decision of the case on merit after hearing the parties.

13. The Counsel for the applicant has argued that the question of giving notice is the basic

principle of principles of natural justice in the case when the applicant is to be reverted and the basic right of the applicant of being heard before reversion, cannot be taken away and the hearing before this Hon'ble Tribunal is not a substitute for the hearing to which the applicant was entitled to, before the decision is taken.

14. The Counsel for the applicant has referred to the decisions of the Hon'ble Supreme Court which have been brought out in the judgement of the Hon'ble Tribunal written by the Learned Member (A) in para 9. The Learned Member (J), on the other hand, has observed that this is not the case where Article 311 (2) of the Constitution is applicable, as it is not a reversion as a consequence of some misconduct but as a result of non-availability of the post and no evil consequences flow out of this order as far as the applicant is concerned. The Learned Member (J) has relied on the judgement of State of U.P. & Others Versus U.P. Madhyaamik Shiksha Parishad Shramik Sangh & Another [1996 (32) ATC 517] while the Learned Member (A) has distinguished the same.

15. After considering the matter and after hearing both the counsels on this issue, I am of the opinion that the reversion order is as a result of non-availability of post and therefore, the reversion order is not as a result of any misconduct on the part of the applicant and the provision of Article 311 (2) of the Constitution will not be applicable. As far as the principles of natural justice are concerned, I am of the view that when the reversion is for non-availability of the post, it is not necessary to give notice if the person is required to be reverted unless the very issue of availability of the post is being questioned. Here, the applicant has not questioned the availability of the post but has sought the right on the post as a result of continued working on that post for the last ten years. Since I am separating the issue concerning reversion from back date with the issue concerning reversion of the applicant because of non-availability of the post, and ^{since} I am holding that reversion from the back date is bad in law, I am of the view that notice is not required to be given in case if the reversion is ordered as a result of non-availability of the post. The applicant, in such circumstances can be given a post-decision hearing

on the basis of a representation. To that extent, the hearing of the Tribunal would be a sufficient opportunity for the purpose of effective hearing. Later judgements of the Hon'ble Supreme Court, especially in *Maneka Gandhi V/s. Union Of India & Others* [AIR 1978 SC 597] envisage a situation where post-decision hearing would be sufficient for the purpose of satisfying the principle of natural justice.

16. Thus, I am partly in agreement with Learned Member (A) in that the reversion cannot be made from back date and no recovery can be made on the basis of reversion order issued on 23.04.1992. I am partly in agreement with the Learned Member (J) in that, when the post is not available, the applicants have no right to continue in those posts. Therefore, the order dated 23.04.1992 does not require interference by the Tribunal but the reversion would be effective only from the date the applicants have actually been reverted as a result of the order dated 23.04.1992.

17. Therefore, I dispose of the O.A. with the following directions :-

(i) The reversion of the applicant from the

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back date is bad in law and is liable to be quashed and is accordingly quashed.

- (ii) The reversion of the applicants due to non-availability of the post issued by the administration vide their order dated 23.04.1992 does not require any interference by the Tribunal except to the extent that it cannot be made applicable from the back date.
- (iii) The interim order passed by the Tribunal vide its order dated 29.01.1993 in all the three cases for non-recovery of any dues is made absolute.
- (iv) There will be no order as to costs.

(P.P. SRIVASTAVA)
MEMBER (A).

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