

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.
~~Transfer Application No.~~

415/92

Date of Decision : 22.7.95

Shri K.B. Patil

Petitioner

Shri G.D. Samant

Advocate for the
Petitioners

Versus

Union of India & Others

Respondents

Shri R.K. Shetty

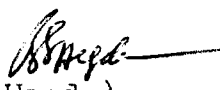
Advocate for the
respondents

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)

(6)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. 415/92

Shri K.B. Patil ... Applicant

v/s

Union of India & Others ... Respondents

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri M.R. Kolhatkar, Member (A)

APPEARANCE : 1) Shri G.D. Samant, counsel for the Applicant.

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

JUDGEMENT

Date: 27.7.95

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

1. The Applicant has challenged in this O.A. the reversion order issued by the Respondents vide dated 13-6-1991 at Annexure 'A' and 16-10-1991 at Annexure 'A-1' respectively. Accordingly, he prayed for quashing of the reversion order dated 18-11-1991 at Annexure 'E' cancelling the promotion of the Applicant as Fitter HS Gr.II.

Bn
2. The Applicant was recruited as a Fitter on 11-11-1983 in the scale Rs. 260-400 (RS) and was further promoted as Fitter HS II in the scale Rs. 330-480 (RS) w.e.f. 15-10-1984. Since 1984 to 1991 his reversion orders passed by the Respondents, he was working as Fitter HS II. The Respondents vide their letter dated 13-6-1991 passed an order for recovery of the alleged overpayment made to the Applicant and also stated that

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the promotion of the Applicant has been cancelled in July 1988 vide dated 1-7-1988. Admittedly, this order is not communicated to the Applicant which is clear from the Annexure 'A'. The said letter was issued on 16-10-1991 after a lapse of 3 years. Admittedly, the Applicant has been working in the post of Fitter HS Gr.II from 1984 to 1991. As against the aforesaid letter, the Applicant made representations vide dated 13-12-1991 and 28-1-1992 but so far not received any reply from the Respondents. The Respondents passed an order dated 1-7-1988 stating that the promotion/pay fixation as Fitter HS Gr.I is treated as cancelled so far as the Applicant is concerned. Subsequently, vide dated 18-11-1991, the promotion/pay fixation as Fitter HS II as cancelled. There is a considerable lapse on the part of the Respondents in checking the error occurred in time. By virtue of the order they passed on 13-6-1991, recovery was sought from his pay on the ground that it is overpayment which has been stayed by the Court on 29-4-1992 and confirmed thereafter. The main crux of the argument of the learned counsel for the Applicant is that the promotion is in order and continued for 7 years without any break and wrongly reverted in 1991. In this connection, he has brought to our attention the letter issued by the Respondents vide dated 13-2-1987 which reads as follows:

- "(d) Certain categories of skilled personnels have been upgraded to the pay scale of 260-400 from 210-290 wef 15 Oct 84 in terms of instructions in E-in-C's letter No. 20270/89/ELC dated 29th Oct 84. They have also come up for promotion as HS II on 15th Oct 84 having completed 3 years by that date in
1. 15th Oct 84 to Skilled category.
 2. 16.10.84 HS II

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Skilled grade. A doubt arises whether such promotees can be given the HS 11 scale from the same date. Whether such upgraded personnel are to put in 3 years in the grade 260-400 to be eligible for promotion or they complete 3 years in the Skilled grade in any scale.

3. 3 years condition not applicable in this case of one time action."

thereby the Applicant contends that his promotion is made in accordance with the instructions issued by the Respondents and thus the reversion order is not warranted.

3. In reply, the Respondents denied the various contentions of the Applicant and the learned counsel for the Respondents Shri Shetty submitted that the letter issued by the Respondents vide dated 13-2-1987 does not apply to the Applicant and that it applies for promotion from semi-skilled to skilled and those who were in the scale of 210-290 and put to 260-400 and as such upgraded persons, 3 years' condition is dispensed with, but not for the persons like the Applicant who has been appointed in 1983 in Skilled category and by mistake he has been promoted in the year 1984 without completing even the probationary period. Admittedly, the Applicant was on probation for a period of 2 years and he has completed only 11 months and 4 days. Though the mistake was traced belatedly, it is open to the Respondents to rectify the mistake and revert the Applicant to his original position. Therefore, the alleged promotion is non-est in the eye of Law. In this connection, the learned counsel for the Respondents draws our attention to the Respondents' letter dated 13th February 1987 read with letter dated 4-7-1985 - Ann. 'C' wherein it is clearly envisaged that upgradation of the scales shall be from semi-skilled grade of Rs. 210-290

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to skilled grade of Rs. 260-400 which is to be read alongwith Respondents' letter dated 19th April 1985 wherein it is clearly envisaged that Skilled Tradesmen with three years' service shall be promoted to Highly Skilled Grade II subject to passing of Trade Test to be laid down for this grade and to Highly Skilled Grade I after putting in a minimum of three years in Highly Skilled Grade II subject to passing of Trade Test for Highly Skilled Grade I to be laid down for the purpose pending framing of the formal Recruitment Rules.

4. It is understood during the course of hearing that the Recruitment Rules were framed in 1992. It is true that the Applicant has not passed the trade test till now and as and when he passes the trade test, his candidature may be considered for promotion to the post of HS Gr.II. In this connection, the learned counsel for the Applicant Shri Samant draws our attention to the letter issued by the Respondents vide dated 8th April 1986 which reads as follows -

"(i) 20% of the vacancies, as on 15-10-84, shall be filled merely on the basis of seniority, without obligation to qualify in the trade test."

according to which, without passing any trade test he should have been considered and promoted to the post of Highly Skilled Gr. II, thereby the promotion already granted is in accordance with this letter of the Respondents etc. Since the Recruitment Rules have been framed only in 1992, the Respondents have not relaxed other conditions prescribed for promotion for and promotion to the HS Gr.II/ Relaxation was made, so far as the semi-skilled employees were concerned which is

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stated on page 62 and no relaxation has been considered by the Respondents so far as the other categories are concerned. Since the Applicant admittedly has not passed the trade test and completed the probationary period when he was promoted to the post of HS Gr.II and has not completed three years of service as Fitter, the question of his being promoted to the post of Highly Skilled Gr.II hardly arises. Even assuming without admitting that trade test is not required as suggested by the Applicant at page 44, a further promotion is subject to seniority but here also the Applicant has neither completed three years' service as required under the rules as skilled tradesman nor completed 3 years as skilled Fitter; therefore the Applicant is not entitled to be promoted with retrospective effect from 15th October 1984 as he has not fulfilled the requisite pre-conditions.

5. In the facts and circumstances of the case, we pass the following orders -

In so far as the recovery of the alleged overpayment made to the Applicant while he was holding the post of HS Gr.II is concerned, since he has already performed the duties of Highly Skilled Gr.II and earned the wages, the question of any recovery or the alleged overpayment does not arise. The recovery has already been stopped by virtue of the Court's orders. The Respondents are therefore directed not to recover anything from the Applicant's salary so far as the alleged overpayment is concerned. Secondly, regarding the reversion order issued by the Respondents reverting the Applicant from HS Gr.II to Fitter, in the light of the above, the said

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order cannot be faulted with and the same is upheld
and justified. 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)

ssp.