

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

CAMP : NAGPUR

ORIGINAL APPLICATION NO.: 1109/93.

Date of Decision : 6.2.92.

Bharmadas Shrawanji Mandpe

... Petitioner.

Shri M. K. Deshpande

... Advocate for the  
Petitioner.

VERSUS

Union Of India & Others

... Respondents.

Shri R. S. Sunderam

... Advocate for the  
Respondents.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

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

- (i) To be referred to the Reporter or not ? ☒
- (ii) Whether it needs to be circulated to other ☒  
Benches of the Tribunal ?

  
(B. S. HEGDE)

MEMBER (J).

os\*

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

CAMP: NAGPUR

ORIGINAL APPLICATION NO.: 1109/93.

M.P. NO.: 11/95.

*Promoted* Dated this 6<sup>th</sup>, the Feb. day of \_\_\_\_\_, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).  
HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Bharmadas Shrawanji Mandpe,  
22, Vivekanand Nagar,  
Nagpur - 440 015.

... Applicant

(By Advocate Shri M.K.Deshpande)

VERSUS

1. Comptroller & Auditor  
General Of India,  
10, Bahadurshah Jafar Marg,  
Indraprastha Estate,  
New Delhi - 110 002.

2. Principal Director Of Audit,  
Posts & Telecommunicats,  
Shamnath Marg, Civil Lines,  
Delhi - 110 054.

3. The Director Of Audit,  
Posts & Telecommunications,  
Nagpur - 440 001.

... Respondents.

4. Ramkrishna Bhaskarrao  
Gajbhiye,  
Modi Padav,  
Maruti Niwas,  
Kamptee - 441 002.

(By Advocate Shri R.S. Sunderam)

: ORDER :

¶ PER.: SHRI B.S. HEGDE, MEMBER (J) ¶

In this O.A., the applicant is challenging the impugned order dated 05.01.1993 which states that pursuant to the decision of the Central Administrative Tribunal dated 20.11.1991, the case for promotion to S.G. Auditor has been examined by the higher authorities at Delhi and that Shri R.B. Gajbhiye had gained seniority over Shri B.S. Mandpe due to his early confirmation than the latter and Shri Mandpe has no case for promotion as S.G. Auditor w.e.f. the date of

promotion of Shri Gajbhiye, who was senior to him on the date of his promotion as S.G. Auditor.

2. It is noticed that, both the applicant as well as Shri Gajbhiye has retired from service. The applicant retired on 01.07.1985 and Shri Gajbhiye retired on 01.02.1989. The Tribunal vide its order dated 20.11.1991 has observed that full justice was not done to the applicant. After the said period of three years was over, the applicant became entitled for confirmation but he was not considered for confirmation and was shown to be a temporary auditor. When the appointment of Respondent No. 4 was made, the appointment order was issued in the year 1981 and he was appointed during 1980 i.e. several months after the punishment period was over. The applicant could have also been considered for the same and he could have been considered for confirmation also. The respondents instead of waiting for 2 - 3 months for considering the applicant for confirmation as his period was going to be over, hurriedly, it appears confirmed the respondent no. 4. Accordingly, direction was given to the respondents that the applicant shall be deemed to have been confirmed with effect from the date the punishment period was over and his case for promotion to the higher post shall also be considered and if necessary, deemed promotion will be given to him with effect from the date his junior has been promoted. This will be done within a period of three months from the date of communication of the order. Pursuant to the decision of the Tribunal, the respondents vide their letter dated 29.05.1992 confirmed the applicant in the post of Auditor and he is deemed to be confirmed in the Auditor's cadre w.e.f. 01.01.1980. The contention

*Blm*

of the learned counsel for the applicant is that the respondents' department totally disregarded the direction given in the judgement. Instead of considering the applicant for promotion, the respondents have once again rejected his claim for promotion and stated that Shri Gajbhiye had gained seniority over the applicant due to his early confirmation and hence the applicant had no case for promotion as S.G. Auditor from the date of promotion of Shri Gajbhiye. Being aggrieved by this, the applicant approached the Tribunal by filing M.P. No. 449/93 in T.A. No. 266/87. The Tribunal disposed of the said M.P. under Rule 24 of the Administrative Tribunals Rules, vide its order dated 08.09.1993 stating that the Tribunal had directed that the applicant shall be deemed to have been confirmed with effect from the date the punishment period was over and his case for promotion to the higher post shall also be considered and if necessary, deemed promotion may be given to him w.e.f. the date his junior has been promoted. Insofar as confirmation in the Auditor's cadre is concerned, the respondents considered the applicant's case and he was deemed to be confirmed in the Auditor's cadre w.e.f. 01.01.1980, therefore, the first part of the order stands complied with. With regard to the second part, the Tribunal had observed that Shri Gajbhiye was junior to the applicant and like him, also a member of S.C. community was promoted against the one post on which the applicant was claiming promotion w.e.f. 01.12.1980 with retrospective effect. The applicant could have been confirmed after 01.01.1980 i.e. after the punishment period was over but it was not possible only due to want of permanent vacancy



in the cadre. Further, the respondents submit that Shri Gajbhiye had gained seniority over the applicant due to his early confirmation and that the applicant has no case for promotion as S.C. Auditor from the date of promotion of Shri Gajbhiye, who was senior to him on the date of promotion as S.G. Auditor. The reference made by the Tribunal was obviously to the seniority in the cadre of Auditor. The promotion has evidently not been granted to the applicant but this controversy is the one which goes beyond the stage of the directions, which can be given under Rule 24 of the Administrative Tribunals Act. If the applicant is aggrieved by the decisions of the respondents, it is open to the applicant to agitate the matter by filing a separate O.A. if he so desired. Pursuant to this, the applicant filed the present O.A. seeking relief to quash the impugned order dated 05.01.1993 and to give direction to the respondents to grant deemed promotion to the post of Selection Grade Auditor in the scale of Rs. 425-700 on the basis of O.M. dated 13.02.1980 w.e.f. 01.12.1980, the date from which his junior has been promoted.

3. The respondents in their reply deny the contentions of the applicant and contend that though the Respondent No. 4, Shri Gajbhiye was junior to the applicant in the Auditor's cadre, the applicant could maintain his seniority over the Respondent No. 4 at the initial stage only. The penalty of with-holding the increment of pay for a period of three years without cumulative effect imposed on the applicant, had an adverse effect on his confirmation in auditor's cadre and his date of confirmation was important for assigning him seniority in auditor's cadre. When the applicant was undergoing punishment,



the Respondent No. 4 was confirmed in Auditor's cadre w.e.f. 01.10.1975 whereas in pursuance of directives in judgement dated 20.11.1991 in T.A. No. 266/87, the applicant could get deemed confirmation in the cadre of Auditor w.e.f. 01.01.1980, after his punishment period was over. By virtue of having been confirmed from an earlier date i.e. 01.10.1975, the Respondent No.4 gained seniority in Auditor's cadre over the applicant who was confirmed from the later date viz. 01.01.1980 on the principle "seniority would follow the order of confirmation," prior to the decision of the Direct Recruits case (1990).

4. In this connection, the learned counsel for the applicant has brought to our notice the scheme dated 13.02.1980 from the Ministry of Home Affairs, wherein it is stated that appointments made to the selection grade on or after 30.12.1977 should be on the basis of seniority subject to the rejection of the unfit. As stated earlier, the respondent no.4 has been confirmed prior to the scheme i.e. on 01.10.1975, thereby he gained seniority, therefore, he cannot avail of the benefit accrued under this scheme. The action of the respondents was prior to this scheme. He also relies upon the following decisions in support of his contention i.e., the respondents ought to have complied with the directions of the Tribunal. The Supreme Court in the case of Direct Recruit Class-II Engineer Officers Assn. V/s. State of Maharashtra (1990) 2 SCC 715 decided on 10.04.1990 observed that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according

*BM*

to the date of confirmation. Secondly, he relies on the decision of the Supreme Court in Bal Kishan V/s. Delhi Administration & Another [1989 Supp (2) SCC 351] wherein the Apex Court held that in service there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Lastly, he relies on Shiv Kumar Sharma V/s. Haryana State Electricity Board, Chandigarh & Others [1988 (Supp) SCC 669] wherein the Supreme Court has held that the applicant cannot be punished twice i.e. first, by the stoppage of one increment for one year and second, by placing him below his juniors in the seniority list.

5. The learned counsel for the respondents submits that only one vacant post reserved for Scheduled Caste category was available for promotion to the post of Selection Grade. As per the decision of the Tribunal, the case of the applicant was also considered for deemed promotion to the post of Selection Grade w.e.f. 01.12.1980, that is the date from which the Respondent No. 4 was promoted to the said grade. The respondent no. 4 being senior officer to the applicant had rightful claim over this post for promotion, thereby, the applicant could not be granted promotion to the said grade w.e.f. 01.12.1980. Both the applicant and the Respondent No. 4 were promoted as Senior Auditor w.e.f. 01.03.1984 on account of restructuring of cadres in I.A. & A.D. Since there was no vacancy available immediately after the completion of the punishment, he could not be promoted immediately thereafter. In this connection, the learned counsel for the respondents relied upon the O.M. issued by the

*Rln*

respondents vide dated 04.11.1992 wherein it is stated that one of the basic principles enunciated in the O.M. dated 22.12.1959 is that seniority follows confirmation and consequently permanent officers in each grade shall rank senior to those who are officiating in the grade. This principle has been coming under judicial scrutiny in a number of cases and the Apex Court in the case of Class-II Direct Recruits Engineering Officers' Association V/s. State of Maharashtra, decided on 02.05.1990 has held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. Pursuant to the decision it has been decided that seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation. These orders shall take effect from the date of issue of this O.M. Seniority already determined according to the existing principles on the date of issue of these orders will not be reopened even if in some cases seniority has already been challenged or is in dispute and it will continue to be determined on the basis of the principles already existing prior to the date of issue of these orders. Since the subject matter involves the issue prior to the decision of the Supreme Court, the confirmation already given cannot be reopened again.

6. Heard the learned counsel for the parties and perused the records. The only direction given by the Tribunal is that the applicant shall be deemed to have

*RR*




been confirmed with effect from the date the punishment period was over and his case for promotion to the higher post shall also be considered and if necessary, deemed promotion will be given to him with effect from the date his junior has been promoted. If the applicant is aggrieved with the non-compliance of the order of the Tribunal by the respondents, he should have filed a contempt petition, which he did not choose to do so. Instead, he filed an M.P. under Rule 24 of the Administrative Tribunals Rules. The Tribunal had clearly held that under the circumstances, it is not possible for the respondents to give him any deemed promotion in compliance with the order. If he is otherwise aggrieved, it is open to him to file a fresh O.A. if he so desires.

7. In the result, we do not find any infirmity or illegality in the order passed by the respondents vide dated 05.01.1993. Prior to the decision of the case - Class-II Direct Recruits Engineering Officers' Association V/s. State of Maharashtra, those who have been confirmed earlier stands senior to the persons confirmed later. Since the applicant was on punishment at the relevant time, he could not be considered. Later on, for want of vacancy, he could not be considered till 1984. Therefore, the question of giving retrospective promotion right from 1980 does not arise.

8. In the result, we do not find any merit in the O.A. and the same is dismissed with no order as to cost. The M.P. No. 11/95 also stands dismissed.

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

  
(B.S. HEGDE)  
MEMBER (J).

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

R.P. NO.: 30/97 IN O.A. NO.: 1109/93.

Dated this Tuesday, the 15<sup>th</sup> day of July 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

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

Brahmadass Shrawanji Mandpe

... Applicant

Versus

1. Comptroller & Auditor General  
of India,  
10, Bahadurshah Jafar Marg,  
Indraprastha Estate,  
New Delhi - 110 002.

2. Principal Director of Audit,  
Post & Telecommunications,  
Sham Nath Marg, Civil Lines,  
Delhi - 110 054.

3. Director of Audit,  
Post & Telecommunications,  
Nagpur - 440 001.

4. Ramkrishna Bhaskarrao Gajbhiye,  
Retired Senior Auditor,  
Office of the Director of Audit,  
P & T., Nagpur.

Resident of Modi Padao,  
Maruti Niwas,  
Kamptee - 441 002.

... Respondents.

TRIBUNAL'S ORDER BY CIRCULATION :

¶ PER.: Shri B.S. Hegde, Member (J) ¶

The applicant has filed this application seeking review of the judgement dated 06.02.1997, wherein the Tribunal after considering the rival contentions of the parties dismissed the O.A. as devoid of merits on the basis of judgement delivered by the Supreme Court in the case of Direct Recruit Class-II Engineer Officers Association V/s. State of Maharashtra ¶ (1990) 2 SCC 715 ¶ wherein it is

186

observed that those who are confirmed earlier stands senior to the persons confirmed later. Since the applicant was on punishment at the relevant time, he could not be considered for promotion. After the expiry of the punishment, for want of vacancy he could not be considered till 1984. Both the applicant and the Respondent no. 4 were promoted as Senior Auditor w.e.f. 01.03.1984 on account of restructuring of cadres in I.A. & A.D. Therefore, the question of giving retrospective promotion right from 1980 does not arise.

2. The applicant initially filed a writ petition in the High Court in the year 1983 and the same was transferred to the Tribunal in the year 1987 and finally decided on 20.11.1991 with the following observations :

"When the appointment of Respondent No. 4 was made the appointment order was issued in the year 1981 and he was appointed during 1980 i.e. several months after the punishment period was over. The applicant could have also been considered for the same. After the said period was over, he could have been considered for confirmation. The respondents instead of waiting for 2 - 3 months for considering the applicant for confirmation as his period was going to be over hurriedly it appears confirmed the Respondent No. 4. Thus, obviously some injustice has been done to the applicant and accordingly we direct the respondents that the applicant shall be deemed to have been confirmed w.e.f. the date the punishment period was over and his case for promotion to the higher post shall also be considered and if necessary deemed promotion will be given to him w.e.f. the date his junior has been promoted."

88

Subsequent to the judgement, the applicant has filed an M.P. No. 449/93 under Rule 24 of the Administrative Tribunals Act. Though it is conceded that the Respondent No. 4 was junior to the applicant and like him, also, a member of S.C. Community was promoted against the one post on which the applicant was claiming promotion w.e.f. 01.12.1980 with retrospective effect. It is true that the Tribunal has observed that promotion has evidently not been granted to the applicant but this controversy is the one which goes beyond the stage of the directions which can be given under Rule 24 of the Administrative Tribunals Act. The cause of action is a fresh one and it is not a matter which can be examined in the original case by giving a direction. As per the observations made by the Tribunal, the applicant has filed a fresh O.A. vide O.A. No. 1109/93, which has been disposed of by the Tribunal on 06.02.1997. The counsel for the applicant has relied upon the judgement of the Supreme Court in Shreedharan Kallat V/s. Union Of India 1(1995)4 SCC 207 wherein the Court has held that the order of the High Court regarding validity or interpretation of, having achieved finality, held, binding on the department and cannot be challenged by it in another case nor could the Central Administrative Tribunal pass an order affecting the finality of the High Court decisions particularly when the High Court's order has been upheld by the Supreme Court, etc. The ratio laid down in that case would not apply to the fact of the present case. In the present case, no decision has been rendered by the High Court. Though the applicant originally filed the

*BM*

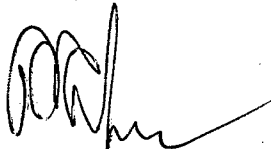
Writ Petition in the High Court, later on it was transferred to the Central Administrative Tribunal. If the respondents had not adhered to the directions of the Tribunal as per the judgement of the Tribunal dated 20.11.1991, it was open to the applicant to file a Contempt Petition, which he did not do so. He filed an application under Rule 24 of the Administrative Tribunals Act, which has been disposed of by the Tribunal for the reasons stated above.

3. In this Review Petition, the applicant has not made out any fresh ground for our consideration to review the order passed by the Tribunal vide dated 06.02.1997. He only points out that the judgement of the Tribunal is inconsistent. If the applicant is aggrieved by the order of the Tribunal, it is open to him to challenge either in the High Court or in the Supreme Court. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court or the Tribunal.

*Blz*

4. In the light of the above, we find, no such error has been pointed out in this review petition except challenging the decision of the Tribunal, which is required to be challenged in an appropriate forum and not by filing a review petition.

5. In the result, we do not find any ground to interfere with the order passed by the Tribunal. Accordingly, the Review Petition is dismissed.



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



(B.S. HEGDE)  
MEMBER (J).

os\*

24.12/97  
Order/Judgment despatched  
to Applicant/Respondent (s)  
on 22/12/97

24/12/97