

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

ORIGINAL APPLICATION NO: 1231 OF 1993

B. M. Chaturvedi

.. APPLICANT

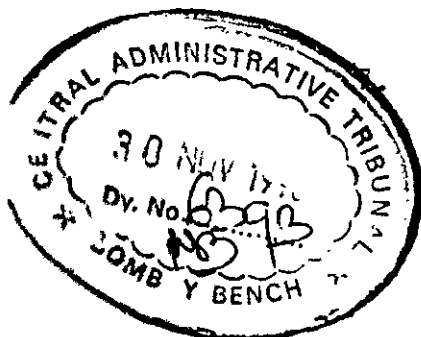
V/s

Union of India & Ors.

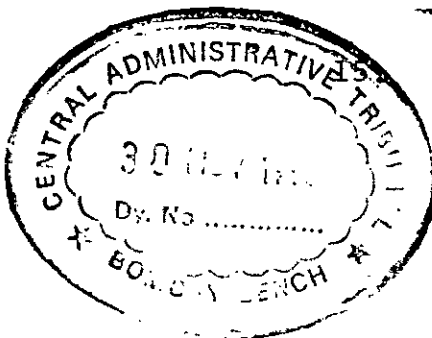
.. RESPONDENTS

I N D E X

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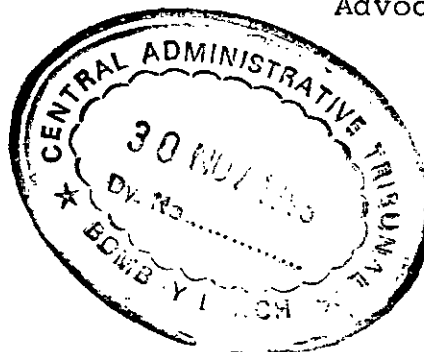
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Ramesh Chandra

Advocate for the Applicant



1 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

ORIGINAL APPLICATION NO: 1237 OF 1993

B. M. Chaturvedi,)
employed as Foreman (Tech))
Ordnance Factory, Ambernath)
and residing at Quarter)
No: Class VII/2-A, Ordnance)
Estate, Ambernath - 421 502.) .. APPLICANT

-versus-

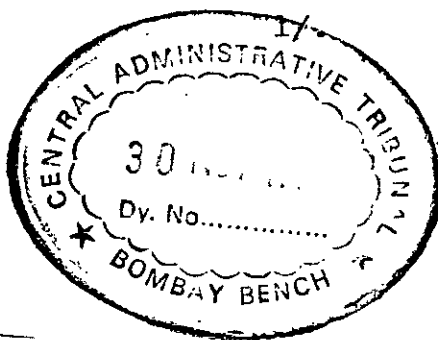
1. Union of India,)
through Secretary,)
Government of India,)
Ministry of Defence,)
Production, North Block)
New Delhi - 110 001.)

2. The Chairman,)
Ordnance Factory Board,)
10-A, Auckland Road,)
Calcutta - 700 001.)

3. The General Manager,)
Ordnance Factory,)
Ambernath -) .. RESPONDENTS

DETAILS OF THE APPLICATION:

Particulars of Order against which
this application is made:



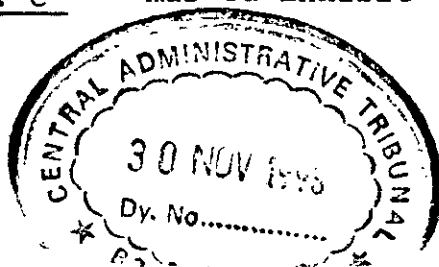
This application is filed challenging

the purported order of cancellation dated 27.11.1993 purporting to cancell OFA Factory Order Part II No:567 dated 5.7.1993 and purporting to revive OFA Factory Order No:276 dated 5.4.1993. By reason of the said order, the respondents are seeking to revert the applicant from the post of Foreman to the post of Assistant Foreman, illegally and on a total misinterpretation of the judgment of the Supreme Court. The applicant continues to work on the same post of Foreman on which he has been working for the last four years. The applicant has not yet handed over charge of the said post to any one nor any person has been posted vice him as Foreman. The said order dated 27.11.1993 is claimed to be pursuant to the judgment of the Hon'ble CAT, Calcutta dated 30.12.1991 in O.A. No:99 of 1991 and the judgment dated 31.3.1993 of the Hon'ble Supreme Court of India in the case of K.K.M. Nair & Ors V/s Union of India & ors. Copy of the judgment of CAT, Calcutta dated 30.12.1991 is not available with the applicant and said judgment does not appear to have been published also. A copy of the said order dated 27.11.1993 is annexed hereto and marked Exhibit "A". A copy of the judgment dated 31.3.1993 of the Hon'ble Supreme Court of India, in K.K.M. Nair's case is annexed hereto and marked Exhibit "B". A copy of of the promotion order dated 31.7.1989 referred in the impugned order is annexed hereto and marked Exhibit "C". Copy of the OFA together

EX."A"

EX."B"

EX."C"



EX."D"

EX."E"

EX."F"

& "G"

with Factory Order Part II No:567 dated 5.7.1993 is annexed hereto and marked Exhibit "D". A copy of the O.F.A. Factory Order Part II No:276 dated 5.4.1993, referred to in the impugned order is annexed hereto and marked Exhibit "E". The judgment of the Supreme Court in the said case of K.K.M.Nair makes reference to earlier related judgment of the Hon'ble Supreme Court, one dated 2.2.1981 in Civil Appeal No:441 of 1981 and another dated 28.3.1989 in Writ Petition (Civil) No:530 of 1983 (Paluru Ramakrishniah & Ors V/s Union of India & Ors, copies whereof are annexed hereto and marked Exhibits "F" and "G" respectively.

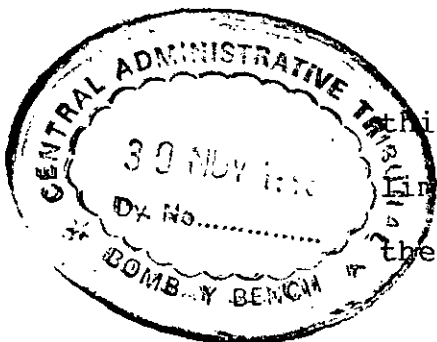
2/. JURISDICTION

The applicant declares that this Hon'ble Tribunal has jurisdiction to entertain and try this application for the reliefs claimed.

3/. LIMITATION

The applicant further declares that this application is within the period of Limitation as allowed under section 21 of the Administrative Tribunals Act, 1985.

4/. FACTS OF THE CASE:



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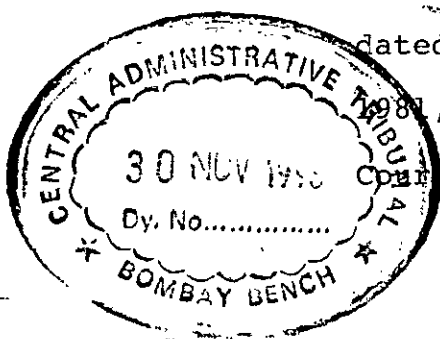
The facts of the case, briefly stated are as under :-

a/. That the applicant is a permanent employee of the Union of India. He has completed about 30 years' service under Government of India, in the Defence Production Units. He is presently working as Foreman (T) in the Ordnance Factory at Ambernath. The post of Foreman is in the scale of Rs.2375-3500/- and the post of Assistant Foreman is in the scale of Rs.2000-3200/-.

b/. The applicant joined Government service on 9.4.1964 as supervisor "A" (Technical) in the Ordnance Factory, Khamaria, Jabalpur. The applicant was thereafter promoted to higher grades of Chargeman II, Chargeman I, Assistant Foreman and Foreman on different dates, after due selection in accordance with the rules. The applicant was promoted as Foreman (Mechanical) Ordnance Factory, Ambernath with effect from 31.8.1989 under Factory Order Part II dated 5.9.89. A copy of the said order dated 5.9.1989 is annexed hereto and marked Exhibit "H".

EX. "H"

c/. According to the judgment and order dated 2.2.1981, in Civil Appeal No:441 of 1981, by the hon'ble Supreme Court, (Veerendra Kumar & Ors V/s Union of

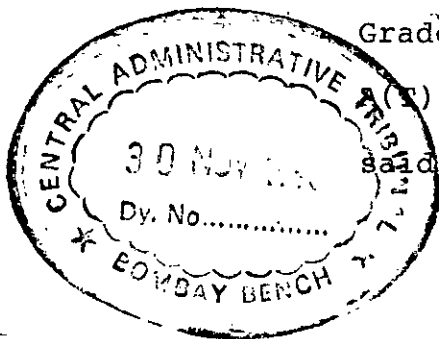


India & Ors (AIR 1981 SC 1775), the promotion of the applicant to various grades of Chargeman II, Chargeman I and Assistant Foreman were antedated to take effect from 9.4.66, 1.6.74 and 28.11.77 respectively. A copy of the said judgment and order dated 2.2.1981 of the Hon'ble Supreme Court is already annexed as Exhibit "F". A copy of the Order Part II BY dated 6.3.1990 issued by the Officer in Temporary Charge, Small Arms Factory, Kanpur giving the revised antedated seniority based on the said judgment dated 2.2.1981 read with further order of the Supreme Court dated 28.3.1989 is annexed hereto and marked Exhibit "I". A copy of the Ordnance Factory Board, Calcutta letter No: 3265/Seniority/DIP/VK/A/NG dated 27.7.1989 which is the basis of the said order dated 6.3.1990 is annexed hereto and marked Exhibit "J".

EX. "I"

EX. "J"

d/. The petitioner herein was a party to the Civil Appeal No:441 of 1981 before the Supreme Court. Consequent on the passing of the judgment and order dated 2.2.1981, the Ministry of Defence, Government of India, issued an order dated 12th October, 1982 promoting the applicant and several others to the grade of Chargeman Grade II (Tech) from the grade of Supervisor (S) with effect from 9.4.66. A copy of the said order dated 12.10.1982 is annexed



EX. "K"

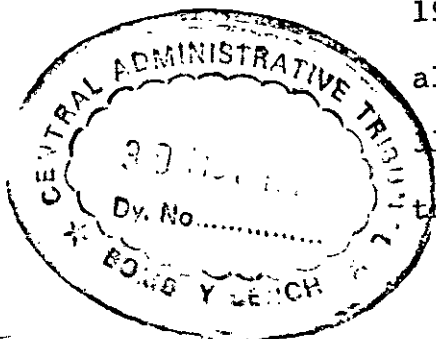
hereto and marked Exhibit "K".

e/. The applicant states that the DPC considered the case of applicant and other Assistant Foremen for promotion to the higher grade of Foreman and the said select list drawn up by the DPC was published under circular dated 31.7.1989, a copy whereof is annexed hereto and marked Exhibit "L".

EX. "L"

The name of the applicant appears at Sl. No:78 in the said select list. A promotion order dated 31st July, 1989 was issued by the Ordnance Factory Board promoting the applicant and several other persons borne on the select list, as Foremen at Ordnance Factory at Ambernath. The name of the applicant appears at Sl. No:78 of the said promotion order which is already annexed to the O.A. as Exhibit "C".

f/. The applicant states that under Factory Order Part II by No:276 of 5.4.1993, the applicant was reverted as Assistant Foreman (T) from 30.12.1991. A copy of the said order dated 5.4.1993 is already annexed to the O.A. as Exhibit "E". The said reversion was purported to be pursuant to the judgment dated 31.10.1991 in O.A. No:99 of 1991 passed by the Hon'ble C.A.T., Calcutta allegedly quashing the promotion order dated 31.7.1989. A copy of the said judgment of the Calcutta Bench is not readily available



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with the applicant and he craves leave to refer to and rely upon the said judgment when produced.

g/. The applicant was not a party to the said O.A. No:99 of 1991. The respondents had passed some order of reversion of Foreman similar to the one passed in the applicant's case in Jabalpur region and the said employees who were sought to be reentered had filed O.A.No:275 of 1993 before the C.A.T., Jabalpur Bench and their reversions were stayed by interim order dated 8.4.1993. A copy of the said interim order dated 8.4.1993 is annexed

EX. "M"

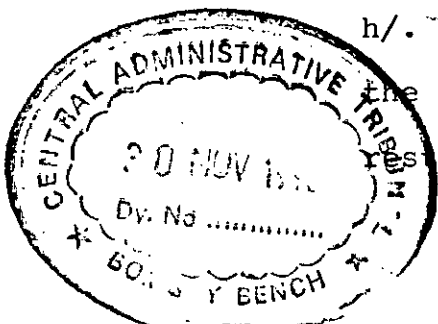
hereto and marked Exhibit "M". The Jabalpur Bench was pleased to pass further orders on 30.6.1993 in the said O.A. No:275 of 1993, continuing the said stay of reversions till further orders and at the same time also decided to refer the case to a larger Bench for decision to which the Counsel for the parties also agreed. Copies of the said 2

EXS. "N"

~~"O"~~

(two) orders dated ~~8.4.1993~~ and 30.6.1993 passed by C.A.T., Jabalpur Bench, are annexed hereto and marked Exhibits "N" & ~~"O"~~ respectively.

h/. By representation dated 22.4.1993, the applicant requested respondent No:3 to restore him to the position of Foreman in



^{"O"}
EXs. ^{"P"}
& ^{"Q"} ^{"P"}

view of the stay order passed by the Jabalpur Bench in O.A. No:275 of 1993. The applicant also sent a reminder dated 20.5.1993 on his said request. Copies of the said representations dated 22.4.1993 and the the reminder 20.5.1993 are annexed hereto and marked Exhibits ^{"O"} ^{"P"} ~~"P"~~ and ~~"Q"~~ respectively.

i/. The applicant states that by Factory Order Part II No:567 dated 5.7.1991 the respondents cancelled the earlier Factory Order Part II No:276 dated 5.4.1993 with the result that the applicant has been restored to the position of Foreman and that was restoration of status quo ante without any break. A copy of the said cancellation order dated 5.7.1991 is already annexed to the O.A. as Exhibit "D".

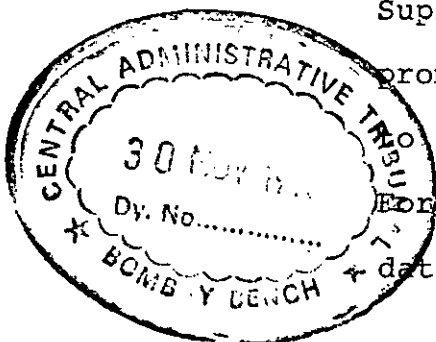
j/. The applicant states that a provisional revised combined seniority list of Supervisors 'A'(T), senior Draftsman, Senior Planer and Senior Estimator was published sometime in the month of June/July, 1991. No copy of the said seniority list was furnished to the applicant but he was allowed to see a page in which his name was shown. His name was shown at Sl. No:2409 and the following details appeared against his name:-

Serial Number: : 2409

9

Name : Chaturvedi B.M.
F.O.I. : O.F.C.
Date of Birth : 01.02.40
Post Held as on 1.1.73 : Supervisor "A"
Date of holding : 9th April, 1964
Chargeman II. from : 31st July, 1975
Remarks :
Notional Date
Chargeman II : 9th April 1966

The applicant made a representation dated 5.7.1991 against the said seniority list and complained that he was not in a position to point out his exact placement as the list shown to him was incomplete only from Sl. No:2235. The applicant requested that his seniority may be placed correctly as already explained by him in his application dated 9.4.1991, and the same should be intimated to him. There is no reply to the said representation of the applicant dated 5.7.1991 and there is no publication of final seniority list, till now. However, on the basis of the undisclosed seniority list and/or on the basis of wrong seniority assigned, contrary to the judgments of the Supreme Court, the respondents are seeking to promote juniors and in the process seeking to revert the applicant as Assistant Foreman. A copy of the said representation dated 5.7.1991 along with forwarding letter



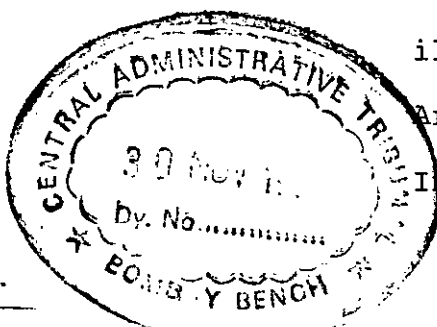
"Q"
EX. "R"

dated 5.7.1991 is annexed hereto and marked Exhibit "R".

Without properly settling the disputes as to the seniority sought to be altered, abruptly and within barely 4 months of withdrawal of the previous order of reversion, the respondents have now come out with the impugned order dated 27.11.1993, purporting to once gain revert the applicant from the post of Foreman to the post of Assistant Foreman. The position of the applicant and his promotion as Foreman are completely protected by the judgments of the Supreme Court and the respondents are interfering with the rights of the applicant to hold the post of Foreman erroneously by applying the judgment of the Calcutta Bench and of the Supreme Court in K.k.M. Nair's case, which have no application to the case of the applicant. Hence, this application to this Hon'ble Tribunal.

5/. GROUND'S FOR RELIEF WITH LEGAL PROVISIONS:

The applicant submits that the proposed reversion of the applicant from the post of Foreman to the post of Assistant Foreman is illegal, arbitrary, inequitable, violative of Articles 14 and 16 of the Constitution of India, contrary to the judgments of the



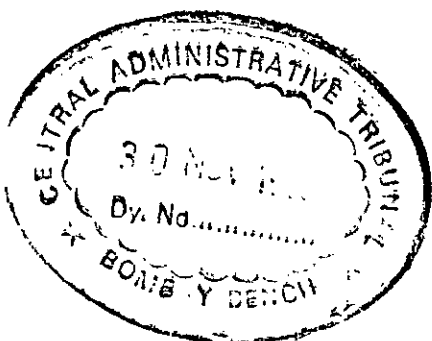
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Supreme Court and would illegally invade the right which has come to be vested in the applicant to hold the post of Foreman by reason of the order of Promotion granted in the year 1989, and therefore the respondents are liable to be restrained from taking any action to revert the petitioner, on the following among other grounds :-

a/ That any reversion of the applicant from the post of Foreman which he has been continuously holding from August 31, 1989 onwards, would attract the provision of Article 311 of the Constitution of India and unless the applicant has been given a reasonable opportunity to show cause against the reversion, such reversion cannot at all be ordered. The proposed reversion of the applicant after he was unconditionally appointed to the said post under promotion order dated 31st July, 1989 would amount to imposition of penalty of reduction in rank.

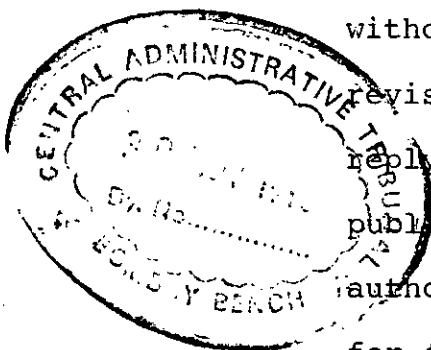
b/. That the applicant was not a party to O.A. no:99 of 1991 decided by Calcutta Bench. The said judgment is therefore not binding upon the applicant and that no action can be taken to revert the applicant in pursuance of the said judgment. In any event the reversion earlier ordered pursuant to the judgment



of the Calcutta Bench has been recalled and the said reversion order has been cancelled by Factory Order Part II No:567 dated 5.7.1993. The respondents cannot be permitted to act differently from time to time. The proposed reversion is therefore arbitrary,apricious and whimsical.

c/. That, in any event, the Jabalpur Bench of the C.A.T. has not agreed with judgment of the Calcutta Bench and has stayed the reversion ordered pursuant to the judgment of the Calcutta Bench. The Jabalpur Bench has also referred all cases for decision to a larger Bench. In the circumstances,ater restoring the applicant to the post of Foreman under Order dated 5.7.1993, within barely four months, respondents cannot be permitted to once again revert the applicant, as done earlier.

d/. The applicant has an indefeasable right to hold the post of Foreman. Such a right cannot be affected by merely publishing a provisional revised seniority list, without even disclosing the ground for revising the seniority list and without replying to the objections and without publishing a final seniority list. The authorities have to disclose the grounds for the proposed revision and furnish all



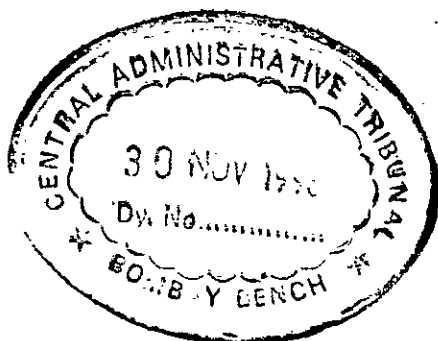
material in support of the said grounds like the judgment of the Calcutta Bench and given an opportunity to the applicant to show cause and thereafter pass a speaking order and then take any action for reversion of the applicant, without prejudice to the rights of the Applicant to challenge the revision of seniority. Today nothing is disclosed or made public. A gleaning at one page of the proposed revised seniority was permitted in which the name of the applicant appeared and the applicant's objection thereto remains unanswered till date. Nothing else has been disclosed to the applicant as to why he is being reverted. The interim orders passed by the Jabalpur Bench run contrary to the judgment of the Calcutta Bench and all cases have been referred to a larger Bench. The respondents themselves acted upon the orders of the Jabalpur Bench and cancelled the order of reversion passed in the month of April, 1993 and restored the status quo ante of the applicant in all respects. Once again, without any fresh material or circumstances arising in the case, respondents cannot be allowed to once again revert the applicant.



R

d/. That the seniority of the applicant has been fixed pursuant to the judgment of the Supreme Court dated 2.2.1981 in respect of the applicant and several others by circular dated 12.10.1982 and it cannot be permitted to be altered pursuant to the judgment of the Calcutta Bench. The respondents themselves cannot be permitted to revise the seniority after a lapse of 10 years. In fact it is clearly mentioned in the proposed revised seniority brought to the notice of the applicant sometime in the month of July, 1991 that the notional seniority of the applicant in the cadre of Chargeman II is 9.4.1966 and having accepted the said position, the respondents now cannot seek to revert him from the post of Foreman which is wholly justified on the basis of the said seniority as Chargeman II. There is no order cancelling the said notional seniority which was granted pursuant to an order dated 2.2.1981 of the Hon'ble Supreme Court of India.

e/. The proposed reversion of the applicant is because of total misapprehension of the judgments and orders of the Courts, by the respondents. The proposed reversion is arbitrary and uncalled for and violative of Articles 14 and 16 of the Constitution of India.



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f/. That neither the judgment of the C.A.T. Calcutta Bench in O.A. No:99 of 1991 nor the judgment of the Supreme Court in K.K.M. Nair's case, can be pressed into service, for reverting the Applicant as they are inapplicable to his case. The Applicant was not a party to K.K.M. Nair's case or Paluru's case or Calcutta C.A.T. case. In fact it has been held in Paluru' Case that the judgment dated 2.2.1981 in Civil Appeal No:441 of 1981 has become final inter-partie and the relief granted on that basis cannot be interfered with. This position is accepted in K.K.M. Nair's case also. K.K.M.Nair's case turns on the facts of its own case, which have no application to the facts of the Applicant's case. Therefore, the judgments in K.K.M.Nair's case and the O.A. No:99 of 1991 have been wrongly pressed into service for reverting the Applicant which cannot be permitted to be done. Calcutta C.A.T. judgment proceeds on a total misapprehension of the judgment of the Supreme Court in Paluru's case. For this reason also the said judgments cannot be pressed into service. As witheld by the Supreme Court, the confusion is not cleared as department is revising the promotions of all employees wholesale without due regard to the observations of the Supreme Court in Paluru's case and K.K.M. Nair's

O.A. 1234/93

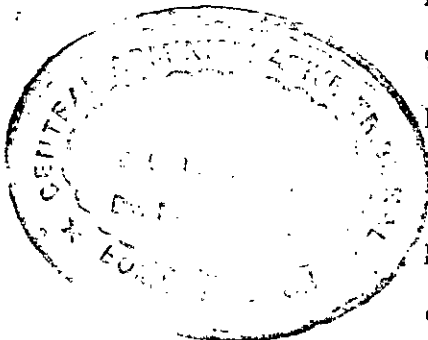
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case which cases have left the judgment of the Supreme Court in Civil Appeal No: 441 of 1991 (Virendra Kumar & Ors V/s Union of India & Others) in tact in so far as parties thereto are concerned. The Respondents ought not therefore to have taken action to snatch away the seniority or promotions granted to the 75 petitioners before the Supreme Court in Virendra Kumar's case, of which the Applicant is one.

g/. That Calcutta C.A.T. judgment dated 30.12.1991 in O.A. No:99 of 1991 setting aside the promotion order dated 31.7.1989 is not binding on the Applicant of any other person promoted by the said order, as there was no promotion order in existence on 30.12.1991 to be set aside as it got worked out more than 2 years back and no promotee (including the Applicant) can be affected by the said judgment unless he was made a party thereto. The judgment of the Supreme Court in K.K.M Nair's case proceeds on the basis that the relief granted to K.K.M.Nair and others, was not being upon S.K.Chattopadhyay and others because they were not made parties to the proceedings adopted by K.K.M. Nair and others before Madhya Pradesh High Court.

* By the same yardstick, the judgment of the C.A.T. Calcutta is not binding upon the Applicant.



Relief

: 17 :

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6/. DETAILS OF REMEDIES EXHAUSTED:

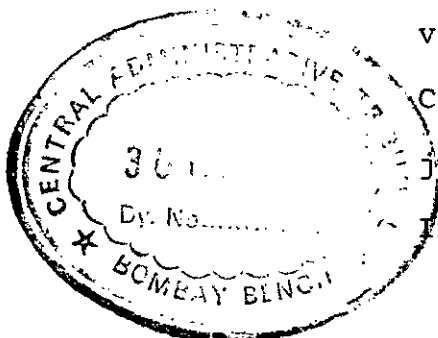
The applicant submits that since the reversion order will be implemented immediately causing irreparable harm and hardship to the Applicant and since the proposed reversion is patently illegal and without jurisdiction, the Applicant is approaching this Hon'ble Tribunal without making any representation in the matter.

7/. PARTICULARS OF PROCEEDINGS ADOPTED OR PENDING:

In respect of the apprehended reversion for which this application is made, the Applicant has not filed any suit, petition or proceeding, in any court of Law or before any Bench of this Tribunal.

8/. RELIEF(s) CLAIMED:

a/. that it be declared that the proposed reversion of the Applicant from the post of Foreman to the post of Assistant Foreman, pursuant to the order dated 27.11.1993, is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and contrary of the judgments of the Hon'ble Supreme Court of India;



b/. that it be declared that the order dated

.....18/-

12.10.1982 granting promotion to the Applicant as Chargeman II, with effect from 9.4.66, pursuant to the judgment and order dated 2.2.1981 of the Supreme Court and the seniority assigned to the applicant in the different grades pursuant to the said judgment are valid, legal and binding and cannot be altered to the detriment of the Applicant, on any basis whatsoever;

c/. that the respondents be permanently restrained by an order and permanent injunction from reverting the Applicant from the post of Foreman to the post of Assistant Foreman;

d/. that if need be, this case (O.A.) also may be considered for reference to a larger Bench and in the meantime, the respondents may be restrained from reverting the Applicant from the post of Foreman and orders similar to the ones passed by the Jabalpur Bench of the C.A.T. in O.A. No:275 of 1993 may be passed;

e/. Such other order or direction may be issued as may be just and proper in the facts and circumstances of the case;

that the costs of this application be provided for;



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9/. INTERIM RELIEF, IF ANY, PRAYED FOR:

Pending final decision on this application, the following interim reliefs may kindly be granted :-

a/. that the respondents be restrained by a suitable order and temporary injunction from reverting the Applicant from the post of Foreman to the post of Assistant Foreman, pursuant to the order dated 27.11.1993 or any other similar order;

b/. that ad-interim relief in terms of prayer (a) above be granted.

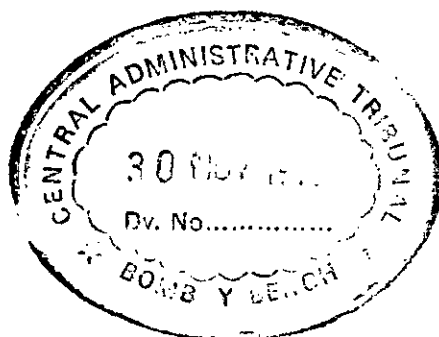
10/. NOT APPLICABLE.

11/. Details of I.P.O.

I.P.O. No: 348139 dated 25.11.93.
for Rs.50/- in favour of The Registrar,
Central Administrative Tribunal, Bombay.

12/. List of documents: Exhibits "A" to "B"

Bombay dated this the 30th day of
November, 1993.



B. M. Chaturvedi
(B.M. CHATURVEDI)
APPLICANT

.....20/-

VERIFICATION:

I, B.M. CHATURVEDI, of Ambernath
now in Bombay, employed as oreman in the
Ordnance Factory at Ambernath, do hereby verify
that what is stated under items 1,4,6,7,10 to
12 are true to my own knowledge and what is
stated under items 2,3 and 5 are based on
information and/or legal advice which I believe to
be true and I have not suppressed any material
facts.

So verified at Bombay, this the
30th day of November, 1993.

B.M. Chaturvedi
(APPLICANT/DEPONENT)

Ramesh R.

Advocate for the Applicant.