

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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Original Application No: **660/93**

Transfer Application No:

DATE OF DECISION: 16-11-94

Keshav S. Joshi Petitioner

Shri. G.S. Walia Advocate for the Petitioners

Versus  
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Union of India & Ors. Respondent

Shri. V.G. Rege Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R. Kolhatkar  
(M.R. Kolhatkar)  
M(A)

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 660/93

Shri. Keshav S. Joshi .. Applicant

Vs.

1. Union of India, through  
General Manager,  
Central Railway, Bombay VT.
2. Chief Workshop Manager  
Matunga Work-shop  
Central Railway, Bombay .. Respondents

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

APPEARANCES

1. Shri. G.S.Walia, Counsel  
for applicant
2. Shri. V.G. Rege, Counsel  
for respondents

JUDGMENT

DATED : 10-11-84

Y Per. Shri. M.R.Kolhatkar, Member (A) Y

In this application under section 19 of the Administrative Tribunals Act, the facts are that the applicant was recruited as Apprentice by the respondents and subsequently became Chargeman 'B' in February 1966, Chargeman 'A' in 1973 and was promoted as a Shop Superintendent on 2-2-1980. By the order dated 7-11-1983 he was reverted to the lower post of Chargeman Grade 'A' which he challenged under Writ Petition No. 1964 of 1984

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in the High Court of Judicature at Bombay, converted as T.A. 67 of 88 to this Tribunal, which delivered its judgment on 23/8/1991. In that case, the Tribunal noted that the applicant was issued warnings and his Annual Confidential record was not good. It noted that the applicant's post being non-selection post, whenever the applicant is declared unfit, he could have been passed over. But the Tribunal also noted the Railway' Board's letter dated 21.5.1956 which envisages that after 18 months, either the person should be declared suitable for retention in the grade or should be reverted because he is unsuitable. And any person who is permitted to continue to officiate beyond 18 months cannot be reverted for unsatisfactory work without following the procedure prescribed in the discipline and appeal rules. The Tribunal also referred to the Full Bench judgment in Jetha Nand and Others v. Union of India & Ors. The Operative portion of the judgment in Tr. 67/88 is as below :

" In the instant case we are also of the view that the applicant should be given atleast two opportunities to improve and without improving he should not be reverted and until he is not given two opportunities he shall not be reverted and if reverted he should be placed back on the original position and the question of reversion should be considered after giving two more opportunities. We are constrained to pass this order in view of the facts of this particular case though it has also been decided by the full Bench. The application is disposed of with this observation "

2. The applicant submits that in the meanwhile he has retired with effect from 30/11/89 and that the respondents by their order dated 16.11.92 cancelled the order of reversion and restored back the applicant to his position as Shop Superintendent on local basis and he was shown as considered as Asstt. Shop Superintendent w.e.f. 1.1.1984 in comparison with Shri. B.D. Nake, who is junior to him on proforma basis. On 3/4/93, vide page 16 (Exhibits) 'C') he was given pay fixation on proforma basis and it was stated that no arrears would be paid. This action of the respondents in not paying the arrears has been challenged by the applicant. According to the applicant, he is entitled to all the difference of salary for which he would have been entitled and that the principle 'no work, no pay' does not apply to this case as it was not the fault of the applicant that he did not work in the promoted post of Shop Superintendent.

3. The respondents have resisted the claim of the applicant, firstly on the ground that the application is not maintainable because it is hit/barred by the principles of resjudicata and principles analogous

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thereto. In the original application, namely TA 67 of 88

the applicant had claimed the following relief vide

item (c) of written statement :

- " c) to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution directing respondents 1 and 2 to pay the petitioner arrears of salary being the difference between the pay and allowances admissible to him in the post of Chargeman 'A' and pay and allowances admissible to him in the post of Shop Supdt., for the period from the date of his reversion till judgment."

But the Tribunal considered this relief but did not choose to grant it specifically. Secondly, the Tribunal judgment also did not allow consequential benefits. In view of this, the applicant is not entitled to the relief.

4. The applicant has relied on the following judgments.

- a) Ramesh Chander Vs. R.S. Gahlawat & Ors.
- b) P.S. Puri Vs. UoI & Ors.
- c) C.S. Ushakumari Vs. Sr.Supdt.of Post Offices

Ramesh Chander Vs. R.S. Gahlawat & Ors.

This case was decided by Jodhpur Bench of C.A.T on 17-1-1992 and reported at (1992) CSJ (CAT) 207. That was the case in which there was a specific direction to give consequential benefits and the

Tribunal relying on the ratio of K.V. Jankiraman's case directed the respondents to make payment of arrears of salary from the date of retrospective notional promotion till the date when he was actually promoted.

In the instant case; admittedly there is no specific direction of the Tribunal for payment of consequential benefits.

P.S. Puri Vs. UOI & Ors.  
(OA 728/92 of Bombay Bench)

This is a single bench case, decided on 6/10/1993 in which the Tribunal pointed-out that the applicant is entitled to all consequential benefits in terms of clear direction of the Tribunal in OA 727/86 decided on 12/10/1990.

C.S. Ushakumari Vs. Sr. Supdt. of Post Offices

In this case, decision was rendered on 21.4.1992 by the Ernakulam Bench of CAT vide (1993) 23 ATC 468. In that case relying on Rule 5 of CCS (TS) Rules which makes it incumbent on the authority ordering reinstatement on its own motion or otherwise to specify the amount of portion of pay and allowances, if any, to be paid to the employee for the period between the dates of termination and reinstatement and to stipulate whether the period would be treated as period spent on duty for any purpose or for all purposes taking into account the circumstances of the case, the Tribunal held that even in absence of an order regarding payment of consequential benefits, unless

there is a case for the Department that the employee was otherwise gainfully engaged, the Department is bound to make payments to the employee.

5. We have considered the matter. It appears to us that the relief for payment of arrears was claimed by the applicant in T.A 67/88 and the Tribunal chose not to grant the same. The Tribunal also chose not to grant consequential benefits. The order of the Tribunal was not got reviewed nor had the applicant take<sup>N</sup>out any C.P for implementation of the judgment of the Tribunal. Therefore the application is <sup>clearly</sup> barred by principles analogous to resjudicata.

6. The applicant would contend that what he challenges is the order dated 3-4-1993 which denies him arrears of pay. But this order was an order for implementation of the judgment of the Tribunal and therefore the non granting of arrears cannot be challenged by way of this O.A. The case law <sup>relied upon</sup> by the applicant do not assist him. The case of Ramesh Chander related to a matter wherein consequential benefits was in terms granted to applicant.

In the case of Ushakumary, the applicant was without employment and the question of interpretation of Rule 5 of CCS (TS) Rules fell for determination. In this particular case, the applicant was already in service and the ratio of Ushakumari does not apply. Finally,

we also note that at the time of passing the judgment i.e. on 23-8-1991, the applicant already stood retired. It was open to the applicant to point out to the Tribunal that he had stood retired and the Tribunal could have taken note of the same. But the Tribunal's order was passed without showing awareness of such a fact.

7. Considering all the circumstances, we see no merit in the application, which we accordingly dispose of by passing the following order :

O R D E R

O.A is dismissed. No order as to costs.

*M.R. Kolhatkar*

(M.R. Kolhatkar )  
Member (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Review Petition No.6/95  
in  
Original Application No.660/93

Keshav Shankar Joshi .. Review Petitioner

-versus-

Union of India & Ors. .. Respondents

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

Tribunal's order on review Petition  
by circulation

Date: 12-1-95

(Per M.R.Kolhatkar, Member(A))

In this review petition the  
original applicant <sup>has</sup> sought review of the  
judgment on several grounds. So far as the  
grounds (a),(b),(c) & (g) are concerned they  
are in the nature of grounds for appeal and  
do not fall within the scope of review  
jurisdiction of C.A.T. In this connection  
we refer to the observations of Hon'ble  
Supreme Court in the recent judgment in  
Smt. Mira Bhanja vs. Smt.Nirmalakumari  
Chaudhari, JT 1994(7)SC 536 which has dealt  
with the restricted scope of the review  
jurisdiction. In our view these grounds  
do not make out a case for review. So far  
as ground at (d) and (e) are concerned they  
attributes certain errors to the Tribunal.  
In our view these allegations are entirely  
baseless.

2. In the result we consider that  
no grounds for review of our judgment have  
been made and the review petition is liable

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to be rejected, which we accordingly  
reject with no order as to costs.

A M

M.R. Kolhatkar  
(M.R. KOLHATKAR)  
Member (A)