

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1032/94

Date of Decision: 9.7.1999

Shri R. Manmohan Applicant.

Shri P.A. Prabhakaran. Advocate for
Applicant.

Versus

Union of India and others. Respondent(s)

Shri R.K. Shetty. Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman.

Hon'ble Shri. D.S. Baweja, Member (A)

- (1) To be referred to the Reporter or not? *no*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *no*

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 1032/94.

Friday the 9th day of July 1999.

CORAM: Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman
Hon'ble Shri D.S. Baweja, Member (A)

R. Manmohan
T/40/7, Transit Camp
Homi Bhabha Road,
Navy Nagar, Colaba
Mumbai.

... Applicant.

By Advocate Shri P.A. Prabhakaran.

V/s.

1. Union of India through
its Secretary
Ministry of Defence,
New Delhi.
2. Garrison Engineers (Naval Works)
Dr. Homi Bhabha Road,
Navy Nagar, Colaba,
Mumbai.
3. Commander Works Engineers,
Naval Works,
Dr. Homi Bhabha Road,
Navy Nagar, Colaba
Mumbai.
4. Chief Engineer,
Dakshin Kaman Mukhyalaya
Headquarters Southern Command
Engineers Branch,
Pune.
5. Engineer-in-Chief's Branch (EIC)
Army Headquarters, DHQ PO
New Delhi.

... Respondents.

By Advocate Shri R.K. Shetty.

...2...



O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application filed under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply opposing the application. We have heard the learned counsel for both sides.

2. The applicant was working as Switch Board Attendant. The Department wanted to fill up the post by direct recruitment. Applicant, one Konkhar and others responded to the advertisement. By the time the selection took place, the department abolished the post of Switch Board Attendant. The name of the post was changed to Electrician. In view of change of nomenclature the applicant and Shri Konkhar and others were not selected. Being aggrieved by the decision of the Administration Shri Konkhar filed O.A. 146/90. This Tribunal by order dated 22.11.1991 allowed that application and directed the administration to consider the case of Shri Konkhar and regularise him and appoint him irrespective of change of nomenclature. Similarly the applicant had also filed O.A. 1230/92 claiming for identical relief. The Division Bench of this Tribunal following earlier judgement of Konkhar's case allowed the application by order dated 16.3.1993 and gave identical direction to the administration to appoint the applicant in the same way as done in the case of Konkhar. The administration complied



with the order of the Tribunal by passing the impugned order dated 12.6.1993 and appointed the applicant as Electrician Semi-Skilled in the pay scale of Rs. 800 - 1150. The applicant has joined the service in pursuance of this order. After making representation to the administration the applicant has filed the present O.A. seeking a direction to the respondents to regularise the services of the applicant in the status of Electrician with effect from 12.1.1984 and further consequential reliefs and payment of arrears etc.

3. The respondents in their reply have taken a stand that the applicant cannot be appointed as Electrician (Skilled) in the higher pay scale of Rs. 950 - 1500 since such an appointment is contrary to recruitment rules. They have also taken a stand that since identical prayer was made by the applicant in the earlier O.A. and was not granted. The present application is barred by principles of res-judicata.

After hearing both sides we see sufficient merit in respondents' contention that the applicant cannot ask regularisation from 12.1.1984 since the prayer is barred by principles of res-judicata. Even in the previous O.A. the applicant had asked for the same relief. Therefore the applicant cannot be granted the status of Electrician from 12.1.1984 and onwards.

4. The applicant's grievance is that inspite of appointment as Electrician in pursuance of the order of the Tribunal, the status of the applicant is shown as Electrician semi-skilled and gave lower scale of Rs. 800 - 1150 as against Rs. 950 - 1500. The learned counsel for the respondents contended that the direction given by the Tribunal in the previous O.A. is erroneous and contrary to rule and it cannot be followed and he wanted to cite decision of Supreme Court and also want to argue on first principles by relying on circulars of the department. In our view the parties to case are bound by the judgement and they cannot be allowed to say that the judgement is erroneous. Agrieved party has to approach the higher forum for setting aside the judgement or can apply for review of the judgement. Once the judgement of a Tribunal or Court has become final, its correctness cannot be challenged as between the parties. The learned counsel for the respondents may be right that if an earlier judgement not inter parties is wrong and if cited as precedent, it can be questioned in a subsequent case. But in our view as between parties judgement is final cannot be re-opened. However such a judgement is not cited as a precedent but cited ^{as} on a binding judgement. When the judgement of a Tribunal is cited on a precedent and it's correctness is doubted, in such a case, the matter will have to be referred to a larger bench. We do not want to go into the question on first principles whether the Tribunal could have given

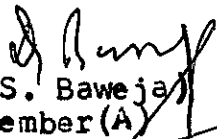
given such a decision as contended by the learned counsel for the respondents.

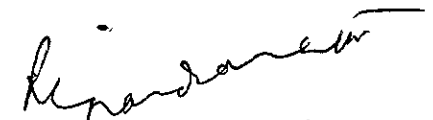
5. In the previous order, after hearing both sides and by considered order, this Tribunal gave a direction in O.A. 1230/92 that the applicant should be appointed to the post to which he was interviewed irrespective of nomenclature of the post. It is not disputed that the post of Switch Board Attendant has been abolished and re-designated as Electrician. Therefore the applicant must be appointed as Electrician and that has been done by the administration but they have shown status as "semi skilled" which is not permissible in view of the direction of the Tribunal. The learned counsel for the applicant brought to our notice ^{that in} Konkari's case, similar mistake had been committed by the administration and it was corrected by the Tribunal by order dated 31.1.1994 in C.P.31/93 in O.A. 146/90.

6. The learned counsel for the respondents submits that if such a direction is given then it may open further litigation since many officials have been appointed likewise. We make it clear that we are giving this direction in view of the earlier judgement between the parties and in the peculiar facts and circumstances of the case. Therefore the administration need not have any fear that this judgement or previous judgement will affect the case of other employees who have been appointed to the post in question.

We make it clear that the relief is granted in the peculiar facts and circumstances of the case and this should not be treated as precedent in another cases.

7. In the result, O.A. is allowed with a direction to the respondents to treat the appointment of applicant as Electrician (Skilled) and he should be granted same pay of Rs. 950 - 1500 as granted to Shri Konkar in pursuance of the order of the Tribunal dated 31.1.1994 in C.P. 31/93 in O.A. 146/90. As a consequence to this order the applicant is entitled to arrears of monetary benefits from 12.6.1993 (date of his appointment order). No order as to costs.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman

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