

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:524/94

DATE OF DECISION:

04/05/2000

Shri Hemant Rajaram Bhavsar Applicant.

Shri R.C.Ravhani. Advocate for
Applicant.

Versus

The Secretary Defence Production and Suppliers Respondents.
and others.

Shri R.K. Shetty Advocate for
Respondents

CORAM

Hon'ble Shri B.N.Bahadur, Member(A)

Hon'ble Shri S.L. Jain Member(J)

- (1) To be referred to the Reporter or not? Yes.
- (2) Whether it needs to be circulated to other Benches of the Tribunal? No
- (3) Library. Yes.

B.N.B.
(B.N.Bahadur)
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.524/1994
DATED THIS DAY ^{4th} OF MAY 2000.

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER (A)
AND
HON'BLE SHRI S.L.JAIN, MEMBER (J)

(04-05-2000)

1. Hemant Rajaram Bhavsar
Lower Division Clerk
Ammunition Factory
Khadaki, Pune 311003. ... Applicant

(By Shri R.C. Ravlani, Advocate)

Vs.

1. The Secretary
Defence Production and Suppliers,
Ministry of Defence
2. The Secretary
Ordnance Factory Board
10A Auckland Road
Calcutta 700 001.
3. The General Manager
Ammunition Factory
Khadaki,
Pune 411003. ... Respondents

(By Shri R.K.Shetty, Advocate)

O R D E R

[Per B.N.Bahadur, Member (A)]

This is an Application made by Shri Hemant Rajaram Bhavsar seeking the relief, from this Tribunal, in substance, that he be designated as Punch and Verifier Operator (P&VO for short) w.e.f. 30.6.1987 and provided Special Pay as such Operator from 30.6.1987 to 11th September, 1989. The applicant also seeks a direction to declare him as deemed to have become qualified for the post of Senior DEO from 1990. Consequential reliefs have also been sought.

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2. The facts brought forth by the applicant are that he was working as Lower Division Clerks (LDC) in Computer Service Section in respondents Ammunition Factory at Pune. An EDP Section was started in this Ammunition Factory, and Computers installed, in 1987. He was selected and transferred to Computer section in May 1987. The applicant further states that he relies on Annexure B at page 19 and 20 to make the claim that LDCs were ordered to be redeployed for data entry work after selection and were to be redesignated as P&VO. The applicant has also enclosed at Annexure B 1 a telegram further which significantly says that the selected LDCs cannot be sanctioned any special pay.

3. The applicant further states that he was selected on the basis of the conditions laid down in the aforesaid Annexure and is fully qualified for the work in EDP section. Further, that he actually did the work of P&VO over a long period w.e.f. 30.6.1987 as is cleared from the communication made by his immediate superiors to higher authorities(Page 77). It is the grievance of the applicant that no one in his factory was redesignated as per instructions issued by the Ordnance Factory Board (OFB) and that despite his representation from time to time, his request has been finally rejected vide the impugned order dated 20.11.1993 (Annexure A).

4. A reply has been filed by the Respondents where it is stated that the Applicant was deployed from Establishment Section to Computer Section, to carry out normal duties of an LDC. Orders which stated that redesignation of LDCs be made as P&VO

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are accepted as issued but it is averred that the redesignation was not done. Since no redesignation was done the applicant couldnot claim further post of DEO or Senior DEO. Respondents aver that the Applicant himself agrees that no redesignation was done and this is enough to negative his claims, since it is the prerogative of Govt. to take up redesignation or not. Accordingly, no benefits in changes of special pay or higher scales can be claimed by the Applicant. Respondents further state that the post of Junior DEO/Senior DEO was itself sanctioned on 23.7.1992 (Page 23) and hence the claims in regard to these posts are not tenable.

5. We have heard learned Counsel on both sides. Counsel for the applicant argued his case in detail first taking us over the communications at pages 19 to 30 of the paper book. He argued that it was incumbent for the respondents to have redesignated the applicant. But not a single person was redesignated. The grounds taken in the Application and briefly recapitulated in above paragraphs were reasserted by learned Counsel. It was additionally argued that one Factory at Jabalpur had in fact provided such benefits as can be seen by Annexure R.1 filed with Rejoinder dated 18.12.1994, filed by applicant. Learned counsel argued that this offers him a strong case for being provided the designation as P& VO, and remuneration as has been done in the Gun Garrage Factory at Jabalpur, through Order at page 46. The learned Counsel also referred to the Amendment Notification dated 30.12.1994 at page 68 of the paper book, to argue that as per



this Order he derives the right for promotion to DEO after six years. Support was sought to be drawn from the letter dated 10.4.1993 at Annexure H (page 77) through which the Management confirmed that he worked all along as D&VO.

6. Learned counsel defended the point of limitation on the plea of his prayer being continuing cause of action and also cited the case of S.K. Ganguly 1995 31 ATC 6621 in his defence.

7. Arguing the case on behalf of Respondents, learned counsel agreed that they did work in the EDP Section, but took the defence that since no redesignation was made, there was no ground for the prayers of extra pay and consequential allied claims as are being claimed. Learned counsel referred to the telegraphic orders dated 28.9.1987, whereby it had been clearly stated that no special pay should be sanctioned to the LDCs utilised for purpose of data entry work. Counsel for respondents further stated that posts were subsequently created and benefits had been given now as stated by them in their additional reply dated 8.3.2000. Counsel for respondents also sought to bring out the point relating to the limitation of Tribunals in deciding matters relating to Policy decisions of the Govt.

8. We have considered all papers in the case, including rejoinder/additional statement of reply, and have also considered the arguments made by learned Counsel on both sides. It is true that instructions were issued by the OFB on 3.6.1987, regarding redesignations as described above. It is also true, that a subsequent clarification by OFB telegram prohibited payment of

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special pay to such LDCs. All these happened in 1987 between June and September. It is also a fact, as can be concluded from records before us, that the Applicant was working in the EDP section but was not redesignated as per the directions in the first communication.

9. The main stand of the applicant seems to be that since Govt. instruction had been issued regarding redesignation and since he had done the work of P&VO, he, by right is entitled as of right, to the benefits and redesignation and to Special Pay and other allied benefits. Now, by the same token it is also equally true the specific orders were issued by telegram to the effect that no special pay would be payable. Applicants were well aware of the second Orders also and has infact annexed them. He also states that he had made representation in the matter. In this context the question of limitation raised of delay and becomes very relevant.

10. Learned Counsel for the applicant seeks the benefit from 1987 and has come up to file this O.A. on 31.3.1994. No doubt he is severely hit by the delay and latches. A feeble argument of continuing cause of action was raised and the two cases of M.R. Gupta, and Ganguly's case referred to above, were cited. Even if this is regarded as continuing cause of action, and even if he were to have a case on merits, the application is definitely hit by the infirmity of delay. The case of S.K. Ganguly cited refers to an All India Service Rules and the facts and circumstances therein do not help the case of the applicant.

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11. Even on merits, there is substance in the argument of learned counsel for the Respondent that they had taken a decision not to redesignate certainly not to give special pay. No right can therefore, accrue to the applicant, specially the in light of the fact that he has not come up to the Tribunal till as late as March, 1994. In fact, in 1995, the regular benefits have been provided as stated by the respondents. Similarly, the mere submission of an enclosure at page 46 cannot become the basis of our satisfaction to the extent that relief can be granted on the ground of hostile discrimination.

12. Thus no rights have come to be established by applicants on merits to redesignation and, therefore the further consequential incidental reliefs also cannot be provided by this Tribunal. Further in the face of facts of the case, it clearly suffers from grave delay and laches. We are, therefore not convinced that there is any case made out for our intervention.

13. In the consequence, this Application is hereby dismissed with no orders as to costs.

0 S.L.Jain
(S.L.Jain)

Member (J)

B.N. Bahadur
(B.N. Bahadur)

Member (A)

04/5/2000

sj*