

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.: 1139 OF 1995.

~~Transfer Application~~

Date of Decision 13.10.95

Shri K. Balasubramanian,

Petitioner/s

Shri C. Nathan,

Advocate for
the Petitioners

Versus

Union Of India & Others,

Respondent/s

Shri V. S. Masurkar,

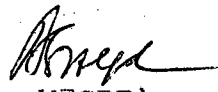
Advocate for
the Respondents

CORAM :

Hon'ble Shri. B. S. Hegde, Member (J).

Hon'ble Shri. P. P. Srivastava, Member (A).

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


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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 1139 OF 1995.

Shri K. Balasubramanian ... Applicant

Versus

Union Of India & Another ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri P. P. Srivastava, Member (A).

APPEARANCE :

1. Shri C. Nathan,
Counsel for the applicant.
2. Shri V. S. Masurkar,
Counsel for the respondents.

JUDGEMENT :

DATED : 13.10.95

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

1. Heard the arguments of Shri Nathan, Counsel for the applicant and Shri V. S. Masurkar, Counsel for the respondents and perused the records. It is true that the relief claimed in the O.A. as well as in the interim relief are one and the same. The prayer made in the O.A. is to give direction to the respondents not to revert the applicant from the post of Divisional Engineer beyond one day or in the alternative to order the respondent no. 1 to promote the applicant as Divisional Engineer after one day's break alongwith others who are similarly reverted and promoted.

2. Insofar as the facts are concerned, there is no dispute. The applicant filed this O.A. in September 1995 and obtained an ex-parte interim relief on 26.09.1995 stating that status-quo be ordered till then. Shri V.S. Masurkar, appears on behalf of the respondents on the next

date of hearing i.e. on 09.10.1995 and submitted that he would file a reply to the same. The reply was filed on 10.10.1995 and the matter came up for hearing on the same date. The applicant was initially appointed in the department in the year 1972 and he was promoted as Assistant Engineer in the year 1981 and worked in that capacity till 1991. From 1991 till 1993 he has been promoted as Divisional Engineer and again he was reverted on 18.06.1993 to the post of Assistant Engineer and again re-promoted as Divisional Engineer w.e.f. 24.09.1993 till 15.09.1995. Subsequent to the interim order passed by the Tribunal, the respondents vide their letter dated 05.10.1995 passed the following order :-

"Promotions ordered above are purely on temporary basis and to take effect from 19.09.1995 or from the date he actually assumes the charge as DE and will be subject to the decision of C.A.T., Bombay Bench in O.A. 1139/95. The officiating arrangement will be upto a maximum of 180 days or till the post is filled by regular incumbent."

"The above promotion is purely on local officiating basis and the officer will not have any claim whatsoever on the seniority in STS on the basis of having officiated in STS or ITS Grade 'A'."

It is true that the application is filed not against any specific order but being aggrieved ^{that} he will be reverted from the post of Divisional Engineer to Assistant Engineer. The applicant's reversion is sought to be effected by the utilisation of a method of 180 days promotion to the post of Divisional Engineer, 1 or 2 day break thereafter and again promotion as Divisional Engineer. In this connection, the Learned Counsel for the applicant draws our attention to the Office Memorandum issued by the Department of Personnel & Training vide dated 14.09.1992 pursuant to the decision of the Supreme Court in K.V. Jankiraman [(AIR 1991 SC 2010)] which reads as follows :-

"At the time of consideration of the cases of Government servants for promotion, details of Government servants in consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee :

- i) Government servants under suspension;
- ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- iii) Government servants in respect of whom prosecution for a criminal charge is pending."

In this connection, various guidelines have been given in the aforesaid O.M. He also draws our attention to the order passed by this Tribunal in similar matters - in the case of Shri Madan G. Sahu V/s. M. T. N. L. [O.A. No. 539/93]. The Court after considering the rival contentions of the parties, passed the following order :-

"It is clear that the reversion was not due to any finding recorded in the departmental inquiry but is in anticipation of the inquiry. The order of reversion, if it was passed on such flimsy basis, cannot be supported and the order of reversion will not operate until final decision of the original application. We, therefore, stay the operation of the reversion as far as the applicant is concerned."

He has also relied upon the decision of this Tribunal in T.A. No. 462 of 1986 in T.N. Kutty V/s. General Manager, M.T.N.L., wherein the Tribunal relied upon the various decision of the Supreme Court, especially in the judgement of Jagdish P. Shastri V/s. State of U.P. & Others [AIR 1971 SC, 1224]. According to him, the said observations made by the Supreme Court will as it is apply to the facts of this case. Accordingly, the Tribunal while quashing the

impugned order directed the respondents not to revert him to the post of J.E. in strict compliance with the provisions of law and grant him all consequential relief, including arrears of difference in salary. In this connection, he also drew our attention to explanation(4) to Rule 11 of CCS CCA Rules, 1965 in order to support his contention that continuance of his client in the post of Divisional Engineer is justified for the following reasons :

"Where the appointment was required to be made on adhoc basis purely for administrative reasons (other than against a short term vacancy or a leave vacancy) and the Government servant has held the appointment for more than one year, if any disciplinary proceeding is initiated against the Government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him."

3. In the instant case, admittedly, the applicant has been working in the post of Divisional Engineer right from 1992 onwards, therefore, just because a charge sheet is to be issued against him that does not entitle the respondents to revert him to the post of Assistant Engineer having worked for more than three years in the higher post. He also submitted that exhibit-I dated 08.05.1990, by virtue of delegation of powers to Heads of Circles to make local officiating arrangement for filling up vacancies in Sr. Time Scale of ITS Group 'A' on temporary basis, where it empowers that in case eligible JTS officers under (1) above are not available and it is not possible to keep the STS post vacant, the senior most TES Group 'B' Officer in the C-circle/District may be ordered to officiate locally against the short-term vacancies. It is an undisputed fact that

the applicant is a senior most officer and has been working in the higher post on adhoc basis temporarily, as the respondents allege, the question of his reversion on the mere protest of pendency of disciplinary enquiry against him, is not justified.

4. The Learned Counsel for the respondents on the other hand draws our attention that the main relief in the O.A. and the interim relief is one and the same and therefore it is possible to dispose of the O.A. at the admission stage itself. Secondly, the O.A. is not filed against any specific impugned order. It is true that the applicant was promoted on local officiating basis as Divisional Engineer vide respondents order dated 24.03.1995 and in the said order it is made clear that the promotion is purely on local officiating basis and the officer will not have any claim on the seniority in S.T.S. on the basis of having officiated in S.T.S. and the said promotion is only for 180 days and therefore no separate order of reversion will be issued. The reason for not appointing the applicant to the post of Divisional Engineer is for want of Vigilance Clearance Certificate. In this connection, he draws our attention that the respondents have made correspondences with the Competent Authority vide their letter dated 18.09.1995 (exhibit R-1) recommending 16 names for reappoint-
officiating
ing them as Divisional Engineer and asked the Competent Authority to inform whether any vigilance case is pending against any of the officers. The Deputy General Manager vide his letter dated 20.09.1995 intimated the respondent no. 2 that no vigilance case is pending against other officers except Shri K. Balasubramanian, the present applicant at sl. no. 6. Against the applicant, charge-sheet under Rule 16 has been issued on 16.08.1995 by D.o.T., New-Delhi and hence vigilance case is pending against him.


Thirdly, the Learned Counsel for the respondents submitted that the case of one Shri M. G. Sahu cannot be equated with the present case because in that case no reply has been filed by the respondents. In this case, the respondents is handicapped in not promoting the applicant on account of vigilance case pending against him. However, he states that the Heads of Circle have powers only to promote officers purely on local officiating basis for a period upto a maximum of 180 days only. By virtue of the order issued by the respondents dated 24.03.1995, no separate reversion order is required to be made. The contention of the Learned Counsel for the applicant is that the O.M. dated 14.09.1992 would apply only to regular appointment and not to local officiation or adhoc promotions but the said O.M. would apply to all appointments either regular or adhoc.

5. In the light of the above, after hearing the rival contention of the parties, we are of the view that so far as the facts are concerned, admittedly the applicant has been working right from 1992 onwards as Divisional Engineer with a break of one or two days as stated by the respondents in their reply. Infact, though the respondents have not filed any reply in Sahu's case, the facts and circumstances of the case is one and the same between the two. Even the O.M. dated 14.09.1992 is circumscribed with certain conditions that the respondents is duty bound to complete the enquiry within a specific time. It is open to the aggrieved party to seek for adhoc promotion. Explanation (4) to Rule 11 of CCS CCA Rule would make amply clear that when a adhoc promotion is made duly on adhoc basis purely for administrative reasons and he has worked in that capacity for more than one year and if any

disciplinary proceedings is initiated against the Government Servant, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him. It is not the case of the respondents that the disciplinary proceedings is initiated before the applicant is being promoted to the post of Divisional Engineer. As a matter of fact, he has been working in that capacity right from 1992 onwards with a break of one or two days and has been re-appointed from time to time alongwith others. While retaining the applicant in the promoted post, no prejudice would be caused to the respondents in conducting or completing the proposed departmental enquiry. As and when the enquiry is completed, any decision taken pursuant to the enquiry, the respondents is at liberty to take appropriate action as they deem fit in accordance with law. However, merely on the basis of non-clearance of the vigilance on the ground that Charge-sheet under Rule 16 has been issued in 08/1995, that does not by itself dis-entitle the applicant to be promoted till the enquiry is complete and pursuant to that enquiry if he is punished, they are at liberty to take action accordingly.

6. In the result, we hereby dispose of the O.A. at the admission stage itself by confirming the interim order passed on 26.09.1995, which is in accordance with the order passed in O.A. No. 539/93 vide dated 11.06.1993. Accordingly, the applicant is allowed to continue in the post of Divisional Engineer in terms of the order passed by the respondents vide dated 05.10.1995. The respondents are at liberty to proceed with the disciplinary enquiry against the applicant according to law. No order as to costs.


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


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