

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR.

O.A.NOS. 1260/95 and 1326/95. 199
TR.A.NO.

DATE OF DECISION 18.3.1996

Smt.S.S.Kulkarni & Anr.

Applicant(s)

Shri S.V.Gole.,

Versus


Union of India & Ors.

Respondent(s)

Shri P.S.Lambat.

- ✓ 1. Whether it be referred to the Reporter or not ? ✓
2. Whether it be circulated to all the Benches of the
Central Administrative Tribunal or not ?

~~MEMBER~~


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

~~VICE CHAIRMAN~~

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY,
CAMP AT NAGPUR.

Monday this 18th day of March, 1996.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

(1) ORIGINAL APPLICATION No.1260/95.

Smt. S.S.Kulkarni & Anr. ... Applicants.
(By Shri S.V.Gole, counsel)

(2) ORIGINAL APPLICATION No.1326/95.

Smt. Usha J.Pande. ... Applicant.
(By Shri S.V.Gole, counsel)

V/s.

Union of India & Another. ... Respondents.
(By Shri P.S.Lambat, counsel)

O R D E R

{Per Shri B.S.Hegde, Member(J)}

Heard Shri S.V.Gole proxy for Shri H.W.Harsulkar
for the applicants and Shri P.S.Lambat for the respondents.
In this O.A. the applicants have sought for quashing and
setting aside the order of reversion of the applicants
from the post of Telephone Operators to that of Casual
Khalasi vide Order dt. 13.1.1993 and direct the
Respondents to pay the difference of wages
between Rs.1260/- and 870/- (basic) and all other
consequential benefits along with interest at the rate
of 18% p.a. from 13.1.1993 to the date ~~their~~ they were
relieved to take over charge of the post of regular
Telephone Operators on 28.8.1995. It may be recalled
that the very same subject matter was entertained by this
Tribunal in O.A. No.678/90 wherein applicant No.2 in
O.A. 1260/95 was a party applicant viz. Kum.Meena Maniram
Ukey. The Tribunal after considering the contention
of both the parties on 16.1.1994 passed the following
order :

"Casual telephone operators including the
applicants who have appeared for the

selection held in pursuance of the memorandum dated 8.6.1990 should be considered for absorption as regular telephone operators in the grade of Rs.950-1500(RSRP) against the direct recruitment quota of five posts out of eleven posts created in terms of memorandum at Annexure-20 provided :

- (i) they fulfil the minimum educational qualification for direct recruitment of telephone operators; and
- (ii) passed the departmental examination held in pursuance of the memorandum dt.8.6.1990.

The upper age limit shall be relaxed to the extent of their service as casual telephone operators by the competent authority. Their seniority in the telephone operators grade of Rs.950-1500 shall be from the date they are regularly absorbed in pursuance of this order."

2. The applicants thereafter filed C.P. No.86/95 which has also been disposed of by the Tribunal on 17.7.1995 on an undertaking given by the respondents that the process of implementation has already been commenced and accordingly, the Tribunal thought it fit not to proceed with the Contempt Petition in view of the undertaking given by the learned counsel for the respondents and accordingly ^{C.P. was} discharged.

3. In this O.A. ^{again} the applicants are ^{BN} challenging the very same reversion order passed by the Respondents on 13.1.1993 which has already been adjudicated in the earlier O.A. (O.A. No.678/90) wherein Applicant No.2 Kum.Meena Maniram Ukey was a party applicant by which the applicants have been regularised in Group 'B' category in the grade of Rs.750-940 with immediate effect. Their pay is fixed in the grade Rs.750-940 from the date they acquired temporary status. The applicants have also filed M.P. 254/95 seeking condonation of delay in filing the O.A. and M.P. 255/95 seeking permission to file joint application.

4. The Respondents in their reply have submitted that the application is not maintainable because the very same order which has been challenged in the earlier O.A. (O.A. 678/90) which was decided on 16.1.1994

by this Tribunal and hence applicants ~~will not~~ have no locus standi to challenge the same once again as the principles of res judicata would apply to the facts of this case. The respondents have further pleaded that the application is not only barred by limitation, but even on merits it is not maintainable. As a matter of fact, the applicants were engaged as Casual Telephone Operators in casual capacity on Railway Electrification Project of Nagpur. The ad-hoc promotions were given to them on project level only for a temporary period. It is on record to show that the order dt. 13.1.1993 reverting the applicants to the grade of Rs.750-950 as casual labour, as there was no work to casual Tele. Operators on the project and hence they had two alternative either to revert them or to divert them to other projects like Ambala, Bilaspur, Danapur on the same status. Hence options were called from these applicants but they have not given their options to go outside Nagpur RE Project. As the applicants have not given any option for other projects, the respondents have reverted them and posted them as casual labours in the grade Rs.750-940 for continuity of their services instead of retrenching them and the applicants continued to work on this project of Nagpur in the said grade. It is further submitted, that the Tribunal had directed the respondents to consider the absorption of the applicants as regular Tele.Operators in the grade of Rs.950-1500(RPs) against the direct recruitment quota provided they fulfilled the conditions of selection. Accordingly, the applicants were regularised as Tele.Operators in regular cadre vide order dt. 29.8.95 and hence they are entitled for

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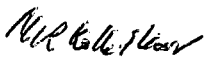
the Grade of Rs.950-1500 as per absorption order and not from the date of reversion. Accordingly, the will be entitled to the pay only from that date. Therefore, the application is not maintainable, the same should be dismissed in limine.

5. We have perused the pleadings and considered the rival contentions of both the parties. During the course of hearing, we asked the learned counsel for the applicant to show us the appointment order of the ^{he} applicants, instead/drew our attention to Annexure - 1 which indicates the chart showing the date of appointment and grade of Rs.800-1150, but no appointment order was furnished. The main contention of the applicants in this O.A. is that the reversion to a lower Grade 'D' post to which they were never appointed from a post on which they were initially appointed viz. Rs.800-1150 (and in the case of applicant in O.A. 1326/95, Rs.950-1500) is contrary to law as laid down by Supreme Court. However, on a perusal of the pleadings we are satisfied, that the applicants were engaged as casual operators in casual capacity on Railway Electrification Project at Nagpur. The higher pay scale was given to them in the Project only for a temporary period and they were liable to be retrenched but for the protection given by Tribunal's order. The Tribunal's order was to absorb them. It is noted that they were given option to go outside Nagpur R.E. Project but the same was not exercised. Hence they were accommodated at Nagpur in Grade 'D' scale till their absorption. The Supreme Court Judgment to which the counsel has referred ~~in~~ applies to reversion as a matter of penalty and does not apply to reversion pending absorption in terms of the Tribunal's order.


In the circumstances, we find that the applicant has made out no case on merit apart from the fact that the matter has already been agitated before this Tribunal in O.A. No.678/90^{and} the same cannot be adjudicated once again by filing this belated O.A. in view of principles analogous to res judicata. For the reasons stated above, we do not find any merit in the O.A. at the same is liable to be dismissed.

6. Similar issue is involved in O.A. 1326/95. Though, no notice is served on the Respondents, during the course of hearing the parties conceded that the order passed in O.A. 1260/95 would equally apply to this O.A. also, as the subject matter is similar to the one i.e. O.A. 1260/95. Since O.A. 1260/95 is dismissed, this O.A. i.e. 1326/95 is also dismissed.

7. In the result, the MPs filed by the applicants for condonation of delay and joinder of parties would be liable to be dismissed. Accordingly, Original Applications No.1260/95 and 1326/95 are dismissed as devoid of merits. No order as to costs.



(M.R.KOLHATKAR)
MEMBER(A)


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

B.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

REVIEW PETITION NO. 7/96 IN O.A. NO. 1260/95 AND 1326/95.

Dated, this 28 the — day of August, 1996.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Shubhangi S. Kulkarni & Others ... Applicant

VERSUS

Union Of India & Others ... Respondents

Tribunal's order by circulation :

This R.P. is filed by the applicants seeking review of the judgement dated 18.03.1996.

2. Having perused the R.P., we are satisfied that the R.P. can be disposed of by circulation under Rule 17 (iii) of the C.A.T. (Procedure) Rules, 1987. The applicants have sought review of the judgement on the following grounds :


That the applicants were continuously working in the grade of Rs. 950-1500 till they were permanently absorbed in the grade and thereby, they are entitled to continue in the grade. Thus the reversion order is bad in law.

3. Needless to repeat, in this R.P. the applicants are challenging the very same Reversion Order passed by the respondents vide dated 13.01.1993, which has been decided by this Tribunal in O.A. No. 678/90, in which the applicant no. 2 of O.A. 1260/95, was a party to the said petition and the


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applicants have been regularised in Group 'D' category in the grade of Rs. 750-940. It came on record that the applicant was engaged as Casual Telephone Operator in casual capacity on Railway Electrification Project of Nagpur. The adhoc promotions were given to them on project level for a temporary period. After the completion of the project, since there was no work, they were reverted to the cadre of casual labour. The department had two alternatives, either to revert them or to divert them to other projects and they called for options but the applicants had not given their options outside Nagpur project, thereby, they were reverted. Accordingly, the Tribunal did not find any merit in their contentions and rejected the O.As.

4. The R.P. can be entertained where some mistake or error apparent on the face of the record is found and also on any analogous ground in view of Order 47 Rule 1 of C.P.C. The same cannot be expressed on the ground that the decision was erroneous on merits. In this petition, the applicants challenged the findings of the Tribunal, in that event, they can challenge the findings of the Tribunal by filing an appeal and not through Review Petition. The grounds raised in the R.P. are more germane for an appeal against the judgement and not for review. Accordingly, we find that there is no merit in the R.P. and the same is dismissed.



(M. R. KOLHATKAR)
MEMBER (A).


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