

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1316/1995

DATE OF DECISION: 22/02/2001

Shri G.S.Dhongade

Applicant

Shri B.Dattamoorthy

-----Advocate for
Applicant.

Versus

Union of India & Anr.

-----Respondents.

Shri R.C.Kotiankar

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri B.N.Bahadur, Member(A)

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

B.N. Bahadur

(B.N. BAHADUR)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1316/1995
DATED THE 22ND DAY OF FEB,2001

CORAM:HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

Shri S.S.Dhongade,
Junior Telecom Officer,
Office of the General
Manager (E-1) Kailash
Commercial Complex,
Vikhroli, Bombay-400 083.

... Applicant

By Advocate Shri B.Dattamoorthy

V/s.

1. Union of India through-
The Secretary, Telecom
[Commission, Ministry of
Communications,
Sanchar Bhavan, Ashok Road,
New Delhi - 110 001.

2. The Chief General Manager,
Mahanagar Telephone Nigam Ltd,
Telephone House,
Bombay - 400 028.

... Respondents.

By Advocate Shri R.C.Kotiankar


(ORAL) (ORDER)

Per Shri B.N.Bahadur, Member(A)

The Applicant in this case Shri S.S.Dhongade, has come up
to this Tribunal seeking the reliefs as follows:-

- 8)
- a) this Hon'ble Tribunal will be pleased to hold and declare that the impugned Order reverting the applicant is totally unjustified and set aside the same;
 - b) this Hon'ble Tribunal will further issue an Order directing the Respondents to promote the applicant to the post of Sub Divisional Engineer with all consequential benefits;
 - c) for any such or other reliefs as may be deemed fit and proper in the circumstances of the case;
 - d) the costs of this application be provided to the applicant.

...2.



2. The basic facts in the case have been brought out in the pleadings arguments taken by applicant's counsel would need to be reproduced straightaway, in synoptic form, below since the dates will be important for an analysis of this case.

3. The Applicant was appointed in 1982, after an examination, and was locally promoted in Telegraph Engineering Service Group 'B' and continued on this post. However, he came to be suspended in the year 1988 and was chargesheeted three years later in 1991. His suspension was revoked on 8/11/94 and after revocation of this suspension, the applicant was reinstated on the post of Assistant Engineer (Sub Divisional Engineer). After about six months of such reinstatement on this higher post, the applicant was reverted vide order dated 28/4/95 w.e.f. 5/5/95 to the post of Junior Telecom Officer (JTO). These are the facts of the case which broadly bring out the grievance with which the applicant comes up to the Tribunal, seeking the reliefs as recorded above.

4. The Respondents have filed a written statement, in defense, where the claims of the applicant has been resisted. After describing of the applicant the facts as above, the Respondents emphasises that the reinstatement was made as officiating Sub Divisional Engineer itself, in pursuance of Government instructions, and the reversion to the post of Junior Telecom Officer which came about on 5/5/95, came because of a policy which stated that local officiating arrangements should not be continued beyond 180 days. This point has been reiterated several times in the written statement. The statement further on gives parawise replies.

B.S.

...3.

5. We have considered all the papers in the case and also heard the learned counsels, Shri B.Dattamoorthy for the applicant and Shri R.C.Kotiankar for the Respondents.

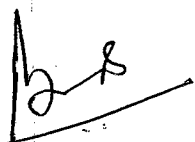
6. Shri Dattamoorthy recounted the facts of the case pointing out facts and chronological events. It was emphasised that the applicant has been officiating in the higher post of Sub Divisional Engineer for over 13 years and that infact he had been reverted, albeit after reinstatement on the higher post. The learned Counsel then took us over various Rules of CCS CCA and, later on, to the judgement of the Full Bench of this Tribunal made in OA 400/2000 on 11/10/2000 in the matter of L.M.Medar V/s. Union of India & Ors (2001(1) ATJ 5).

8. The learned Counsel for the respondents, Shri R.C.Kotiankar argued the case in detail, making the point that this was a case not of reversion but of non promotion. He also stated the various rules under CCS CCA, and argued that the bringing down of the Officer to the lower post of Junior Telecom Officer was not an act of punishment/penalty.

9. The learned Counsel provided us with a synopsis of events and grounds taken by him and we have gone through these carefully. Before making points on merits, the learned counsel had taken the legal objection that the OA seeks reliefs relating to two causes of action and hence is liable to be dismissed on this infirmity alone.

10. The following cases were cited by Shri R.C.Kotiankar:-

- i) Director - Lift Irrigation Corporation Ltd. and Ors. V/s. Pravat Kiran Mohanty and Ors.
JT 1991(1) SC 430.



- ii) Beena (Smt.) V/s. State of Kerala and Ors
1994 ATC (27) 56.
- iii) Union of India & Ors. V/s. Bigyan Mohapatra and
Ors - SLJ 1993 (2) 97
- iv) Western Railway Class II Officers Association and
Ors V/s. Union of India & Ors. CAT Full Bench
Vol.III (1991 - 93) 91.
- v) S.N.Mishra V/s. Union of India - CAT Calcutta
Bench - SLJ 1991(1)(CAT)511
- vi) Sumangal Naganath V/s. Union of India
1999 SCC (L&S) 1318

11. In the first place, we will straightaway recall the arguments to the effect that the case suffers legally since two separate causes of action are being sought. We have seen the prayers made and find that the second relief sought can best be described as a consequential relief. Hence this objection is not sustainable.

12. In regard to the rules cited we need not go into them, Since the matter is no longer res integra and is covered squarely by the aforesaid case of L.M.Medar V/s. Union of India. In fact this issue had been considered by various Benches and it was because of doubts thereby, the matter finally came up before the Full Bench. This Full Bench has gone into all aspects and we need not repeat the arguments taken by them. The Head Note in the judgement reads as follows:-

A) Ad hoc Promotion - Reversion-
Departmental Enquiry - Held promotion on ad hoc basis on local seniority for 180 days in the Department of Telecommunication and continued from time to time in spells of 180 days with breaks of one or two days for more than a year cannot be denied on issue of chargesheet or pendency of disciplinary proceedings on expiry of 180 days period or earlier.

...5.



B) Ad hoc Promotion- Reversion- Applicant a Sub Divisional Engineer in Telecom Department promoted on local officiating basis to the post of Divisional Engineer for a period of 180 days in 1996 - Appointment continued with break of one or two days after a spell of 180 days - Continued in the post for more than 4 years- Whether can be reverted on the ground that disciplinary proceedings have been initiated against him or a charge sheet for minor penalty has been issued- No.

13. It has clearly to be held therefore that reversion of an officer cannot be resorted to just because there is an enquiry against him. True the suspension aspect cannot be touched by us and will be covered by law and rules and as per the results of the enquiry. That the reversion of the Applicant (we hold to be a reversion without going into the semantics) vide order of Respondents at Annexure A dated 28/4/95 clearly states that Shri Dhongade has been reverted as Junior Telecom Officer w.e.f. 5/5/95. No amount of semantics can help the cause of the Respondent. We therefore hold that the reversion of the applicant made w.e.f. 5/5/95 is bad in terms of the ratio decided by Full Bench of the Tribunal in the case of L.M.Medar.

14.....Now as regards the second relief, regarding seeking promotion, this aspect will have to be considered in the light of the first finding and the decisions have to be taken as a corollary of the ratio in Medar's case. It must be recalled that after the suspension was revoked by the Respondents themselves w.e.f. 8/11/94, the reversion order was made about six months after. The point made strongly by Shri R.C.Kotiankar, Learned counsel for the Respondents, was that this came about as a policy and that policy issues cannot be gone into by Tribunal like ours. Certain citations were also made on this point which we hold to be made out of context and not applicable. It is not as though the policy of 180 days promotion has been given up once

and for all, as is clear from his statement that further promotions have been made for 180 days. So the argument of estoppel, that learned counsel ^{bb} ~~takes~~ would not hold. In the circumstances, a simplistic argument that just because others were brought down also, and later the applicant was considered but not provided a promotion in view of the penalty imposed cannot be looked at in the manner that it has been done. What has really come about is that through the order of penalty imposing the reduction in five stages in the scale of pay, the effect has been to make such reduction in the lower scale of pay thus making it also a reversion in the rank. This cannot be done unless a penalty of reduction in rank was imposed as such. We also note that subsequent promotions which are made are not regular promotions. It would be understandable if regular promotions had been considered and the case regarding promotion decided thereafter. However, once adhoc promotions are being resorted to again even admitting that this is being done with breaks, Respondents action cannot be justified. Hence, this reversion is held to be bad and is quashed and set aside.

15. In view of the above discussions, the OA is allowed. The Respondents will issue orders in terms of the decision above within a period of six weeks from the date of receipt of copy of this order. No costs.


(B.N. BAHADUR)
MEMBER(A)

abp


(ASHOK AGARWAL)
CHAIRMAN