

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 702 of 1995

Date of Decision: 23.06.2000

Trimbak Ramji Shirsat Applicant.

Shri P.A. Prabhakaran Advocate for  
Applicant.

Union of India & Ors. Versus

Respondent(s)

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

CORAM:

Hon'ble Shri. L. Hmingliana, Member (A)

Hon'ble Shri. Rafiquddin, 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? 20

J. N. Shaeel

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI.

REGISTRATION NO. OA 702 OF 1995

DATE OF ORDER : 23.06.2000

Trimbak Ramji Shirsat, residing at Vill. Wadala, House No. 10, near Municipal School, Tal. Nashik, District. Nashik, presently working as Assistant Binder in the Government of India Press, Nashik, Pin - 422 006.

.....APPLICANT.

By Advocate Shri P.A. Prabhakaran.

Versus

1. The General Manager, Government of India Press, Gandhinagar, Nashik - 422 006.
2. The Director, Directorate of Printing, Ministry of Urban Development, 'B' Wing, Nirman Bhavan, 2-Maulana Azad Road, New Delhi - 110 011.

.....RESPONDENTS.

By Advocate Shri R.K. Shetty.

C O R A M

Hon'ble Mr. L. Hmingliana, Member (A)

Hon'ble Mr. Rafiuddin, Member (J).

O R D E R

L. Hmingliana, Member (A):-

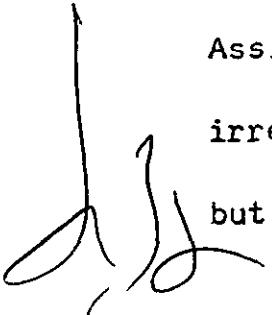
The applicant is an Assistant Binder in the Government of India Press, Nashik Road. His employment in the Press began with his ~~employment~~ <sup>appointment</sup> as labourer on 16.8.1967. He was promoted as Assistant Mechanic on ad hoc basis on 10.7.1984, and he continued to work in that post till he was appointed as Assistant Binder in the same pay-scale on 12.4.1994, and his pay was



fixed at Rs. 1010/- in the pay scale of Rs. 950-20-1150-EB-25-1400/- whereas his pay as Assistant Mechanic had already reached Rs. 1150/- in the same pay scale, and some of his juniors in the cadre of labourers had already been promoted as Assistant Binders before his promotion.

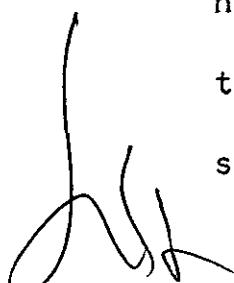
His prayer is for being sent <sup>back</sup> to the cadre of Assistant Mechanic, and for his promotion as Mechanic or in the alternative for his promotion from the cadre of labourers to that of Assistant Binders from the date his juniors in the labourers' cadre were promoted and also for protection of his pay of Rs. 1150/- in the post of Assistant Binder.

2. The applicant belongs to <sup>a</sup> scheduled tribes (ST) and there is no person belonging to ST working as Mechanic. It is the case of the applicant that there are vacant posts of Mechanic, and he is entitled to promotion to the vacant post as the only ST candidate working in the feeder cadre. His initial appointment as labourer in the Government of India Press was through the Employment Exchange, and his appointment as Assistant Mechanic was after he passed the trade test as required by the rules. Labourers are eligible for promotion as Assistant Mechanic and also as Assistant Binder, irrespective of <sup>the</sup> type of work they are doing as labourers, but passing the prescribed trade test is a pre-condition



for promotion as Assistant Mechanic or as Assistant Binder. It is the case of the applicant that when he was Assistant Mechanic, he applied for promotion as Mechanic, and instead of considering him for promotion, the respondents threatened him with reversion as labourer, and forced him to do the trade test for promotion as Assistant Binder, and that was how he came to be shown as being promoted as Assistant Binder after he had been working as Assistant Mechanic for almost 10 years.

3. His statement that under the threat of reversion he was forced to appear at the trade test for promotion as Assistant Binder is denied by the respondents in their written statement. It is stated that the applicant had indicated his willingness for being absorbed in the post of Assistant Binder, subject to his passing of the trade test, and he appeared for the trade test on 15.5.1992 and passed the same, and he was appointed on regular basis as Assistant Binder in the same pay scale that he was drawing as Assistant Mechanic, and his pay was fixed at Rs. 1010/- with effect from 4.10.1994. It is admitted that he is, in fact, drawing lesser pay than those Assistant Binders who had been junior to him as labourers. At the hearing the respondents' learned counsel, Shri R.R. Shetty stated that on his appointment as Assistant Binder, his



pay was fixed at Rs.1010/- so that he would not be drawing more pay than his seniors in the cadre of Assistant Binders.

4. It is undisputed that the applicant's initial appointment as Assistant Mechanic was on ad hoc basis, and the appointment was never regularised. But he was never reverted as labourer either, and instead he was allowed to continue in the post without interruption, and he was given increments too, regularly every year, as if he was regularised in the post. In short, he was treated as a regular Assistant Mechanic. His learned counsel, Shri P.K. Prabhakaran stated that there was no other Assistant Mechanic belonging to any Scheduled Tribe, and ~~that~~ statement of the learned counsel was not controverted. It is also stated in the OA that there was no one from any Scheduled Tribe among the Mechanics, because there were no ST candidates for appointment to the post. The applicant who is from a Scheduled Tribe, and who had proved his merit by qualifying in the trade test for promotion as Assistant Mechanic, and who was ~~as Assistant Mechanic~~ permitted earlier to continue for about 9 years must have felt that he stood a good chance of promotion as Mechanic. Then he must have been quite shocked to learn from the respondents that he was in peril of reversion as labourer, instead of standing any chance of promotion as Mechanic, and to be advised to do ~~the~~ trade test all over again, this <sup>time</sup>

for promotion as Assistant Binder.

5. In the office circular No. 68 dated 6.5.1994, the applicant was shown as being promoted and regularised as Assistant Binder. The number of those who were shown as promoted as Assistant Binders was 39 including the applicant, but 35 of them were already working in the same posts of Assistant Binders (25) and in equivalent posts of Assistant Mechanics (3) and Attendants (6). Then the promotions were only on paper, and it was only the regularisations which were actual. Those who were actually promoted were four labourers. It can be readily seen from the order that the administration was resorting to ad hoc appointments to the posts of Assistant Binders on a large scale, instead of making regular appointments to the post. It is not known whether those who were already working as Assistant Binders on ad hoc basis either on direct recruitment or on promotion were also subjected to reduction of pay, consequent to the <sup>ad hoc</sup> regularisation of their promotion/appointment like the applicant.

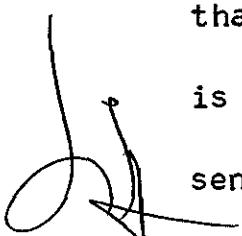
6. It is well-known that ~~the~~ Scheduled Tribes are poorly represented in service inspite of reservation of posts for them to government posts. Then it is a matter for concern that there was no Assistant Mechanic or Mechanic from any Scheduled Tribe, and the applicant



who had been working as Assistant Mechanic for almost 10 years even though on ad hoc basis, had to be shown as being promoted and regularised as Assistant Binder, and that too with reduction of his pay from Rs. 1150/- as Assistant Mechanic to Rs. 1010/- as Assistant Binder.

7. The stand taken by the respondents in their reply is that there was no vacancy in the quota for promotion, and there was a ban on direct recruitment. It would have been helpful if they gave the number of sanctioned posts of Assistant Mechanics and the number of vacancies if any, as pointed out by Shri Prabhakaran. The ban on direct recruitment to the posts must have been lifted. The respondents will have to show the information to the applicant if he approaches them. But for now there is no sufficient information available to us for granting relief to the applicant for regularisation of the service the applicant rendered in the post of Assistant Mechanic on his previous ad hoc promotion.

8. Coming to the prayer of the applicant for protection of the pay he was drawing as Assistant Mechanic, the stand taken by the respondents is that the reduction of his pay to Rs. 1010/- as Assistant Binder was so that he would not be drawing more pay than his seniors in the cadre of Assistant Binders. It is true that normally fixation of pay is linked to seniority, but not always. There can be circumstances



under which a junior draws more pay than his seniors.

9. Shri R.K. Shetty, learned counsel for the respondents argued that the fixation of the applicant's pay was in accordance with the provisions of FR 22 I(a) (i). But the applicant was never actually reverted as labourer. Though he was shown as being promoted, the post he was holding at the time of his promotion was shown as Assistant Mechanic. We have not been shown any rule which provides that the pay of government servants should be reduced on their appointment to posts carrying the same pay scale as the posts they were holding on ad hoc basis or that the government servants are entitled to draw more pay than their juniors.

10. The application is partly allowed. The pay of the applicant on his appointment as Assistant Binder shall be fixed at the same stage as he was drawing in the identical pay scale of Assistant Mechanic, and he shall be granted increments from that stage in the normal course. He shall be also be paid arrears of the amounts by which his pay after refixation exceeded the pay he was actually drawing. The respondents shall implement this order within 6 months from the date of communication of this order to them. There shall be no order as to costs.

Rafiquddin  
(RAFIQUDDIN)  
MEMBER (J)

W. H. M. Liana  
26/6/00  
(L. HMINGLIANA)  
MEMBER (A)