

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

CONTEMPT PETITION NO.: 163 OF 1995 IN
ORIGINAL APPLICATION NO.: 926 OF 1995

Dated, this 8/2 the March day of — 1996.

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

Shri Mehboob Khan ... Applicant
(Advocate by Shri D. V. Gangal)

VERSUS

Union Of India & Others ... Respondents.
(Advocate by Shri V.S. Masurkar).

: O R D E R :

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

1. Heard Shri D.V. Gangal, Counsel for the applicant and Shri V. S. Masurkar, Counsel for the respondents. The Learned Counsel for the applicant draws our attention to the ex-parte order of the Tribunal passed on 04.08.1995 stating "status-quo till then". Subsequently, after hearing both the parties, second order of the Tribunal passed on 18.08.1995 while admitting the O.A., reads as follows :-

"The order granting status-quo on 04.08.1995 is modified in that respondents 1 to 6 may proceed to make the promotions in accordance with the order dated 15.06.1995 subject to the result of this petition but there be a status-quo

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in respect of the position of the applicant in that he will not be reverted for making way to the persons in panel dated 15.06.1995. The last person in the impugned order may have to make way if no other vacancy exist for him in the event of the applicant being allowed to retain in the present post."

2. According to the learned counsel for the applicant, the respondents have violated the order of the Tribunal dated 18.08.1995 and committed a contempt and accordingly, he desires the Tribunal to give direction to the respondents not to give effect to the orders passed by the respondents vide dated 09.10.1995, 30.10.1995 and 14.11.1995 respectively. In this connection, the Learned Counsel for the applicant also draws our attention to the contentions raised in para 4.5 and 4.6 of the O.A. to which the respondents have replied at para 11 stating that the benefit of seniority with reference to junior appointed as Foreman with effect from 29.12.1974 is applicable while following a rota-quota system. However, promotion to the next higher grade are effected by counting qualifying service with effect from the date of appointment and not with reference to the date of junior's date of appointment unless there is a specific clause in the recruitment rules. During the course of hearing, we asked the learned counsel for the applicant to furnish the recruitment rules so as to verify whether

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further promotion is permissible only after completion of the qualifying service. He was unable to furnish the same and stated that he would furnish the recruitment rules at the time of final hearing. The respondents in their reply submit that the applicant in his O.A. No. 926/95 has sought to quash the order of the respondents dated 7.04.1995 and 15.06.1995 and the same is being sought in this contempt petition. Further, they submit that the applicant has not been reverted pursuant to the direction of the Tribunal, despite the fact that no vacancy existed and as such, there is no contempt insofar as the action of the respondents is concerned. In this connection, the learned counsel for the respondents draws our attention to the order passed by the Tribunal vide dated 19.08.1994 while disposing the C.P. No. 58/94 in O.A. No. 891/90 wherein the respondents had been directed by the Tribunal to prepare a combined seniority list as per para 6 and 7 of the judgement dated 30.10.1992 in O.A. No. 891/90. Accordingly, the respondents prepared a combined seniority list and by this process, the applicant was relegated to lower seniority in combined seniority roll of Foreman 1988 and he could not find place in any of the panel published vide Department Order dated 15.06.1995. Nevertheless, he has not been reverted and has been allowed to continue in the same position as he was working earlier. The only direction by the Tribunal in the facts and circumstances of the case was that the applicant should not

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be reverted to the lower position that what he was holding at the time of passing interim direction, which the respondents strictly complied with. Whether the seniority list of 1992 to 1995 is found to be correct or not, the same will be decided at the time of final hearing and that is not the matter to be agitated in contempt petition.

3. In the light of the above, we are of the view, that the applicant has not made out any case for our interference and thus the respondents have not committed any contempt. Accordingly, the contempt petition filed by the applicant is discharged. The question of seniority will be decided at the time of final hearing as and when it is listed for hearing.

M. R. Kolhatkar

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

B. S. Hegde

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 926/95

DATE OF DECISION: 5/01/2001

Shri Mahboob Khan Bahadur Khan

Applicant.

Shri D.V.Gangal

Advocate for
Applicant.

Versus

Union of India & 10 Ors.

Respondents.

Shri V.S.Masurkar (R-1 to 6)

Shri S.P.Saxena (R-7 to 10)

Advocate for
Respondents.

CORAM:

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

Hon'ble Smt. Shanta Shastri Member (A)

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

Shanta S.
(SHANTA SHASTRY)
MEMBER (A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:926/1995
DATED THE 5th DAY OF JAN. 2001**

**CORAM: HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHAstry, MEMBER(A)**

Shri Mahboob Khan son of Bahadur Khan,
Designation: Junior Scientific Officer,
Controllerate of Quality Assurance,
(Engineering Equipments),
Aundh Camp Pune - 411 027. ... Applicant

By Advocate Shri D.V.Gangal

V/s.

1. Union of India, through
The Secretary, Department of
Defence Production,
Ministry of Defence,
New Delhi - 110 011.
2. The Director General of Quality Assurance,
Ministry of Defence (DGQA),
Dept. of Defence Production,
DHQ P.O. New Delhi - 110 011.
3. The Sr. Quality Assurance Officer,
S.O.A.E.(E), DGQA Complex,
Vikhroli, Bombay - 400 083.
4. The Controller,
Controllerate of Quality Assurance(V),
Ahmednagar.
5. The Controller,
C.O.A(E), Aundh Camp,
Pune - 411 027.
6. The Controller,
C.O.A(FE),
Aundh Camp,
Pune - 411 027.
7. Sachidanandam,
Junior Scientific Officer,
Senior Quality Assurance Establishment,
Meenambakkam,
Madras.
8. N.K.Sharma,
Foreman,
Senior Quality Assurance Establishment,
Faridabad.

9. R.P.Gautam,
Foreman,
Controllerate of Quality Assurance Estt,
Aundh, Pune - 411 027.

10. M.M.Basu,
Foreman,
Senior Quality Assurance Establishment,
Calcutta.

11. B.S.Arora,
Foreman,
Senior Quality Assurance Establishment,
Bombay - 400 054. Respondents

By Advocate Shri V.S.Masurkar (R-1 to 6)
Shri S.P.Saxena (R-7 to 10)

(ORDER)

Per Set.Shanta Shastry, Member(A)

The applicant is aggrieved by the impugned order dated 15/6/95 whereby his name in the panel of J.S.O. has been deleted. He has therefore prayed as follows:-

- a) to quash and set aside the order dated 15/6/1995.
- b) Issue a writ of certiori holding and declaring that the judgement dated 30/10/92 in OA 891/90 is per incuriam and is directly in conflict with the judgement in Direct Recruit case of the constitution Bench of the Supreme Court and the judgement in Keshavchandra Joshi's case.
- c) to hold and declare that the applicant is and was always senior to respondents 7 to 11 as Foreman in the combined seniority list of 1988.
- d) to hold and declare the seniority list dated 7/4/95 illegal and to quash the same.

...3.

- e) to hold and declare that the empanelment of the applicant as J.S.O. by order dated 9/1/92 followed by posting and movement orders dated 13/5/92 and 29/5/92 are legal and valid.
- f) to grant costs.

The applicant also prayed for interim relief to restrain the respondents 1 to 6 from operating and implementing the order dated 15/6/95 pending hearing and final disposal of the OA.

2. The applicant was initially appointed as technical supervisor at Inspectorate of Armaments, Jabalpur. He was then directly recruited as Chargeman Gr.I in 1977. He was further directly recruited and appointed as Foreman under Senior Quality Assurance Officer, New Delhi on 30/5/1978. Later on he was promoted as Junior Scientific Officer under the Collectorate of Quality Assurance Aundh, Pune. Some Foreman aggrieved by the combined seniority list challenged the same by OA No.891/1990 in this Tribunal. It was decided on 30/10/92. The respondents were directed to prepare combined seniority list of Foreman and others based on continuous length of service. The seniority list was accordingly revised. Review DPC was held and the applicant's name was deleted to make way for the applicants 2 to 5 in the revised panel of J.S.O's.

3. The contention of the applicant is that he was selected for promotion to the post of J.S.O. after following the prescribed procedure on merit by a duly constituted D.P.C. He was actually promoted and given placement. He completed his probation and is deemed to have been confirmed. After putting in

three years' service in the post he cannot now be reverted as his name cannot be deleted from the panel of 1991.

4. In OA 891/90, the right to continue as J.S.O. of the applicant was never under challenge. The Hon'ble Court did not direct quashing of any panel nor has directed specifically the reversion of any J.S.O. including the applicant.

5. Only the competent authority has to pass orders for cancelling the DPC proceedings or the panel. No such formality has been followed. Before deleting his name the applicant should have been heard. Applicant is senior to R-7 to R-11 as he belongs to the recruitment year 1973-74 and has been granted deemed date of 29/12/1974 whereas R-7 to R-11 were appointed after that date. The Hon'ble Tribunal accepted that the applicant is senior to the applicants in OA-891/90. The applicant is thus aggrieved that his name from the promotion panel of 1991 has been deleted unauthorisedly without giving him an opportunity. Also the seniority list of 7/4/95 was not circulated to him.

6. The respondents 1 to 3 submit that they have merely implemented the judgement dated 30/10/92 in OA-891/90. In fact they had sought clarification from the Hon'ble Court by filing MP. They had submitted two seniority lists based on para 6 and paras 6&7 of combined of the judgement to the Court. When the matter came up for hearing on 19/8/94, the seniority list based on para-7 was accepted and accordingly a revised combined seniority list of Foreman as on 1988 was issued vide order dated 7/4/95. As per DPC Rules, any change or revision in the seniority list also warrant revision of

promotion panel issued on the basis of pre revised seniority list. Therefore all promotion panels were reviewed and order dated 15/6/95 was issued.

7. The applicant's name from the review DPC panel was deleted because of his relegated seniority. After holding of Review DPC the earlier selection is automatically cancelled. In the judgement in DA 891/90 it was specifically directed in para 7 that the inclusion in the panel for promotion to the post of J.S.O. at appropriate place should thereafter be considered after their seniority in the combined seniority list is revised. Naturally, the seniors have to be adjusted against the vacancies occupied by the earlier incumbents. A review DPC was therefore a must.

8. Applicant has joined duties of Foreman on 8/5/1978 and therefore his seniority will be reckoned w.e.f. 8/5/1978 for next promotion and not with reference to the date of his juniors.

9. It is further submitted that the applicant was not reverted in view of the statusquo ordered to be maintained by the Hon'ble Tribunal vide order dated 18/8/95 modifying the earlier order dated 4/8/95. So the applicant has not been reverted. He has been duly promoted vide order dated 14/11/1995 w.e.f. 1/3/94 against next available vacancy. The applicant's promotion was also subject to the outcome of DA No.

10. The reference to judgement of Hon'ble Supreme Court in Keshavchandra Joshi's case has no bearing in this case.

11. The Respondents No.7 to 11 have also filed written statement and have stated that the applicant was a party to DA-891/90. Therefore the judgement is binding on him. He had even filed his reply in the aforesaid DA defending his case. He

could have filed a review application or gone in appeal but he did not do it. Therefore, he cannot reopen the issue now.

12. We have heard the learned counsel for the applicant as well as the respondents.

It is clear that the applicant's seniority was lowered in pursuance of the ratio laid down in the judgement dated 30/10/92 in OA-891/90. Revised seniority naturally called for review DPC and placement of the applicants in the said OA. The applicant was also a party to OA-891/90. Though the applicant has argued that the Hon'ble Court never direct to revert him or to cancel the earlier panels for promotion to JSO and nor was it the issue yet the Hon'ble Court did direct to revise the combined seniority list on the basis of length of continuous service. The applicant was appointed in 1978 though against the vacancy of 1973-74. The revised seniority naturally led to the promotion of the seniors first. This being so the action of the respondents cannot be said to be unjustified. The applicant's seniority within the the Vehicle Division stands unchanged. All the same the applicant was not reverted but promoted from 1/3/94. This being so we are not inclined to interfere with the impugned order.

13. OA is accordingly dismissed without costs.

Shanta Shastray
(SHANTA SHAstry)
MEMBER(A)

S.L.Jain
(S.L.JAIN)
MEMBER(J)