

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. No.525/97

Dated this Sixth ~~the~~ Day of January ~~1999~~ ²⁰⁰⁰

06/01/2000

Coram : Hon'ble Shri B.N. Bahadur, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

Shri K.V.Chandrasekharan,
employed as Foreman (Mech.)
in Naval Armament Inspectorate,
Western Naval Command,
Naval Dockyard, Mumbai
Applicant by Shri R.Ramamurthy, Adv.

... Applicant in
O.A.525/97

O.A.No.527/97

Shri K.S.K. Nair,
employed as Foreman (Mech.)
in Naval Armament Inspectorate,
Western Naval Command,
Naval Dockyard, Mumbai.
Applicant by Shri R.Ramamurthy, Adv.

... Applicant in
O.A.527/97

V/s

1. Union of India through
the Secretary, Ministry of
Defence, Government of India,
New Delhi.
2. Chief of Naval Staff
Naval Head-quarters,
New Delhi - 110 066
3. Director of Naval Armament
Inspectorate, Naval
Head-quarters, R.K. Puram,
New Delhi - 110 066
4. The Flag Officer Commanding-
in-chief, Western Naval
Command, Mumbai
Respondents by Shri V.S. Masurkar, Counsel

... Respondents

ORDER

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

We are considering here two O.A.s namely O.A.525/97 and
O.A.No.527/97. These O.A.s are being considered together and are
being disposed of through this common order since the facts and

circumstances, the issues involved and the reliefs sought are same / similar. The order impugned (dated 25.3.1997) in both cases are also same.

2. To give the facts as brought forth by the applicant in O.A.525/97 - it is stated that the applicant was working in the Naval Armament Inspectorate, Western Naval Command, Mumbai as Foreman(Mech.) and holding that post since April, 1988. His seniority list No.is 11. He applied for the post of Mech. Examiner [now call Sr.Chargemen (Mech)] and, after written test and interview was appointed as Mechanic Examiner w.e.f. 3.2.1981. In the said higher post the seniority list published in September, 1987 put him at Sl.No.32. He was also confirmed in the said higher post with effect from April, 1981.

3. The grievance of the applicant is that his seniority was recast^a without notice. It is averred by applicant that the Central Administrative Tribunal, Hyderabad Bench had not directed any revision of select lists of Foreman (Mech.) which is a grade higher than the grade of Sr.Chargeman, in which grade the seniority was to be revised in respect of applicants before the Hyderabad Bench. The applicant claims he had filed an representation on 21.4.1987 but has not received a reply. Hence he challenges the order dated 25.3.1997 through which the select list was announced as also the Orders dated 26.3.97, notifying promotion of certain persons to the post of Foremam (Mech.). Applicants in both O.A.s challenge the exclusion of their name as prescribed in para 8 of O.A.

4. The respondents in the case have filed their written
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statement in reply, denying all allegations and averments, except those admitted. The respondents state that the Union Government had been directed by order of the Hyderabad Bench to regularise the service of 47 applicants as per orders delivered in O.A.s No.259/91, 1043/94 and 1266/94. Accordingly the seniority of all applicants in those 3 cases were adjusted and intimated to all concerned vide circular of 16.6.1995 (Ex.R-1). Thereafter as per this decision, review DPCs were held to review earlier DPC decisions taken between 1988 to 1992. Since the applicant became junior to the applicants in the O.A.s before Hyderabad Bench he could not be placed in the revised select list during review DPC. This select list was published vide circular dated 25.3.1997.

5. While the basic facts pertaining to the case of the respondents is as mentioned in the paragraph above, the respondents further go on to give parawise replies in their written statement. It is stated, inter alia, that extra vacancies were not available after providing promotions ~~benefits~~ ^{B-8} resulting from the regularisation of the employees before Hyderabad Bench, and hence reversion of the applicant, alongwith two others was ordered. The respondents takes the plea that the non reversion of the applicant would have resulted in contempt of court and thus strongly depend on the Hyderabad Bench orders to justify its actions. The respondents have thus asked for the dismissal of the application. They have also prayed for the vacation of the interim stay granted.

6. The learned counsel for both sides have been heard. The

arguments by each learned counsel are reproduced below in gist.

The learned counsel for the applicants made the following points / arguments.

(a) The applicants have been brought down in seniority, on the argument that they were no longer in zone of consideration.

(b) It was strenuously argued ^{that} the applicants in these OAs were not party respondents in the O.A.s decided by the Hyderabad Bench, one O.A. was filed in 1991, whereas applicant was already promoted in 1988. The judgment was delivered in, 1993 whereas Mr.Nair was promoted already in October, 1992.

(c) The judgment cannot take away the right already accrued and the applicant's promotion was not under challenge in the Hyderabad case.

(d) It was argued that the judgment of Hyderabad Bench had been held per incurium in two OAs dated 21.2.1995 (Ex.1 page 61).

see
(e) While it was admitted that consequential benefits had to be provided to the applicants in the Hyderabad cases, this does not justify demotion of the applicants in the two OAs. Supernumerary posts can be created for providing benefits.

7. It was argued that even holding of review DPCs was wrong, since no specific directions were given (by Hyderanad Bench) to hold DPCs. The actions of Respondents were unsettling in the legal sense, and have resulted in the mis-implementation of the judgment delivered by the Hyderabad Bench. Applicants should be continued as Foreman and not reverted.

8. The Learned Counsel for the applicants cited the following judgments. *Ans*

(i) Judgment of Mumbai Bench of CAT in OA 865/90 and OA 877/90 (Ex.1 page 61). This was cited to argue that the department was estopped in the matter, as they had not gone in appeal.

(ii) 1997 SCC LS 1484 was cited by the learned counsel to make the point that the case of W John was not applicable and that other benefits can be given but not seniority.

(iii) Full Bench Judgment dated 30.4.1998 in the case of Benjamin Karasu Vs. Union of India which was available in the file relating to O.A. 950/92.

9. Learned Counsel for the applicants took us to para 5 of the reply of the respondents and stated that the applicant cannot become junior for the purpose of reversion in view of the judgment of the Bombay Bench cited above. He went on to say that the applicants in the O.A.s would be contended even if limited relief was given to the extent that applicants position is safeguarded. In the second O.A. also Learned Counsel stated that promotion as Foreman came on 17.12.1992 i.e. prior to the Judgment and interim orders. He stated that in the second O.A. also the applicant would be content with the same limited relief as mentioned above.

10. Arguing the case on behalf of the Respondents, their Learned Counsel made several points in detail. The points made are noted below in gist.

(a) Recalling that the prayer clause challenged only Ex.A. Learned Counsel argued that the applicant had come to the Tribunal on apprehension only, and there was no order of

reversion.

(b) The joinder of parties was questioned, and it was asserted that the parties in the Hyderabad case should also have been made parties by the applicants here, so that they could be heard.

(c) Since the Circular dated 25.3.1997 (Ex.A) was under challenge, no writ of mandamus directing the inclusion of the name of applicant can be issued, unless that order is unsettled; hence no relief can be granted on this basis.

(d) The seniority recast on the basis of the judgment of Hyderabad Bench has not been challenged. This makes a big difference as that should have been challenged, Learned Counsel argued that the orders in the Hyderabad cases gave full authority to the respondents in taking the action for recasting seniority

(e) Learned Counsel questioned the argument that all consequential benefits can be given but not promotion, and stated that the operative order was very clear. He referred to the order in O.A. 1266/94 and asserted that the implication was, that the action for holding the revised review DPCs was fully valid. Once this was valid, some one had to go down in the seniority order. No increase in cadre strength was possible and the hence action taken is inevitable, and legal.

(f) The argument that promotions made prior to Sept. 1992 made by the applicants was resisted and it was stated that the date of 1992 held no sanctity.

(g) Similarly the arguments of the judgment of Hyderabad Bench being declared per incurium was strongly resisted and it

was stated that Defence Department was exempted from Staff Selection Commission procedures, and only casual employment was resorted in. Counsel for Respondents also sought to draw support from the Full Bench Judgment in case of Bombay Bench rendered in O.A.950/92.

11. We have carefully considered the arguments made by learned counsels on either side and have perused all papers in the case and the judgements cited. We have also seen the case papers in the case file of O.A.950/92 (Full Bench Judgment).

12. It is obvious, in the first place, that the orders of the Hyderabad Bench of this Tribunal in deciding O.A.259/91, O.A.1266/94 and 1043/94 are of crucial importance to this case.

On a perusal of the orders in OA 259/91 it is seen, in the first place, that one of the reliefs asked by applicants there was for directions for drawing up a fresh seniority Roll~~e~~^s quashing the earlier Roll~~e~~^s dtd.10.10.1990. The decision given

was one of direction to the respondents to regularise the services of applicants by ignoring artificial breaks in service.

It was also ordered that the applicants would be entitled to all consequential benefits including seniority. Only payment of arrears was specifically in the orders restricted. In the judgment in OA 1266/94 the earlier order in 259/91 was relied upon, and similar orders issued.

13. It must be said that the orders made by the Hyderabad Bench are clear. Learned counsel for applicants had made the point that while seniority could be given as a result of these orders, this does not imply that the settled position could

be changed. Thus, he pleaded, that demotion should not have been made and the problem could have been solved by creating supernumerary posts. It must be said, on harmonious consideration of the aforesaid orders and arguments, that once recasting of seniority was valid, the action taken by the Respondents in holding review DPCs was valid. Also it was inevitable that some persons seniority will get adversely affected as a concomitant consequence. This could logically result in some people being demoted. Hence as long as recasting of seniority is done as a rational exercise as per rules, the fact that some demotions may come about and it cannot be accepted that they could be resisted as a legal right.

14. It is true, as stated by the Learned Counsel for Applicants, that demotions could have been prevented by the creation of supernumerary posts. These devices, as also a decision whether they should be made use of, has to be considered however by the Department concerned. They could not come as a direction from a Tribunal, in the circumstances before us.

15. Learned Counsel for Applicants had taken another point to state that applicants in these two OAs were not parties in the relevant cases before the Hyderabad Bench. The claim made by applicants there was for a relief of recasting of seniority on asserted principles, and not against any particular person, though ultimately it could naturally have an adverse effect on someone or the other. Thus this point will not hold any water.

16. We have seen the judgment of the Mumbai Bench (in OA 865 and 877/90). In this connection we take note of the judgment

of the Full Bench dated 30.4.1998 in OA 950/92. We have also seen the 3rd judgment cited by the learned counsel for the applicant (1997 SCC L7S 1484). Infact the learned counsel for the respondents has also drawn support from the Full Bench Judgment cited above. Upon consideration of all these judgments (referred in preceding paragraphs) in their totality we would have to come to the conclusion that the action taken as a result of the judgments of the Hyderabad Bench would be valid. We cannot accept the view that the Department is estopped in view of the judgment of the Mumbai Bench dated 21.2.1995 (Ex.1).

17. Further the orders passed in OA 259/91, 1043/94 and 1266/94 decided by Hyderabad Bench are final orders. Their legality cannot be a subject matter of challenge, particularly when the said applicants are not parties to the present OAs. The Respondents have decided to implement the said orders and they have implemented them. It is true that in the said OAs the applicants were not parties to the proceedings. On the basis of said fact, the applicants argued that orders passed in the same OAs are not binding on them and the said orders cannot operate as res-judicata, in further proceedings. We agree to the said legal position but the said contention does not apply to the present proceedings for the reasons that subject matter of the above OAs was not executing policy regarding regularisation but seeking a policy decision for regularisation. Hence the said contention does not help the applicant.

18. In the present OAs the said 47 persons who were parties to the OAs as applicants before Hyderabad Bench are not parties

to the proceedings to whom seniority have been provided, and promotion granted and after Review DPC they have empanelled. The applicants allowed the seniority list to continue as per Hyderabad Bench order, the promotion of the said persons (exhibit R-1) has become final. Consequence of which a Review DPC and the selection as per Review DPC. Hence the applicants are now estopped from challenging the consequent action of the respondents. The applicants have not sought the relief of cancellation of consequent relief allowed to the said 47 persons in the above referred OAs before Hyderabad Bench as applicants, Circular dated 16.6.1995 exhibit R-1 and the select panel of Review DPC for the year 1988, 1992. In the above said situation the applicants are not entitled to raise the plea regarding the same. This OA is bad for non-joinder of necessary parties and on account of Principle of estoppel the applicants cannot challenge the same.

19. Learned Counsel for the applicant, had, towards the end, stated that the applicants in two OAs would be content with the limited relief that their position is safeguarded. Once we have arrived at the conclusion that the action to recast the seniority was taken as per Tribunal's order, and that this action was valid, the consequence of recasting of seniority will have to follow, as has been explained above and also some demotions. Thus any relief, even partial which goes against this accepted position cannot be considered. The contention of the respondents that the following of directions of a Tribunal can result in an adverse effect on some people has strength.

20. In view of the detailed discussions made above we do not find any cause for our interference in the cases before us. Hence the applications in the OA No.525/97 and OA No.527/97 are hereby dismissed. There will be no order as to costs.

21. The interim orders made in this case on 20.6.1997, 4.7.1997 and 1.9.1997 are hereby vacated.

(S.L. JAIN)
MEMBER (J)

(B.N. BAHADUR) / ✓
MEMBER (A)

M.

06-01-2000