

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 664/97

Date of Decision: 11.09.2001

Shri V.D. Kamble.

Shri R. Ramesh.

Advocate for Applicant

Versus

Union of India & 3 others

... Respondents

Shri V.S. Masurkar.

Advocate for Respondents

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

Shanta S
(SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 664/97

THIS THE 21st DAY OF SEPTEMBER, 2001

CORAM: SHRI S.L. JAIN. : MEMBER (J)
SMT. SHANTA SHAstry : MEMBER (A)

Vijay Dattatraya Kamble,
employed as Station Superintendent,
in Western Railway at Surat Station,
scale of pay Rs.2375-3500. Applicant

By Advocate Shri R. Ramesh.

Versus

1. Union of India,
through the General Manager,
Western Railway, Churchgate,
Mumbai-400 020.
2. Senior Divisional Operating
Manager (E), Western Railway,
Mumbai Central, Mumbai-400 008.
3. Divisional Rail Manager,
Western Railway, Mumbai Central,
Mumbai-400 008.
4. The Secretary,
Ministry of Railways,
Railway Board, Rail Bhavan,
New Delhi-110 001. . . Respondents

By Advocate Shri V.S. Masurkar.

O R D E R

Smt. Shanta Shastry. Member (A)

This application is directed against the order dated 28.5.1997 issued by the respondents seeking to revert the applicant from the post of Station Superintendent, Surat in the scale of Rs. 2375-3500 to the second lower grade of Rs.1600 -2660 and seeking to post him as Deputy Station Superintendent, Bulsar by

operating the post of Station Superintendent in the scale of Rs. 2000-3200 in the lower grade i.e. Rs.1600-2660. The applicant also prayed for interim relief not to revert him as he had stated that till the date of hearing the applicant had not handed over the charge of the office of the Station Superintendent, Surat. Thus, the order dated 28.5.97 had not been implemented. Initially the applicant was granted interim relief, but the same was vacated by order dated 11th September, 1998 in M.P. No.78/98 of the OA.

2. The applicant had joined the Western Railways as Assistant Station Master around April, 1983. The respondents advertised recruitment for the post of Traffic Apprentices in the scale of Rs.425-700 in the year 1986. The applicant applied in response to that. He was selected and was sent for training for two years between May, 1987 and August, 1989. The applicant was exempted from the initial training of 5 years because he had already been working as Assistant Station Master. So his training effectively commenced from October, 1987 and concluded on 17.6.1989. Thereafter he was posted as Station Master Bassein Road with effect from 17.8.1989 in the scale of Rs. 1400-2300 i.e.; the revised scale introduced from 1.1.1986 on account of merger of scales of pay of Rs.425-560 and Rs.425-700 and certain other scales of pay. Thereafter, in pursuance of a judgment dated 2.6.1992 rendered by the Jaipur Bench of the Tribunal in OA 602/90 the scale of Rs.1600-2660 was

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given to the applicant with effect from 17.8.1989 i.e. the date from which he joined the working post after completion of training as Traffic Apprentice. This was on the basis of the Memorandum dated 15.5.1987 issued by the Railway Board giving the scale of Rs. 1600-2660 to the Traffic Apprentices to join the working post as Station Master after two years of training. Thereafter, the applicant was promoted to the scale of Rs.2000 3200 on regular basis and he was posted to work as Station Superintendent at Andheri with effect from 17.8.1991. He was again transferred to work as Station Superintendent in the scale of Rs.2375-3500 at Bandra Terminus on adhoc basis in April, 1994. A notification was issued on 2.2.95 announcing the selection for the post of Station Superintendent in the scale of Rs.2000 3500 for drawing a panel of 121 employees. The name of the applicant was in the list of eligible employees and after ~~writing~~ ^{written} a test and viva voce and finalisation of the selection, the applicant was selected and initially posted as Station Superintendent in May, 1995 on regular basis. An office order was issued on 24.8.95 stating that the applicant had now been regularly promoted as Station Superintendent with effect from 29.5.95 and he was posted at Surat Station. Then came the impugned order dated 28.5.1997 reverting the applicant.

3. It is the contention of the applicant that the impugned order is illegal and improper in as much as it is sought to revert the applicant two grades below. He

was appointed as Station Master after completion of training as Traffic Apprentice after the issue of the Railway Board's Memorandum dated 15.5.87. His actual training commenced only from October, 1987. Considering the contents of the memorandum dated 15.5.87, right from the beginning of his appointment as Station Master on completion of the training as Traffic Apprentice he should have been appointed in the scale of Rs.1600-2660 instead of in the scale of Rs.1400-2300. Accordingly, the applicant was subsequently offered the correct scale with effect from 17.8.89. The applicant cannot be described as pre May 1987 Traffic Apprentice and therefore cannot be denied the scale of Rs.1600-2660. He was also entitled to further promotion on the basis of his absorption in the scale of Rs. 1600-2660. According to the applicant this is the true import of the judgment of the Hon'ble Supreme court in the case of Union of India & another etc. Vs. M. Bhaskar & Others etc reported in 1996 (2) SC SLJ (Volume 23 page 141). The judgment of the Supreme Court cannot be applied irrespective of the existing situation to revert the applicant by two grades below. The Supreme Court does not say to the effect or does not say in any terms that all further promotions earned on the basis of selection or non selection should be straightaway cancelled and incumbents be reverted. The applicant was not even a party to the aforesaid case. The applicant held the post of Station Superintendent in the scale of Rs. 2375-3500 on regular basis with effect from 29.5.95 for

two years prior to the issue of impugned order. If the employee has held the post for more than 18 months, then he is not liable to be reverted except for unsatisfactory work or as a measure of punishment. The applicant further submits that no one has been posted at Surat against the post held by him.

4. The learned counsel for the applicant submits that Allahabad Bench of the CAT has granted stay by order passed on 10.10.1996, in the case of Zaffar Ahmed & Others Vs. Union of India where similar effect was given based on the Supreme Court judgment in respect of the applicants therein.

5. The applicant also submits that Traffic Apprentices of the Southern Railways similarly placed like the applicant, filed a SLP in May, 1997 challenging the steps taken by the authorities to revert them on the basis of Supreme Court judgment in the case of Union of India & Ors. etc. Vs. M. Bhaskar & Others etc.

Notices were issued to the Railways on 3.5.97.

6. In turn the respondents submit that the applicant have not brought out the factual position correctly and he had obtained the interim relief by misleading the Tribunal. It is not at all correct that he was reverted when the order was passed by the respondents on 28.5.97. The correct position is that the order of reversion was served on the applicant on

30.5.97 i.e. two days before filing of the OA. The relieving order was issued on 3.6.97. The applicant had submitted his representation on 9.6.97 to retain him as Deputy Station Superintendent in the scale of Rs.1600 2660 at Surat. According to the respondents, the applicant has been reverted because of the judgment of the Supreme Court. Before reverting, a show cause notice was issued to the applicant which was duly acknowledged by him on 13.2.1997. In the absence of any representation from him, the impugned order was passed. The applicant has tried to argue again on the interim relief on the ground that the provisions of paragraph 2104, 2105, 2119 and 2317 of the Indian Railway Establishment Manual show that there is no proof of any order having been received from the divisional headquarters in regard to reversion, there is no handing over and taking over of charge and there is no service of reversion order upon him. the applicant once again denied that he had received the show cause notice of reversion. The applicant, has further stated that his seniority has been adjusted between Shri R.B.Desai and R.B. Gurav, but both these employees are not Traffic Apprentices and therefore placing the applicant between these two persons is contrary to the rule in that behalf. The seniority has been based on the date of appointment in the Assistant Station Master Grade in 1983. The applicant has further submitted that certain employees of the Southern Railways who were also sought to be reverted by the Railway Administration pursuant to

the judgment of the Supreme Court in Union of India & Ors Vs. M. Bhaskar & Ors challenged the order of reversion in the Madras Bench of the CAT. The respondents in turn filed SLP and the Supreme Court passed interim order on 6.11.1997 to maintain statusquo with regard to reversion in rank and reduction in pay scale as existed on the date of the order. The Hon'ble Supreme Court had referred the case to the Hon'ble Chief Justice for being placed before Constitutional Bench. According to the applicant his case is similar and he has not been reverted so far. The applicant has, therefore, prayed that he should be allowed to continue in his original post of Station Superintendent in the scale of Rs.2375-3500.

7. The respondents have now submitted the judgment of the Constitution Bench of the Supreme Court delivered on 10th January, 2001 in the matter of EST Rajaram & Others Vs. Union of India & Others (2001 SCC (L&S) 352. While holding that the decision given in the case of M. Bhaskar (supra) was proper, the Supreme Court held that in terms of M.Bhaskar's case such employees were not liable to refund the amounts already paid to them. It was also ruled that hearing of each individual concerned was not necessary. The matter has reached finality and the reversion of the applicant is in order according to the respondents.



8. We have heard the learned counsel for the applicant as well as the respondents and have perused the judgment in the case of the Union of India & another etc. Vs. M. Bhaskar & Ors etc. (supra) of the Supreme Court as well as the subsequent judgment of the Constitution Bench of the Supreme Court on the same matter. The appeal had been filed by various parties as the different Benches of the Tribunal had given different decisions in the matter of the pay scales. The pay scale of Rs. 1600-2660 been given to those who were appointed as Traffic Apprentices prior to 15.5.1987. The main issue was the propriety of the memorandum dated 15.5.87 and the validity of the same. Many of the Tribunal Benches had rejected the understanding of the Union of India relating to the meaning and scope of the memorandum. The Ernakulam Bench of the Tribunal had even recorded the memorandum as invalid. The memorandum of 15.5.1987 brought about some changes in the recruitment rules of Traffic /Commercial Apprentices. One of the changes was the memorandum dated 15.5.87. The recruitment of the apprentices was to be made in the pay scale of Rs. 1600 - 2660 (this scale was earlier Rs.1400 - 2300) and instead of all the posts being filled up by promotion the ratio of promotions were made 75% and of the remaining 25 %, 10% were required to come through Railway Recruitment Board and 15% on the basis of Limited Departmental Competitive Examination. The pre 1987 promotees laid their claim for the higher scale of

pay on the basis of 1987 memorandum and this claim came to be allowed by majority of the Benches of the CAT and since legality of this was challenged in the case of M. Bhaskar & Others (supra) the Supreme Court went into the matter and finally disposed of the matter by setting aside orders of those Benches of the Tribunal which have held that the pre 1987 Traffic/Commercial Apprentices had become entitled to the higher pay scale of Rs.1600-2660 by the force of memorandum of 15.5.1987. Contrary view taken is affirmed. The Supreme Court also set aside the judgment of the Ernakulam Bench which declared the memorandum as invalid. In conclusion the Supreme court stated that despite the conclusion, we are of the view that the recovery of the amount already paid because of the aforesaid judgments of the Tribunal would cause hardship to the concerned respondents/appellants and, therefore, direct the Union of India and its officers not to recover the amount already paid. This part of the order shall apply (1) to the respondents/appellants who are before this Court; and (2) to the pre 1987 apprentices in whose favour judgment had been delivered by any CAT and which had become final either because no appeal was carried to this Court or, if carried, the same was dismissed. The benefit would be available to no other.

9. The judgment was delivered on 6.5.96. Therefore, we find that the Constitution Bench considered this controversy in M. Bhaskar's case and

held the decision as proper on merits. The Constitution Bench observes that the decision in M. Bhaskar's case was taken on detailed analysis of the relevant provisions of the Indian Railway Establishment Code and the Indian Railway Establishment Manual 1968 Edition and in the light of certain general principles of law leading to record cogent reasons have been given in support of the findings and the conclusions arrived at in the judgment. No contention was raised before pointing out any serious error in the decision therein and therefore, in the facts and circumstances of the case the decision is correct and warrants no interference. The main plank of the argument of some of the applicants was that since they were not parties in the case, they had no opportunity to place their case, the court made the observations in para 17 of the judgment. Therefore, the Constitution Bench asked the learned counsel appearing for the parties in support of their challenge to the observations made by the court on merits. No point of substance assailing the observations on merits could be placed by them. The only contention made in that regard was that some of the employees who were given benefit in the judgments of CAT have got further promotions and they may lose the benefit of such promotion in case the observations made in para 17 of the judgment are allowed to stand as it is. The Hon'ble court observed that they were not impressed by the contention raised. If some employes were unjustly and improperly granted a higher scale of

pay and on that basis were given promotion to a higher post then the foundation should not be allowed to stand. This is absolutely necessary for the sake of maintaining equality and fair play with the other similarly placed employees. The Hon'ble Court further clarified that in their considered view it will be just and fair that any amount drawn by such employees either in the basic post (Traffic Apprentice) or in a promotional post will not be required to be refunded by the employee concerned as a consequence of this judgment. This position also follows as a necessary corollary from the observations made in para 18 of the judgment in M. Bhaskar's case.

10. It is to be seen from the aforesaid judgment that all the contentions raised by the applicant in the present case have been answered in no uncertain terms in the judgment. The applicant's contention that his training commenced after the order of 15.5.1987 and therefore, he is entitled to the scale of Rs. 1600-2660 also does not hold good.

11. We are bound by the judgment of the Constitution Bench and therefore, the applicant's case needs to be dismissed and is dismissed accordingly without any order as to costs.

Shanta S

(SMT. SHANTA SHAstry)
MEMBER (A)

S.L. JAIN

MEMBER (J)