

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 778/97

Date of Decision : 14th September 2001

Dr.B.R. Solanki

Applicant

Shri Suresh Kumar

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri R.K.Shetty

Advocate for the
Respondents

CORAM :

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

The Hon'ble Shri G.C.Srivastava, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other No
Benches of the Tribunal ?
- (iii) Library *yes*

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

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.778/97

Dated this the 14th day of September 2001.

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

Hon'ble Shri G.C.Srivastava, Member (A)

Dr.Bava Ram Solanki,
Assistant Director of Education,
Education Office, Nani Daman.

...Applicant

By Advocate Shri Suresh Kumar

vs.

1. Union of India through
Administrator of UT of
Daman and Diu,
Secretariat, Moti Daman.

2. The Collector,
Collectorate,Moti Daman.

3. The Development Commissioner,
UT of Daman and Diu,
Secretariate, Moti Daman.

4. Shri L.S.Borate,Head-Master,
High School, U.T.Daman & Diu.

...Respondents

By Advocate Shri R.K.Shetty

O R D E R

{Per: Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for a direction to the respondents to treat the applicant's adhoc promotion to the post of Assistant Director of Education till the regularly selected person from the UPSC is available, pay the salary of the post of Assistant Director of Education with effect from 6.12.1994 with interest thereon at the rate of 18% p.a.

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2. At the commencement of the hearing, the learned counsel for the applicant stated that he is only claiming the salary of the post of Assistant Director of Education w.e.f. 6.12.1994 to 3.7.1998.

3. The applicant claims the said relief in view of Exhibit-'A' para 1 & 2 dated 6.12.1994 which is as under :-

" The Administrator of Daman and Diu & Dadra and Nagar Haveli, is hereby pleased to order the transfer of Shri B.R.Solanki, Head Master, Govt. High School, Fudam, Diu to Daman. Shri B.R.Solanki will look after the work of Assistant Director of Education, Daman with immediate effect.

Shri B.R.Solanki shall draw his pay and allowances in his own pay scale of Rs.2000-60-2300-EB-75-3200-100-3500 as Head Master against the post of Assistant Director of Education, Daman until further orders."

4. The claim of the applicant is resisted by the respondents on the ground that the application discloses no cause of action, the respondents have issued the order of looking after the charge which is neither a promotion order nor meant to be the same. The matter is referred to UPSC for conveying the DPC for filling up the post on regular basis. The applicant being the senior most is eligible for promotion to the post of Assistant Director of Education which is a selection post and his claim will be considered by the DPC whenever the UPSC conveys the DPC for the same. The applicant was reverted from the post of A.D.E.I. to his original post of Assistant Teacher as he was not possessing

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the requisite training qualification as per Recruitment Rules. The training qualification as was produced by the applicant was not from the recognised University but from the private college which was non statutory body.

5. The promotion and seniority given to the applicant was under challenged in OA.No. 288/93 which was decided on 11.12.1998 and the seniority of the applicant was up-held.

6. During the course of the argument, it is brought out, which is also a fact, that the applicant has worked on the post of Assistant Director of Education, Daman w.e.f. 6.12.1994 to 3.7.1998.

7. It is true that the order Exhibit-'A-1' does not mention that the applicant is promoted to the post of Assistant Director of Education, Daman. The post being a selection post and UPSC has to be consulted in this respect. The applicant was, thereafter, promoted to the post of Assistant Director of Education after consultation with UPSC w.e.f. 30.7.1998. In such circumstances, the defence of the respondents that the applicant has not possessed the requisite qualifications or the eligibility critaria for the post of Assistant Director of Education holds no water.

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8. The learned counsel for the respondents relied on 1998 (1) A.I.SLJ 1, Mohd.Swaleh vs. Union of India & Ors. and argued that as the applicant was not promoted to the post of Assistant Director of Education and as such he is not entitled to the pay of the said post. On perusal of the said authority, we are of the considered opinion that the said case relates to absence of authority to promote/appoint which is not the present case and hence the said case is distinguishable on facts. It is true that even in the present case before appointment to the post of Assistant Director of Education, the UPSC is to be consulted which is only a recommendatory body.

9. The learned counsel for the applicant relied on 1995 (1) ATJ 498, Shri H.S.Bhatia vs. Union of India & Ors. which lays down the proposition that even in case when employee is ordered to look after the duties of a higher post, employee concerned is entitled to the benefit of F.R. 49(iii). In the said case C.P.W.D. Manual Rule 25 was subject of consideration.

10. He further relied on 1998 (5) SCC 87, Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma & Ors. which lays down the proposition that pay of promotion post cannot be denied even the promotion is in officiating capacity or stop-gap arrangement. The case in hand is not of promotion either in officiating capacity or stop gap arrangement but of "Looking after the work".

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11. He further relied on 1999 (9) SCC 169, M.C. Misra vs. Union of India & Ors. which lays down the proposition that adhoc promotion of Assistant Conservator of Forest as Deputy Conservator of Forest effected in accordance with rules, subsequently followed by regular promotion in the latter post, in such circumstances, even irrespective of the regularisation of promotion, arrears of salary in the promotional post from the date of adhoc promotion is admissible in law and is payable after adjusting the payments already made. It is true that the applicant on the recommendations of the UPSC was promoted to the post of Assistant Director of Education, Daman on regular basis vide order dated 30.7.1998 but there was no order for adhoc promotion of the applicant. Hence, this case also does not apply to the present case and the applicant does not get any assistance from it.

12. 1994 (1) ATJ R.Srinivasan vs. Union of India & Ors., it has been held that in case of promotion on adhoc basis, the applicant is entitled to claim pay and allowances attached to the promotional post. As stated above, in the present case the applicant was not promoted to the post of Assistant Director of Education.

13. In view of F.R. 49 (v) no additional pay shall be admissible to a Government Servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge. In the present case, the applicant was not holding additional charge but he was transferred to the said post from his earlier post.

14. The order in favour of the applicant can be said to be a stop gap arrangement by a competent authority.

15. The learned counsel for the applicant argued that even in case of looking after current charge when the employee was holding a post of Assistant Director of Education, he was given the pay scale of the post of Assistant Director of Education and the case of the applicant cannot be discriminated. Before we decide the question of discrimination, first we have to examine whether the applicant has such right because if the applicant has no legal right even if the others were given the said benefit, the applicant cannot claim the said benefit on the basis of principle of discrimination because an error in favour of others does not create a right in favour of the applicant. The applicant was holding the post of Head-Master. His case deserves to be regulated in view of F.R. 22 which is as under :-

"F.R. 22. The initial substantive pay of a Government servant who is appointed substantively to a post on a time-scale of pay is regulated as follows :-

(a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended --

(i) When appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of Rule 30) than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post."

Thus, the applicant is entitled to an increase in his old scale next above the substantive pay only.

16. In the result, OA. is partly allowed. As the OA. was filed on 2.9.1997, while the applicant is claiming relief for the period from 6.12.1994 to 3.7.1998. His claim for one year before the filing of the OA. can be considered in view of Section 21 of the Administrative Tribunals Act, 1985. His claim w.e.f. 1.9.1996 is considered accordingly and rest of the claim is held to be barred by time. The claim from 1.9.1996 till 3.7.1998 deserves to be allowed in view of F.R.22 (a) (i).

17. In the result, OA. is partly allowed. The respondents are ordered to pay to the applicant the difference of the salary - salary paid as Head Master, entitled in view of F.R.22 (a) (i) to the applicant for the period w.e.f. 1.9.1996 to 3.7.1998 within a period of three months from the date of receipt of a copy of the order along with cost amounting to Rs.650/- (Rs.500/- as Legal Practitioner's Fee plus Rs.150/as other expenses).

G.C.Srivastava
(G.C.SRIVASTAVA)

MEMBER (A)

S.L.Jain
(S.L.JAIN)

MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

R.P.No.69/2001 in OA.NO.778/97

Dated this the 27th day of May 2002.

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

Hon'ble Shri G.C.Srivastava, Member (A)

Dr.Bawa Rama Solanki

...Applicant

vs.

Union of India & Ors.

...Respondents

TRIBUNAL'S ORDER

{Per : Shri S.L.Jain, Member (J)}

The applicant in OA.NO.778/97 has filed this Review Petition in respect of order dated 14.9.2001 decided by this Bench on 6.11.2001.

2. The applicant has filed along with Review Petition an application for condonation of delay. In the said application, the applicant has stated that "the said judgement and order was received by the petitioner through his counsel somewhere around 4th or 5th of October,2001 at Diu and as such the petitioner could not prefer the above referred review petition earlier, i.e. within the limitation period of 30 days from the date of the order. There is a delay of about 15 days in preferring the above referred review petition. However, in view of the facts

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mentioned hereinabove and in the interest of justice, the delay in preferring the review petition deserves to be condoned". Perusal of the said averment makes it clear that no ground for condoning the delay has even been stated by the applicant. As per Office report, the counsel for the applicant has received the copy of the said order on 21.9.2001 and there is a delay in filing the review petition.

3. Rule 17 (1) of CAT (Procedure) Rules,1987 is extracted below :-

"17. Review Petition.- (i) No petition for review shall be entertained unless it is filed within thirty days from the date of the order of which the review is sought."

Perusal of the same makes it clear that review petition is to be filed within 30 days from the date of the order of which the review is sought. Even the applicant does not dispute the said proposition of law.

4. Certainly, there is a power with the Tribunal to condone the delay, if satisfied for the reasons stated in the delay condonation application that the applicant was prevented by sufficient cause for not filing the review petition within the time prescribed under Rule 17 of CAT (Procedure) Rules,1987. On perusal of the delay condonation application and the review petition, we do not find any reason to condone the delay. As such, the delay condonation application deserves to be dismissed on the ground of being barred by time in view of Rule 17 (i) of CAT (Procedure) Rules,1987.

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5. We have perused the order passed by this Bench in OA.NO.778/97 and on perusal of the same, we find that the OA. was partly allowed. The ground on which the review is sought though not necessary to go into merit but to attain finality to the litigation, it is stated that "The petitioner's Advocate has made a statement that he was only claiming salary of the post of Assistant Director of Education w.e.f. 6.12.1994 to 3.7.1998 which was certainly an incorrect statement on facts and such concession by the Learned Advocate of the applicant could not have been taken into consideration by the Hon'ble Tribunal". Suffice to state that such ground is not available to the applicant to raise in review petition. The reason being the review can be sought only in the circumstances provided in Order 47 Rule 1 CPC (i) Discovery of new or important matters or evidence, or (ii) Mistake or error apparent on the face of record, or (iii) Any other sufficient reason. The ground for review as stated by the applicant has even no merit as it is not covered under any of the said three categories referred above.

6. In the result, the application for delay condonation deserves to be dismissed, as such review is barred by time and even on merits the applicant has no ground to review the order passed in OA.No.778/97. As such, review is dismissed on merits as well as barred by time.

G.C.Srivastava
(G.C.SRIVASTAVA)

MEMBER (A)

S.L.Jain
(S.L.JAIN)

MEMBER (J)

mrj.

dtg: 27.5.2002
order/Judgment despatched
to Applicant/Respondent(s)
on 2.5.2002.

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