

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1023/97

DATE OF DECISION: 18.12.2001

Shri. C.J. D'Mellow Applicant.

Shri K.B. Talreja Advocate for  
Applicant.

Verses

Union of India and others Respondents.

Shri Suresh Kumar Advocate for  
Respondents

**CORAM**

Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, 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? *X*

(3) Library.

*B.N.B.*  
(B.N.Bahadur)  
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO:1023/97

TUESDAY the 18th day of DECEMBER 2001

CORAM: Hon'ble Shri B.N. Bahadur, Member (A)

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

Cresswell J. D'Mellow,  
Jr. Clerk Matunga Workshop  
Central Railway - Matunga,  
Mumbai.

...Applicant.

By Advocate Shri K.B. Talreja

V/s

1. Union of India through  
The General Manager,  
Central Railway,  
Mumbai CST, Mumbai.
2. The Chief Workshop Manager  
Carriage & Wagon Workshop  
Central Railway, Matunga,  
Mumbai.

...Respondents.

By Advocate Shri Suresh Kumar.

ORDER (ORAL)

{Per B.N. Bahadur, Member (A)}

We have before us an application made by Shri Cresswell J.D'Mellow seeking the relief in para 8 as follows:

(i) This Hon'ble Tribunal may kindly be pleased to direct the respondents to refix his pay correctly counting his previous service as a Jr.Clerk, by condoning his break in service, as enquiry conducted in his case is null and void.

(ii) This Hon'ble Tribunal may kindly be pleased to direct the Respondents that their action to post the applicant as Khalasi was wrong and his posting as a clerk from the date of re-instatement be restored and award all consequential benefits attached to the post, including benefits attached to the post viz. pay / seniority etc.

(iii) The Hon'ble Tribunal may kindly be pleased to saddle the cost of this petition on the Respondents who have failed to consider the representations sent by the applicant.

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(iv) Any other relief /reliefs as deemed fit and appropriate by this Hon'ble Tribunal.

2. We have heard counsel for respective sides. Shri K.B. Talreja Learned counsel for applicant stated that he wishes to press only prayer 8(ii) and not 8(i). We therefore confine consideration in this case only to the prayer at 8(ii). It is argued that the applicant being given re-appointment as Khalasi is wrong, and that it should have been re-appointment as Jr. Clerk. The facts relevant to the case are as follows:

3. The applicant was initially appointed in the services of the respondents with effect from 7.2.1985. After an Enquiry he has been removed from service vide order dated 24.10.1991 (Annexure A-4). He has filed an appeal as per law, but he does not come here in challenge to penalty order. The fact brought out is that mercy appeal was made by the applicant on the ground that his financial condition is very bad etc. The Applicant was re-appointed vide order dated 9.6.1994 as Khalasi and a subsequent order was made dated 14.9.1994 by which the appointment was changed to Jr. Clerk " with immediate effect" i.e. prospectively.

4. Now the point urged by the learned counsel for the applicant is that the reappointment should be at the level of Jr. Clerk right from 9.6.1994. Where an order is quashed / changed or modified, reappointment cannot be a level below the initial appointment (Jr. Clerk in this case), he argues. Thus the basic arguments made by the counsel for the applicant was that the appointment right from 9.6.1994 was reappointment, and hence as per settled law it cannot be made below the rank of Jr. Clerk.

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(iv) Any other relief sought as deemed fit and appropriate by the Hon'ble Tribunal.

2. We have heard counsel for respective sides. Sri K. S. T. learned counsel for applicant stated that he wishes to cross only prayer 8(i) and not 8(ii). We therefore confine consideration to this case only at the prayer at 8(i). It is argued that the applicant being given re-appointment as Khalsa is wrong, and that it should have been re-appointment as J. The facts relevant to the case are as follows:


3. The applicant was initially appointed in the services of the respondents with effect from 1.8.1982. After an enquiry he was removed from service vide order dated 24.10.1982 (Annexure A-4). He has filed an appeal as per law, but he does not come here in challenge to penalty order. The fact brought out in that mercy appeal was made by the respondents on the ground that his financial condition is very bad etc. The Applicant was re-appointed vide order dated 2.6.1984 as Khalsa and subsequent order was made dated 14.9.1984 by which the appointment was changed to J. Clerk with immediate effect. Now, the point urged by the learned counsel for the respondents is that the re-appointment should be at the level of J. Clerk right from 2.6.1984. Where an order is quashed & changed or voided re-appointment cannot be at a level below the initial appointment (J. Clerk in this case), he argues. Further the basis arguments made by the counsel for the applicant was that the appointment right from 2.6.1984 was re-appointment and hence the re-appointed J. Clerk it cannot be made below the rank of J. Clerk.

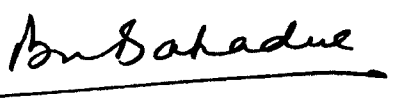
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5. It is clear from the records of the case that the appointment made from 9.6.1994 as Khalasi and the appointment changed with prospective effect as Jr. Clerk vide order dated 14.9.1994 <sup>are</sup> ~~is~~ not ~~a~~ <sup>Bomb</sup> reappointment<sup>s</sup> in the sence that the penalty is quashed and reappointment given; in that case the settled law indeed is that such reappointment can only be to the level of Jr. Clerk. <sup>However Bomb</sup> In the present case, what has happened is that mercy appeal has been made and on that basis it is a fresh appointment that is being given first as Khalasi, and then as Jr. Clerk. It is not as a matter of right that the appointment has been provided or by an appeal order. It is an appointment of mercy. Further the applicant has accepted that, and hence voluntarily taken up the appointment. Under such facts and circumstances, no benefit can accrue on the basis of judicial determination in terms of the settled law being cited by the applicant. That settled law does not apply to the present case.

6. Our attention has been invited to an application made by the applicant to the Chief Workshop Manager, Matunga where the applicant has made a representation requesting that the break in service should be condoned and the rate of pay of Rs. 950/- be re-fixed. <sup>Whilst Bomb</sup> The relief sought in the OA cannot be provided for judicial determination, Our conclusion and decision in this OA will not however come in the way of the respondents considering the request made and decide it on merits. No directions are being given, nevertheless.

7. With the above observation the OA is dismissed with no order as to costs.

  
(S.L.Jain)  
Member(J)

  
(B.N.Bahadur)  
Member(A)