

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.
CAMP AT GOA
ORIGINAL APPLICATION NO. 345/98.

Friday, this the 28th day of April, 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S. Baweja, Member (A).

1. T.Narayana Murthy,
 2. Rama Govinda Naik,
 3. G.K.Nair,
 4. P.S.Suryavanshi,
 5. Bruno Braganza,
 6. ACA Rebello,
 7. R.S.Fernandes,
 8. Jose Pegado,
 9. Prakash Sawant,
 10. George Kutty,
 11. Datta Sitaram Teri,
 12. Lalsingh T.Naik,
 13. Rohidas S.Harmalkar,
C/o. G.E. (NW),
Vasco da Gama.
- (By Advocate Mr.Vijaychandran)

...Applicants.

Vs.

1. Union of India through
Engineer in Chief,
Army Headquarters,
Kashmir House,
New Delhi.
 2. Commander Works Engineer (Navy),
Vasco da Gama,
Goa.
 3. Commander Works Engineer (Army),
Panaji,
Goa.
- (By Advocate Mr.G.R.Sharma)

...Respondents.

ORDER (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is a case filed by the applicants challenging the order of reversion. Respondents have filed reply opposing application. We have heard Mr.Vijaychandran, the learned counsel for the applicant and Mr.G.R.Sharma, the learned counsel for the respondents.

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2. Most of the facts in this case are undisputed.

Some of the applicants, including the first applicant filed an OA earlier viz. O.A. No.704/90. That OA was disposed of by this Tribunal by order dt. 7.1.1992 giving certain directions to the government to provide promotional avenue to the applicants. In pursuance of the direction, the government has issued a circular dt. 6.7.1994 and again another on 21.7.1994 and on the basis of these circulars, the applicants who were in semi skilled grade were upgraded to skilled grade w.e.f. 6.7.1994. Then they were promoted to Highly Skilled - II w.e.f. 31.3.1995 and subsequently promoted to Highly Skilled - I w.e.f. 25.4.1996. By virtue of the impugned order dt. 3.4.1998, the applicants have been reverted from Highly Skilled - I to Highly Skilled - II. The applicants are challenging the impugned order of reversion.

According to the applicants, they were promoted on the basis of the two circulars dt. 6.1.1994 and 21.7.1994 as per which one has to put in three years service in H.S. Gr.II to go to H.S. Gr.I. It is the applicants case that as a one time measure the government has relaxed this condition and therefore they came to be promoted and now the government cannot revert them. The applicants are therefore challenging not only the reversion, but also the attempt made by the respondents to recover any excess salary paid to them as a result of this promotion.

3. The defence of the respondents is that while applicants are regularly promoted to H.S. - II, they could not have been promoted to H.S. - I unless they have put in three years of service in the feeder grade of H.S. - II as per the Recruitment Rules. Since an erroneous promotion had been given contrary to

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the Recruitment Rules, the government was well within its rights to cancel the promotion and revert the applicants. It was also submitted at the bar that the Competent Authority has initiated action against the particular officer responsible for granting the erroneous promotions to the applicants. It is stated that when applicants promotion was illegal and irregular, the government has every right to recover the excess salary paid to them as a result of an illegal promotion.

4. As far as the question whether applicants promotion was regular and the order of reversion is bad, we find that both the parties are relying on the government circular dt. 6.7.1994 and 21.7.1994.

In our view, for our present purpose, the circular dt. 21.7.1994 is relevant. Both the counsels are referring to para 7 of the circular which is at page 32 of the paper book. In para 7 of the circular, it is mentioned that promotional avenue is provided in the form of providing 65% in the Skilled Grade, 20% in H.S. - II and 15% in H.S. - I. The para itself makes it clear that promotion to H.S. - I is after completion of three years in H.S. Gr. II as per Recruitment Rules. Then, it is provided that the 20% promotion to H.S. - II and 15% of promotion to H.S. - II against 15% vacancies of H.S. - I viz. total 35% should be made at H.S. - II level only. So far, there is no dispute.

It is further mentioned that as a one time measure this 15% promotion against the vacancy of H.S. - I should be made as a special case on or before 31.3.1995 and thereafter within one month 15% vacancies of H.S. Gr. I at the level of H.S. II shall be made.

It is nowhere mentioned in the circular that there should

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be further 15% promotion to H.S. I by relaxing the Recruitment Rules. We do not get any such idea by reading this rule. We are not concerned with the object or intention of issuing the said circular. We have to give effect of the circular as it is. The para 7 of the circular speaks only of filling up of 35% of HS - II and does not speak about the filling up of the post by promotion of H.S. - II to H.S. - I. The learned counsel for the applicant invited our attention to 1986 circular and 1984 circular. But, in our view, those circulars are not relevant for interpreting the ¹⁹⁹⁴~~1984~~ circular. Even granting that one time benefit had been given in 1984, it will not mean that ~~same~~ benefit should be ^{given}~~exercised~~ in 1994 unless the circular has itself spelt out its intention and provides special procedure, we cannot give any direction to the government to make a promotion contrary to the Recruitment Rules. It is not disputed and cannot be disputed that as per Recruitment Rules one has to have three years service in HS - II to move on to H.S. - I. Admittedly, the applicants had not put in three years in H.S. - II when they were promoted to H.S. - I on 25.4.1996, they had just put in about 13 months of service on that day. Therefore, on the face of it, the applicants' promotions were irregular and it was contrary to the Recruitment Rules. The circular dt. 21.7.1994 does not give any such right to the applicants to get promotion contrary to the Recruitment Rules.

In such a situation, the law laid down by the Apex Court in the case of I.C.A.R. and Anr. Vs. T.K.Suryanarayan and Ors. (AIR 1997 SC 3108) would be relevant. In this case, the Supreme Court has clearly held that promotion contrary to service rules will not give any benefit. It is further observed that employees

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cannot be permitted to contend that service rules should not be adhered to, because in some cases erroneous promotions have been given.

In this case, admittedly, the applicants promotion is contrary to the Recruitment Rules. The circular of either 6.7.1994 or 21.7.1994 does not speak about out of turn promotion from H.S. - II to H.S. - I in violation of Recruitment Rules. No such one time exception is made in these two orders about giving promotion to the applicants by-passing the Recruitment Rules. Therefore, we are constrained to hold that the earlier promotions of the applicants to H.S. - I in 1996 was contrary to the Recruitment Rules and hence it has been rightly cancelled and the applicants have been rightly reverted and we cannot interfere in the matter.

5. As far as the question of recovery from the applicants is concerned, the learned counsel for the respondents contended that when it is held that the promotion was erroneous, the applicants will have to repay whatever amount they have received during that erroneous promotion and strongly placed reliance on the decision of the Apex Court in the case of V.Gangaram Vs. Regional Joint Director and Ors. (A.I.R. 1997 SC 2776). That was a case where a teacher had been granted four increments for acquiring additional qualification, whereas under the rules he was entitled to only two increments. The Supreme Court, therefore, ruled that the excess of two increments granted to the teacher was illegal and ^{he} is liable to refund that amount.

In our view, the above decision may not be strictly applicable to the facts of the present case. As far as the teacher is concerned, he does not do any extra work, whether he

has got one additional increment or he gets two increments or four increments. It is just an incentive given personally to teacher who gets some additional qualification.

As far as the case of promotion is concerned, an officer promoted has to shoulder high responsibility and has to work in that post. In this case, the applicants were promoted to H.S. - I on 25.4.1996 and they worked in that grade till the date of reversion. When the officials have worked in the higher grade and shouldered higher responsibilities, it is not fair on the part of the government to ask them to refund that amount.

We had occasion to consider this point in two to three cases at Mumbai referring to number of decisions of the Apex Court that in cases of this type the recovery should not be allowed, unless it is a case where the official has mis-represented the facts and obtained advantage or he has played fraud on the government in getting certain monetary benefits. In this case, there is none. We are following the decision we have given in OA No.116/99 dt. 4.4.2000 in Dr.A.Bhaskara Rao & Ors.

Vs. Union of India and also the decision of the Supreme Court on which we have placed reliance in those two decisions, ^{where} and ^{consistent} ~~consistent~~ view has been taken that in cases of this type recovery would not be proper. Before parting with the case, we may place it on record that it is now conceded that the applicants have since been promoted after they have attained the eligibility of three years ^{to} ~~from~~ promotion to the post of H.S.


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Though we have held that applicants are not liable to refund whatever excess amount they have received, we make it clear that the applicants cannot get any advantage of the pay

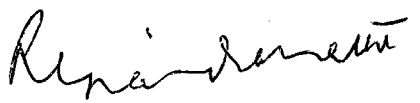


drawn by them in H.S. - I for the purpose of fixation of their pay after 1.1.1996, since we have held that their promotion to H.S. - I was illegal and irregular. Except that, they are not liable to refund the amount, the applicants will not get any benefit of their irregular promotion either for fixation of pay or notional fixation of pay or benefit of that service etc. It is made clear that applicant should be treated as working in H.S. - II from 31.3.1995 till their recent promotion in 1999 to H.S.- I.

6. In the result, the application is disposed of subject to the observations made above. No order as to costs.


(D.S. BAWEJA)

MEMBER(A)


(R.G. VAIDYANATHA)

VICE-CHAIRMAN

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