

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Q.A.No.363/1993

20th November 2001.

CORAM:

HON'BLE MR S.L.JAIN, JUDICIAL MEMBER

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Shri Vasant Govind Narkar,
present working as Junior Clerk(LDC),
in the O/o the Director of Airworthiness,
Mumbai Airport,
Mumbai-400 029. - Applican

(By Advocate Shri S.Ramamurthy)

103

1. Union of India through the Secretary, Ministry of Civil Aviation, Rajiv Gandhi Bhavan, Safdarjung Airport, New Delhi-110 003.
2. The Director General of Civil Aviation, Opp. Safdarjung Airport, New Delhi-110 003.
3. The Director of Airworthiness, Civil Aviation Department, Mumbai Airport, Santa Cruz, Mumbai-400 029.

(By Advocate Shri V.D.Vadhakar)

ORDER

SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER.

The applicant Shri V.G.Narkar who was officiating as Junior Clerk in the office of the Director of Airworthiness, Mumbai Airport, Mumbai, is aggrieved by the Director General Civil Aviation(second respondent)'s Memorandum No.DAW-Admn/2893 dated 17.4.98(Exbt.A) by which he was reverted to his substantive post with retrospective effect from 7.4.98.

2. The facts in brief are: The applicant was originally appointed as a Peon on 16.11.79 and was continuing to work under the third respondent. While being so, he was considered for promotion as Junior Clerk (LDC) in 1988 and as per Exbt.B order dated 1.12.1988, he was appointed as Junior Clerk on purely temporary basis in the office of the Director of Airworthiness, CAO, Mumbai in the scale of Rs.950-1500 plus usual allowances admissible under the rules from time to time. The appointment was subject to several conditions including the requirement of passing SSC examination within a period of six months and production of certificate to that effect. It was also required that he should pass departmental typing test of 30 w.p.m. within a stipulated period of six months. There were further conditions like transferability anywhere in India. The applicant accepted the post and started working as Junior Clerk. By Exbt.C, D, E and F, he was given extension as Junior Clerk (ad hoc) from time to time and he continued to be so till February 1991. He was also allowed the benefits of pay fixation in the light of the recommendations of the IVth Pay Commission. By Exbt.H order dated 15/28/2/91 the applicant was reverted as Peon with effect from 15.2.91. After a break of nearly 2 1/2 months, on 2.5.91, as per Exbt.I order, the applicant was promoted on ad hoc basis (officiating) as Junior Clerk with effect from 2.5.91 ~~in~~ the relevant scale with usual allowances on account of the promotion of one Smt. N.S.Kulkarni as Senior Clerk. In the said memorandum, it was stated that the applicant's ad hoc appointment to the post of Junior Clerk would not bestow on him any claim for regular appointment and that the service rendered on ad hoc basis would not count for the purpose of seniority in the ~~case~~ matter of promotion to the higher grade. It was further stated in the said memorandum that the applicant would be reverted to his original post i.e. Peon as soon as Smt. N.S.Kulkarni is reverted to his original post i.e. as Junior Clerk.

Clerk. The said re-appointment was also subject to the same terms and conditions as mentioned in the original appointment order (Exbt.B) dated 1.12.88. His pay was accordingly fixed in the scale of Junior Clerk. The appointment was extended from time to time as per Exbts.K,L,M,N and O. As per the last of the extension orders, viz, order dated 3.11.97, extension was allowed upto 30.5.98. Apart from earning increments in the Junior Clerk's scale, the applicant also drew the benefits of Vth Pay Commission's recommendations. While continuing so, as Junior Clerk from May, 1997, for nearly 7 years, the applicant was served with the impugned order Exbt.A dated 17.4.98 reverting him from the post of Junior Clerk to his substantive post of Peon retrospectively from 7.4.98. The applicant is aggrieved by the said order as it is according to him, arbitrary and violative of Articles 14 and 16 of the Constitution. The conditions of appointment like passing the SSC examination and the Departmental typing test, having been fulfilled, the applicant was entitled to continue as Junior Clerk since his appointment was against a regular vacancy. No reasons are assigned for the retrospective reversion after a long period of service as Junior Clerk against a regular vacancy. The post of LDC was still lying vacant at the time of filing the O.A., and even after his reversion to the post of Peon, the applicant was asked to carry out the same duties and responsibilities of a Junior Clerk. Thus, the impugned order was ex-facie illegal, according to the applicant. With these pleadings, the applicant seeks the following reliefs:

- i) Declare that the impugned order dated 17.4.98 (Exbt.A) seeking to revert the applicant is illegal, arbitrary and liable to be quashed and set aside.

ii) Declare that the applicant is regularly promoted as Junior Clerk(LDC) with effect from 1.12.1988/2.5.1991.

iii) The impugned order dated 17.4.1988 (Exbt.A) be quashed and set aside.

3. The respondents in their reply statement have put up stiff resistance to the O.A. Inspite of the reposting of the applicant as Junior Clerk on account of what is described as a genuine misunderstanding of the import of the interim order made by this Tribunal on 28.4.98 directing continuance of status quo. On merit, it is pointed out by the respondents that the impugned reversion order was in pursuance of the instructions contained in Director General of Civil Aviation's letter No.A.32016/2/98-E-I dated 26.3.98 (Exbt.2) regarding reversion of all ad hoc appointees on the basis of Financial Commissioner(M/o of Civil Aviation)'s O.O. communication dated 14.1.98 (Exbt.3). As per the latter instructions all the ad hoc appointees continuing in service beyond one year without DOPT's approval were to be reverted, if their ad hoc appointment was not found justified/approved before the salary bill for 1998 was processed. The appointment of the applicant was purely ad hoc as is borne out by the appointment order dated 2.5.91 ^{and} the _{the} vacancy was not regular. It was an ad hoc vacancy. It is also submitted by the respondents that the applicant never thought it fit to make a representation seeking redress of his grievance with the departmental authorities in accordance with the Government of India's decision No.9(a) of CCS (Conduct) Rules (Exbt.6). It is also pleaded by the respondents that since 10% quota for promotion of Group 'D' employees to the post of Junior Clerk had already been exhausted because of the appointment of one Shri Y.L.Palev in July 1997, the applicant had to be necessarily reverted.

4. Shri Ramamurthy, learned counsel for the applicant and Shri V.D.Vadhavkar representing the respondents were heard. According to the learned counsel for the applicant, the retrospective reversion ordered as per the impugned order is indefensible since the applicant had been given an extension of appointment upto 31.5.98. Further, in view of the applicant's long spell of appointment as Junior Clerk, it could not be said that it was a purely ad hoc arrangement. Even after the applicant was reverted, the posts remained vacant. Therefore, the action on the part of the respondents was totally unjust. Counsel would draw our attention to the fact that even in the second appointment order, it has been specifically mentioned that the conditions spelt out in the earlier appointment order in 1988 would apply in so far as the applicant's appointment against the vacancy caused by the ad hoc promotion of Smt.Kulkarni was concerned. Thus, there was continuity of service inspite of a short break in 1991. In any case, there was unbroken service as Junior Clerk from 1991 to 1998. The respondents' argument that the reversion was ordered in the light of the instructions of the DOPT(Exbt.2) is fallacious as the said letter does not specifically cover the applicant's case. The mere use of the word ad hoc would not be relevant when one looks at the substance of the appointment order. The applicant was not to be reverted until Smt.Kulkarni was reverted from her own ad hoc promotion post, which means there was a regular vacancy which could be occupied by him until the event of Smt Kulkarni's reversion tookplace. In this case, Smt Kulkarni's reversion never tookplace and therefore, the vacancy against which his appointment was ordered was very much real and not ad hoc as contended by the respondents. The respondents' further contention that since the quota of 10% earmarked for Group 'D' officials had already existed, the applicant cannot be given

Q.

continued accommodation in the Group 'C' post of Junior Clerk also is erroneous according to the learned counsel for the applicant, since the applicant's appointment ~~is~~ 7 years before the reversion took place was against an identified regular vacancy.

5. Shri VD Vadhavar, learned counsel for the respondents has reiterated the pleadings in the reply statements and the Annexures thereto. The contentions of the counsel rest on the ground that the appointment of the applicant was purely on ad hoc and temporary basis. He had been specifically informed of the fact that his appointment did not amount to conferring on him any right which was attached to a regular appointment. He cannot, therefore, question the reversion as and when the reversion became inevitable, according to learned counsel. It is further contended by the learned counsel that the quota for promotion to Junior Clerk from the Category of Group 'D' employees was limited to 10% and such quota having been exceeded on account of the promotion of his senior one Shri Y.L.Palav in July 1997, applicant's reversion was inevitable. There was no malafide exercise of power in this case. It was purely an administrative necessity and therefore it was just and proper under the existing rules and regulations. He would, therefore, vehemently plead that the application is without merit and hence liable to dismissed.

6. We have considered the pleadings and other material on record as well as the arguments put forward in this case. We find that the applicant was holding the substantive post of a Peon under the third respondent. He was initially promoted as Junior Clerk as per Exbt.B order dated 1.12.88. This order is reproduced in full hereunder, since the conditions therein have been made applicable even on his subsequent reappointment:

Q.

"Reference is made to his application dated 25.5.88 for the post of Junior Clerk.

In accordance with the instructions contained in DGCA-Headquarters letter No.A-12012/2/88-E.I dated 25th October 1988, Shri V.G.Narkar, Peon attached to this office is hereby appointed as Junior Clerk on purely temporary basis in the office of Director of Airworthiness CAO, Bombay in the scale of Rs.950-20-1150-EB-25-1500 plus usual allowances admissible under the rules from time to time. The terms and conditions of the appointment are as follows:

1. He should pass SSC Examination within a period of 6 months and produce certificate to this effect. In case of non-production of SSC pass certificate in stipulated period, he will be reverted back to his original post of Peon.
2. As per standing instructions, he will also be required to pass departmental typing test of 30 w.p.m. within a stipulated period i.e. 6 months, even though he has produced qualifying typing certificate from the recognised institute.
3. He is liable to be transferred anywhere in India.
4. He is required to take the prescribed oath of allegiance to the Constitution of India.
5. If any declaration given by him in connection with his candidature to the post proves to be false or found to have wilfully suppressed any material and information he will be liable to revert to his original post i.e. Peon.
6. If he accepts the appointment on the above terms and conditions, he is directed to report for duty in this office for the post of Junior Clerk immediately."

The initial appointment was given in pursuance of his application dated 25.5.88. There is no stipulation regarding the period of appointment as such except that it is purely on temporary basis. The two main conditions regarding qualification appeared to have been fulfilled by the applicant in due course. We find from record that the said temporary appointment was punctuated by periodical extensions as is evidenced by Exbt.C, D, E and F. It is also seen that the applicant's pay was revised in the light of the IVth Pay Commission's recommendations as per Exbt.G. No doubt, he was reverted by order dated 15/28.2.91. Thus, the applicant who

served as Junior Clerk for less than 3 years found himself reverted with effect from 15.2.91. However, he was again promoted on ad hoc basis (officiating) as Junior Clerk with effect from 2.5.91 as per Exbt.I. This order is reproduced below:

"Due to promotion of Smt.N.S.Kulkarni as Senior Clerk in the place of Shri SD Jadhav who promoted as Head Clerk on ad hoc basis, Shri V.G.Narkar, Peon of this office is hereby promoted on ad hoc basis (officiating) as Junior Clerk with effect from 2nd May, 1991, in the scale of Rs.950-20-1150-EB-25-1500 plus usual allowance admissible under the rules from time to time. The terms and conditions of the appointment are as follows:

- 1) Adhoc appointment of Shri VG Narkar to the post of Junior Clerk will not bestow on him any claim for regular appointment and the service rendered on adhoc basis will not count for the purpose of seniority in the grade of promotion to the higher grade.
- 2) He will be reverted to his original post i.e. Peon as soon as Smt.N.S.Kulkarni is reverted to her original post i.e. as Junior Clerk.
- 3) If he accepts the appointment on the above terms and conditions, he is directed to report for duty in this office for the post of Junior Clerk on adhoc basis immediately.

The above adhoc promotion as Junior Clerk will be valid for a period of six months with effect from 2.5.1991 or date on which she accepts the same."

It is clear from the above particulars that the applicant had been promoted to the post of Junior Clerk as per order dated 2.5.91 (Exbt.I) due to the promotion of Smt.N.S.Kulkarni as Senior Clerk. Thus, the fact that there was a regular vacancy left by Smt Kulkarni on her promotion as Senior Clerk is evident. It is no doubt stated in the reappointment order that the ad hoc appointment granted to the applicant would not bestow on him any claim for regular appointment and that such service would not count for the purpose of seniority in future. However, it is significant to note that the applicant could be reverted to his original post i.e. as Peon only if Smt.Kulkarni was reverted to her original post i.e. as Junior Clerk. In our view, the applicant, therefore, had the legitimate expectation that he

would continue as Junior Clerk until Smt.Kulkarni was reverted to her original post. That latter event has never taken place. At least no such plea has been taken. There is no other circumstance suggesting that the applicant had been wrongly given promotion as Junior Clerk. He is seen to have fulfilled all the stipulated conditions regarding eligibility. It is also apparent that inspite of his reversion which is the subject matter of dispute of this O.A., the applicant, while remaining as Peon on paper and drawing salary of a Peon, is in reality carrying out the functions of Junior Clerk. Such an allegation has been raised by the applicant and we see no material effectively countering the same. With regard to the Exbt.3 communication and the consequent Exbt.2 communication allegedly forming the basis of the reversion order, we fail to understand whether a comprehensive review in this regard was undertaken which could be said to have rendered the applicant's reversion unavoidable. If there was, indeed, such a situation, it would not have been difficult for the respondents to file any material evidence in that regard. No such exercise has apparently been done. In any case, we are convinced that inasmuch as the applicant has been reverted after a long tenure as Junior Clerk in 2 spells, albeit the short break in between, the reversion on ground of ad hoc nature of appointment cannot be justified. It is well settled that protracted adhocism designed to nullify the right of an employee cannot be justified. The argument that the quota of 10% fixed for Group 'D' officials in the matter of promotion to Junior Clerk has been exceeded and that therefore the applicant had to be necessarily reverted is also not well founded in view of the fact that for long 7 years, the applicant has been carrying out the work as Junior Clerk against a regular vacancy. It is not shown as to how on the promotion of the applicant's senior, the quota was exceeded and that, therefore, the applicant had to be reverted. The very fact that the applicant was given periodic

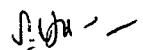
extensions even after such promotion(s) would render that argument weak. This argument is therefore not substantiated. The impugned order Exbt.A dated 17.4.98 is too cryptic to throw any light on the circumstances under which the applicant, who had been given extension upto 31.5.98 had to be reverted with effect from 7.4.98. The reversion order dated 17.4.98 which is intended to have retrospective effect from 7.4.98 is thus patently indefensible.

7. On the facts and in the circumstances explained above, we are of the considered view that the application is bound to succeed. The impugned order dated 17.4.98 Exbt.A is illegal, arbitrary and is liable to be set aside and we do so. The applicant who has been continuing as Junior Clerk on his reappointment with effect from 2.5.91 (Exbt.1) has a right to continue in the same post subject to the various conditions under which such appointment was given and in consonance with the rules and regulations in force. The applicant is also entitled to all consequential benefits from the date he stood reverted as per the impugned order as if he was not reverted on 7.4.98. Consequential orders giving effect to the above direction shall be issued by the respondents within a period of three months from the date of receipt of copy of this order.

8. The application is allowed as above. No costs.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



S.L.JAIN
JUDICIAL MEMBER

trs