

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1120/98

Date of Decision : 23<sup>rd</sup> August-2002

D.S.Bhavar

Applicant

Shri G.K.Masand

Advocate for the  
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.D.Vadhavkar for  
Shri M.I.Sethna

Advocate for the  
Respondents

CORAM :

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

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

- (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.1120/98

Dated this the 23<sup>rd</sup> day of August 2002.

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

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

D.S.Bhavar,  
U.D.C. in the Legal  
Cell of Central Excise,  
Headquarters, Mumbai V.

...Applicant

By Advocate Shri G.K.Masand

V/S.

1. Union of India  
through the Secretary,  
Ministry of Finance,  
Department of Revenue,  
New Delhi.

2. Commissioner of Central Excise,  
Headquarters, Mumbai-I,  
Central Excise Building,  
Maharishi Karve Road,  
Churchgate, Mumbai.

...Respondents

By Advocate Shri V.D.Vadhavkar  
for Shri M.I.Sethna

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 the declaration that order dated 26.11.1985 (Ex.B) is illegal, bad in law, of no consequences; to quash and set aside the same with consequential benefits.

*S.L.Jain*

..2/-

2. The applicant was appointed as Lower Division Clerk in 1975, promoted as Upper Division Clerk in 1979, Upper Division Clerk with a Special Pay in 1979. The post of Upper Division Clerk with Special Pay known as Tax Assistant since 1987. Vide order dated 3.11.1983 (Est.Order No.303/83, Ex.A), the applicant along with 13 others was promoted to the post of Inspector (OX) in the pay scale of Rs.425-800 plus usual allowances on adhoc basis, though on seniority position and excellent service record but for want of DPC meeting which is required as per Recruitment Rules.

3. He was placed under suspension by order dated 10.10.1985 (Ex.E) which was revoked vide order dated 14.6.1985 (EX.G). The said suspension was for holding any enquiry. He was reverted to the post of Inspector which he was holding since 1983 to the post of Upper Division Clerk vide Est.Order No.303 of 1985 dated 26.11.1985 (Ex.B).

4. The applicant represented vide his letter dated 5.2.1986, 3.9.1986 (Ex.H), 19.2.1987 (Ex.I), 10.3.1987. Vide order dated 15/16.4.1998 passed by the President, charges against the applicant and others vide Memo of charges 6.7.1989 and 3.1.1980 were dropped without prejudice to further action which may be considered under circumstances of the case. The applicant once again represented his case vide his letter dated 21.5.1998 (Ex.K), letter dated 25.6.1998 (Ex.L), 10.9.1998 (Ex.M) which were considered and replied vide order dated 26.10.1998 (Ex.N). Hence, this OA. for the above said reliefs which was filed on 10.12.1998.

*P.C. D.*

..3/-

5. After hearing the learned counsel for the applicant on 11.1.1999, the Tribunal ordered notice before admission returnable by 8.2.1999. The respondents put their appearances on 8.2.1999, the matter was adjourned to 19.3.1999, 3.5.1999 and on 13.8.1999 after hearing counsel appearing on both sides, the Tribunal passed the order admitting the OA. The Tribunal further passed the order which is extracted below :-

"Since we have admitted the OA., we will go into the question about legality and validity of order of reversion at the time of final hearing."

6. The Tribunal has admitted the OA., passed the above referred order which has become final between the parties. The learned counsel for the applicant in reply to the arguments by the respondents counsel with regard to limitation argued that after admission of an OA., particularly after hearing the parties when a conscious decision has been taken, the respondents are precluded from raising the point of limitation based on Section 21 of the Limitation Act. He argued that before admitting an application, the Tribunal should examine the question of limitation and if the Tribunal is of the opinion that OA. is barred by limitation, OA. need not to be admitted and the said exercise has been done by the Tribunal. Hence, the matter can not be reagitated once again. According to him, a mandates contained in Section 21 "A Tribunal shall not admit an application". When after hearing the parties the Tribunal has admitted the application now respondents are debarred from

*P. V. M.*

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raising the plea of limitation. He further argued that when the Tribunal has decided to go into question of legality of order of reversion, the said order has become final between the parties, now respondents cannot be permitted to raise the said question.

7. Without going into the question of limitation, in our considered opinion when OA. is admitted after hearing the parties with specific direction that the Tribunal should go into the question of legality of order, now though question of limitation is a question of law which can be allowed to be raised at any time, if not raised earlier. In view of the fact of a decision on the said question, we restrain ourselves to examine the question of limitation raised by the respondents.

8. The applicant was promoted to the post of Inspector (OX) vide order dated 3.12.1983 though on adhoc basis, was suspended on 10.10.1984 which was revoked on 14.6.1985 and thereafter reverted vide order dated 26.11.1985. By that time the applicant continued as Inspector (OX) on adhoc basis for nearly about two years. Whether in such circumstances the reversion order of the applicant can be held justified?

9. In view of decision rendered by this Tribunal in case of L.M. Medar vs. Union of India & Ors. (Full Bench) decided on 11.10.2000, the reversion of an officer though adhoc after putting service of more than one year on the ground that disciplinary proceedings are initiated is not in accordance with

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law. Though the said principle has been laid down in view of O.M. dated 24.10.1986 but the said principle holds good even in case of applicant for the reason that his adhoc appointment was only for want of DPC meeting, he continued on the said post for more than one year and it amounts to reduction in rank without there being an enquiry which offends Article 311 (2) of the Constitution of India.

"After relying on the principles laid down by the Apex Court in the case of P.L.Dhingra vs. Union of India, 1958 S.C.R.828, it was held that Article 311 of the Constitution of India makes no distinction between permanent and temporary posts and extends its protection equally to all Government servants holding permanent or temporary posts or officiating in any of them. The said judgment also takes notice of the case State of Uttar Pradesh & Ors. vs. Saughar Singh and Regional Manager & anr. vs. Pawan Kumar Dubey."

In this respect the learned counsel for the applicant relied on AIR 1971 SC 1221, Jagdish Prasad Shastri vs. State of U.P. & Ors. It is the fact that in case of reversion, question of hearing deserves to be provided. The learned counsel for the respondents replied to the said authority and contended that first the Court must determine whether initial appointment was permanent or officiating. It is true that the said proposition is also dealt in but there is no change in the proposition that even the applicant has held the post in officiating capacity protection under Article 311 of the Constitution of India is available to him".

10. The defence raised by the respondents that the applicant had completed 4 years regular service as UDC yet the applicant was considered for adhoc service in terms of Board's letter No.F.No.A-23011/64/19-AD III-A, dated 4.2.1981 (Ex.1) which

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states that UDCs who has four years service may be considered for adhoc promotion. As per Recruitment Rules, minimum 5 years regular service in the grade of UDC is required. Thus, on one hand respondents have placed reliance on Ex.1, acted accordingly, now taking shelter of Recruitment Rules, other persons who were promoted along with the applicant how they were dealt with did not place on record. In view of the said situation, the respondents cannot be permitted to take advantage of their own wrong, if any, as they are estopped based on principle of estoppel.

If it is true that fresh chargesheet is issued to the applicant on 13.10.1998 for misconduct but the said charge sheet does not come in way to the applicant.

11. In our considered opinion the reversion order dated 26.11.1985 deserves to be declared illegal, liable to be quashed and set aside.

12. OA. is allowed to the extent that the order dated 26.11.1985 is declared illegal, it is quashed and set aside *h* *h* *h*

As OA. is filed on 10.12.1998, the applicant represented vide his representation dated 21.5.1998, the applicant is entitled to only notional benefits till 21.5.1998; thereafter he would be entitled to monetary benefits. No order as to costs.

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

*B.N. Bahadur*  
(B.N. BAHADUR)  
MEMBER (A)

mrj.