

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.748/98

Date of Decision: 28.06.2002

Shri K.J. George.

Applicant(s)

Shri M.S. Ramamurthy.

Advocate for applicants

Versus

Union of India & another.

Respondents

Shri R.K. Shetty.

Advocate for Respondents

CORAM: HON'BLE SMT. SHANTA SHAstry. .. MEMBER (A)  
HON'BLE SHRI SHANKER RAJU. MEMBER (J)

- (1) To be referred to the Reporter or not? \*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? X
- (3) Library ✓

*Shanta S*  
(SMT. SHANTA SHAstry)  
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 748/1998

THIS, THE 28TH DAY OF JUNE, 2002

CORAM: HON'BLE SMT. SHANTA SHAstry. MEMBER (A)  
HON'BLE SHRI SHANKER RAJU. MEMBER (J)

Shri K.J. George,  
resident of  
T/III/158 C G S Qrts.,  
Wadala, Mumbai 400 031. ... Applicant

By Advocate Shri P.A. Prabhakaran.

Versus

1. The director General of  
Quality Assurance, Directorate  
General of Quality Assurance,  
Department of Defence Productions,  
Ministry of Defence,  
DHQP.O. New Delhi-110 011.
2. Senior Quality Assurance Officer,  
O/o Sr. Quality Assurance Establishment  
(Armaments) DGQA Complex,  
L B S Marg, Vikhroli,  
Mumbai-400 083. ... Respondents

By Advocate Shri R.K. Shetty.

O R D E R

Hon'ble Smt. Shanta Shastry. Member (A)

The relief sought in this application is to quash and set aside the impugned orders of reversion vide letter dated 07.8.1998 of the review DPC. The applicant entered service in the office of SQAE (V) on 14.12.1963 as LDC. He was promoted as UDC in the year 1982 and was posted in the same office. In 1998 he was granted his second promotion by order dated 28.4.1998 in the post of OS Grade-II. The applicant's name was at Sl. No.39 in the panel prepared for promotion to the post of OS Grade-II. The applicant accordingly was

posted in Mumbai against existing vacancy. Thereafter, a review DPC was held consequent upon enhancement of percentage of superannuation from 58 years to 60 years. This review DPC drew up a panel on 15.6.1998 by deleting the names of individuals from Sl. No.39 to 59 from the earlier select panel dated 27.3.1998. Based on this, orders were passed on 07.8.1998 to revert the applicant as well as the others who did not find place in the revised panel and accordingly, the applicant was also reverted to the post of UDC with effect from 13.8.1998 vide reversion order dated 24.8.1998. Being aggrieved by this action of the respondents, the applicant has approached this Tribunal for redressal of his grievance. According to the applicant while reverting the applicant the respondents did not take into consideration the recommendation of the 5th Pay Commission relating to Assured Career Progression scheme and also the vacancy existed. The respondents ought to have given him a notice before reverting him.

2. The respondents submit that due to enhancement in the age of superannuation the applicant including some others in the select panel of 27.3.1998 had to be reverted to their original post of UDC as there were no vacancies. This was on account of a policy decision and therefore their action was justified. The respondents have enclosed the details of authorised strength in the DGQA in the post of OS Grade-II which shows that the

required number of OS Grade-II were already in position and hence the applicant could not be continued in the post of OS Grade-II and there was no vacancy. According to the respondents, the applicant's demand is actually for creation of new posts to accommodate him in the post of Grade-II. Creation of post is a policy matter of the Government and courts and Tribunals cannot interfere in it. The respondents are relying upon the decision of the Hon'ble Supreme Court in the case of State of Madhya Pradesh Vs. Dr. Sumedh Gajendra Gadkar wherein the Hon'ble Supreme Court clearly held that the creation of posts is a policy matter. According to the respondents, the OA is absolutely devoid of merit and deserves to be instantly dismissed.

3. The respondents have further submitted that in so far as the recommendations of the 5th Pay Commission on the question of granting financial upgradation is concerned, the same had not been implemented by Union of India and as and when it is implemented the applicant's case would be considered duly. According to the respondents, the decision of reversion has been made applicable to all concerned, no injustice has been done only to the applicant specifically.

4. According to the applicant there are still two vacancies at Mumbai as per the statement given by the respondents vide letter of 01.01.1999. According to

this letter two posts of OS Grade-II were lying vacant from 01.02.1997 and 01.5.1997 due to retirement of the incumbent. The applicant therefore feels that he could be adjusted against one of the vacant post in Mumbai.

5. The respondents submit that this is an All India cadre and the posts are to be filled based on the combined seniority list of the UDC all over India and therefore, even if a vacancy were available in Mumbai that would go to the senior most above the applicant as there are still two more persons above the applicant in the seniority list who were reverted.

6. We find that this is purely a policy matter because a decision was taken by Government of India to increase the age of superannuation the expected resultant vacancies did not occur and therefore those who were promoted in anticipation of the vacancies had to be reverted and action of the respondents cannot be found fault with. At the same time, we find that though it is an All India cadre and the vacancies are filled on the basis of the combined seniority list, yet two vacancies seem to be continued in Mumbai even after the applicant was reverted with effect from 13.8.1998. Apparently the posts do not seem to have been filled. We therefore advised the respondents to ascertain whether the posts were lying vacant even after 13.8.1998 till the date on which the applicant was restored to the

post later on. The learned counsel for the respondents agreed to file the necessary information latest by 24th June, 2002 in this connection.

7. If it transpires that there was a vacancy between the intervening period from 13.8.1998 till the applicant was repromoted, then in our considered view, the applicant's reversion with effect from 13.8.1998 would be redundant. Further, our attention has been drawn to a letter dated 04.9.1998 whereby the sanction of the President has been conveyed for upgradation upto 8% of UDC in the DGQA and three posts in the DGQA (N) to that of Assistant without any special pay of Rs.70/- per month. The learned counsel for the applicant therefore urged that since there are many more posts of UDC which have become available, the respondents ought to have considered restoring him to the post of OS Grade-II immediately on receipt of presidential sanction for upgradation of the post. The learned counsel for the respondents, however, argued that it is not binding on the respondents to fill up all the vacancies. It is for them to decide whether to fill up a vacancy or not. We agree that it is entirely for the respondents to decide about filling up of a vacancy and in normal course, this Tribunal would not like to interfere with it. However, in the present case, it is not the question of filling up of a normal vacancy. Here is a case where a person had been promoted earlier and has now been reverted

because there is no vacancy. This is due to unforeseen circumstance. A person was already promoted to the grade of OS II and if the vacancy existed then there was no point in reverting him, he ought to have been continued in the same vacancy. The respondents have not filed the information in regard to the vacancy in Mumbai till now. We are therefore, proceeding to dispose of the matter without waiting further. According to us, since there is no material produced to controvert the statement in the letter of 01.01.1999 we have to hold that a vacancy existed even while the applicant was reverted on 13.8.1998 and continued thereafter. We have therefore, to hold that the applicant's reversion was uncalled for provided none senior to the applicant among the revertees claimed the same. Accordingly we direct the respondents to consider placing the applicant against one of the vacancies in Mumbai in the post of OS Grade-II (now converted into the post of Assistant after the recommendations of the 5th Pay Commission) with effect from the date he was reverted till the date he was restored <sup>and</sup> till the date the vacancy existed subject to the condition that the claims of the persons senior to the applicant amongst those reverted shall be considered first.

8. Further, the 5th Pay Commission have already given recommendations on ACP scheme and DOP&T have issued OM dated 09.8.1999 providing for two financial

upgradation after 12 years and 24 years respectively. The respondents can also consider the applicant against the aforesaid scheme if he is otherwise eligible. The OA is thus allowed. No costs.

S. Raju

(SHANKER RAJU)  
MEMBER (J)

Shanta F

(SMT. SHANTA SHAstry)  
MEMBER (A)

Gajan