

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 24 of 1997.

DATE OF DECISION...3-5-1999.....

Sri Mahendra Paswan (PETITIONER(S))

Sri S. Sarma. ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors. RESPONDENT(S)

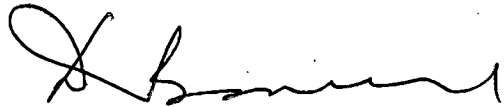
Sri A. Deb Roy, Sr.C.G.S.C. ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 24 of 1997.

Date of Order: This the 3rd Day of May, 1999.

Justice Shri D.N.Baruah, Vice-Chairman.

Shri G.L.Sanglyine, Administrative Member.

Shri Mahendra Paswan,
Refrigerator Mechanic, H.S.Grade-II,
MES No. 224169,
Guwahati Airport, Borjhar,
Guwahati-781015.

... Applicant.

By Advocate Sri S.Sarma.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Defence,
New Delhi.
2. The Chief Engineer,
Eastern Command,
MES, Calcutta.
3. The Chief Engineer,
Siliguri Zone, MES,
Siliguri.
4. The Commandar Works Engineer (A/E),
A.T.Road, Santipur, Guwahati-9.

... Respondents.

By Advocate Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R

BARUAH J.(V.C)

The applicant has approached this Tribunal for the second time in connection with the Annexure-II order dated 8.6.1992 cancelling his promotion to the post of Refrigerator Mechanic Highly Skilled Grade-II. Facts are :

The applicant was originally appointed as a Casual Mazdoor. He was thereafter regularised in the grade of Motor Pump Attendant. Thereafter he was again promoted to the post of Refrigerator Mechanic and on 7.4.1988 he was

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promoted to the post of Highly Skilled Grade-II Refrigerator Mechanic. His pay was fixed in the scale of Rs.330-480/-.

Pursuant to his promotion to the said post he was discharging his duties as Refrigerator Mechanic Highly Skilled Grade-II but suddenly he received Annexure-II notice dated 8.6.1992 disturbing his seniority position. He was further asked to say against the action taken giving 15 days time. In reply thereof the applicant submitted Annexure-III representation against the action taken by the respondents. Thereafter by Annexure-IV order his promotion was cancelled. As a result he was reverted to the next grade. Being aggrieved the applicant submitted Annexure-V representation to consider his case..As nothing was done the applicant was compelled to approach this Tribunal by filing O.A.No.152/92. The said O.A. was disposed of by this Tribunal by judgment and order dated 7.9.1995 (Annexure-IX). This Tribunal after considering the entire facts and circumstances of the case passed the following order. We quote the order as below :

"The position therefore that emerges is that the applicant was promoted against the quota for reserved candidates at point 22 according to the 40 point roster. The impugned order appears to have been passed without considering the roster points properly. The order is also unsustainable for violation of principles of natural justice inasmuch as the impugned order is passed without considering the grounds raised by the applicant in his representation which included the ground based on reservation roster point."

"In the result the impugned order dated 8.7.92 and the letter (Notice) dated 8.6.92 are hereby quashed and it is declared that the applicant shall be deemed to continue in service in the promotional post. It will be open to the respondents to reconsider the matter if so advised. In that event they shall deal with the contentions of the applicant raised in his representation and also have due regard to the provisions relating to reservation quota under the 40 point roster. If any such reconsideration is done and the decision is taken that shall be communicated to the applicant"

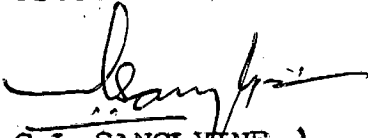
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As per the order this Tribunal quashed the order dated 8.6.1992 and declared that the applicant should be deemed to continue in service in the promotional post. However, it was made clear that it would be open to the respondents to consider the matter, if so advised. This Tribunal directed the respondents to deal with the contention of the applicant raised in his representation and also ^{to} have due regard to the provisions relating to the reservation quota under point 40 roster. The order was passed as far back in September 1995. Pursuant to that Annexure-IX order of this Tribunal the applicant was promoted. However in January 1997 the Annexure-XI impugned order was passed. Against that the applicant has approached this Tribunal. It may be pertinent to mention after the judgment the respondents submitted a Misc.Petition (M.P.No.118/96) praying inter alia to allow some time to them to implement the order. Prayer was allowed by granting six months time. This shows that the respondents had accepted Annexure-IX judgment and order dated 7.9.1995. However, suddenly this Annexure-XI order was passed. The applicant has approached this Tribunal for the second time against this order. In due course respondents have entered appearance and filed written statement.

2. We have heard Mr S.Sarma, learned counsel for the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents. The contention of Mr Sarma is that this Tribunal set aside and quashed Annexure-II impugned order dated 8.6.1992 and also the Annexure-IV order dated 8.7.1992. The Tribunal having set aside and quashed those orders, those orders are now not in existence of the eye of law. The Tribunal has very clearly stated that the action was taken

in violation of the principle of natural justice inasmuch as before disturbing the seniority position of the applicant in the promotional post, he was not given any opportunity of hearing and the roster system was also not properly considered. This time on the basis of the representation passed in O.A. 152/92 that was submitted before the judgment/the present impugned order was passed without complying with the directions given by this Tribunal. The impugned order was passed without proper application of mind and to restore the order dated 25.6.1992 which was the subject matter of Annexure-IV, which was set aside by this Tribunal. Therefore, according to Mr Sarma the action was not only arbitrary and illegal but also unreasonable. Mr Deb Roy having faced with this problem is not in a position to support the Annexure-XI order inasmuch as no opportunity was given. There was no proper discussion regarding the roster points. We have perused the application, written statement and also the annexures, specially Annexure-II, IV and XI. On hearing the counsel and going through the documents we have no hesitation to come to a conclusion that the Annexure-IV order was passed without following the principles of natural justice and also without properly considering the roster points. By restoring the order dated 25.6.1992 the respondents have indirectly restore the Annexure-IV order which had already been set aside and quashed by this Tribunal. In view of the above we find sufficient force in the submission of Mr Sarma. Accordingly we set aside the Annexure-II, Annexure-IV and Annexure-XI impugned order.

Application is allowed. Considering the entire facts and circumstances of the case however, we make no order as to costs.


(G.L. SANGLYINE)
ADMINISTRATIVE MEMBER


(D.N. BARUAH)
VICE CHAIRMAN