



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/1453/2017

Date of order : 8.11.2017

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

SUJIT SEN

VS

UNION OF INDIA & ORS.

For the applicant : Ms. T.Banerjee, counsel

For the respondents: Mr.K.Prasad, counsel

O R D E R

Ms. Jaya Das Gupta, A.M.

The applicant Sri Sujit Sen has approached CAT seeking the following reliefs :

- a) An order do issue setting aside and/or cancelling the order dated 10th October, 2017 vide No. 147/A-32016/ Promotion/JTA(D)/8/ Adm/ER/04 Vol.II passed by the Deputy Director (P&A) for additional Director General & Head of the Department, Eastern Region, Geological Survey of India being Annexure A/19 hereto and/or not to give any effect or further effect to the said order till disposal of this application;
- b) An order do issue directing the respondent authorities specifically the respondent No.4 to withdraw the order dated 10th October, 2017 vide No. 147/A-32016/ Promotion/JTA(D)/8/ Adm/ER/04 Vol.II passed by the Deputy Director (P&A) for additional Director General & Head of the Department, Eastern Region, Geological Survey of India being Annexure A/19 hereto and allow the applicant to continue to work as JT (Drilling) with consequential and further benefits of service;
- c) An order do issue directing the respondents to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the points at issue;
- d) And to pass such further or other order or orders and/or direction or directions as to this Hon'ble Tribunal may seem fit and proper.

He has also sought the following interim relief :

"An order do issue directing the respondent authorities specifically the respondent No.4 to withdraw the order dated 10th October, 2017 vide No. 147/A-32016/ Promotion/JTA(D)/8/ Adm/ER/04 Vol.II passed by the Deputy Director (P&A) for additional Director General & Head of the Department, Eastern Region, Geological Survey of India being Annexure A/19 hereto and allow the applicant to continue to work as JT (Drilling) till disposal of this application."

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It is observed that the main relief and the interim relief lead to the same effect namely to stall the operation of order dated 10th October, 2017.

2. Ld. Counsel for the respondents strongly refuted the prayer for imposition of any interim relief because strictly as per Hon'ble High Court's order the respondents have given a personal hearing to the applicant and then only the final order of reversion has been given. He has also submitted that any genuine mistake can always be corrected. He has referred to the proceeding of personal hearing in respect of the applicant, Shri Sujit Sen, Drilling Assistant, ER, GSI in compliance of the order dated 4.7.2017 passed by Hon'ble High Court in AST No. 139/2017, relevant portion of which is set out below :

" In response to this office letter, the CHQ intimated in its letter dated 9/10.3.2017 that as per rule, the crucial date for counting the qualifying service for the vacancy year 2012-2013 is 1.1.2012 and not 1.1.2013 as done in the instant case. The relaxation allowed in the DG, GSI office order dated 11.4.2013 was specifically meant for the year 2012-2013 and all the calculation for the counting of residency should be done from the 1.1.2012.

Further, in terms of DG, GSI, letter No. A-32019/6/(Region)/10-15A dated 26.4.2017, The special relaxation of qualifying service i.e. up to one year in respect of all non-gazetted posts/vacancies of 2012-2013 was granted by Director General's, GSI office order dated 11.4.2013 was withdrawn since it is not in conformity with the DoPT guidelines and was requested to conduct the Review DPC on 27.4.2017 in respect of all DPC meetings conducted for the vacancies of the year 2012-2013 in terms of DG, GSI order dated 11.4.2013 in order to rectify the discrepancies occurred on account of above relaxation.

Accordingly, a Review DPC held on 27.4.2017 and observed that he was not eligible for promotion in the vacancy year 2012-2013 as he had not completed 08 (eight) years' regular service in the grade of Drilling Assistant for promotion to the post of JTA (Drilling) as on 1.1.2012 as he had joined in the grade of Drilling Assistant on 20.4.2005. As per the then Recruitment Rules of JTA (Drilling) notified vide GSR No. 264 dated 18.5.2001, the minimum residency period should have been eight years' regular service in the grade of Drilling Assistant for promotion to the post of JTA (Drilling). Accordingly, Shri Sujit Sen was reverted back to the post of Drilling Assistant from JTA (D) w.e.f. 26.4.2013 by the Addl. Director General & HoD, ER, GSI as per recommendation of review DPC vide this office order No. 804-812/A-32016/Promotion/JTA(D)/8/Adm./ER/2004, Vol. II, dated 28.4.2017."

3. The earlier CAT's order which was impugned in the petition served in the Hon'ble High Court on 4.7.2017 in AST 139/2017 has not been enclosed by the applicant. However, from the order dated 4.7.2017 of Hon'ble High Court it appears that the only reason why the matter is again before the Tribunal is that the order of the Tribunal had become infructuous because the respondent authorities did not accord personal hearing to the applicant before reverting

him back to the feeder post from the promotional post. The relevant portion of the Hon'ble High Court's order is set out below :

"It is well settled that a order of reversion cannot be passed without a personal hearing being afforded to the affected employee. In these circumstances, the impugned order of reversion which has admittedly been passed without hearing the petitioner, is required to be set aside rather than passing any further order in this matter. We direct the respondents to afford a personal hearing to the petitioner before acting on the proposal to revert him. It appears from the record that the petitioner had submitted a representation which has been rejected by the authorities. That order of rejection which is dated 11th May, 2017 is also set aside.

Since we have quashed the order of reversion dated 28th April, 2017 and the order dated 11th May, 2017, in the event the respondents wish to revert the petitioner, they shall afford him a personal hearing before passing any order of reversion.

In view of the order that we have passed, the Original Application before the Tribunal has become infructuous and is, therefore dismissed.

In the event the respondents do revert the petitioner after hearing him, they shall not act on the order passed for a period of two weeks after the order is communicated to the petitioner."

4. A personal hearing has now been accorded to the applicant by respondent meeting the direction of Hon'ble High Court.
5. As per the direction of the Hon'ble High Court a personal hearing was given to the applicant by the respondent authorities and an order was passed reverting back the applicant to the feeder post again. Such order is enclosed below :

"GOVERNMENT OF INDIA

Geological Survey of India
Easter Region
Bhu-Bijnan Bhawan,
Block DK-6, Sec.II,
Salt Lake City, Kolkata.

No. 1471/A-32016/Promotion/JTA(D)/8/Adm/ER/04 vol.II

Dated, the 10th October, 2017.

OFFICE ORDER

I compliance of order dated 4/7/2017 passed by the Hon'ble Calcutta Court in AST No. 139 of 2017 arising out of OA NO. 350/737/2017, a personal hearing in respect of Sri Sujit Sen, Drilling Assistant, ER, GSI was conducted by the Additional Director General & HoD, Eastern Region, GSI on 25th Sept.2017 in his Chamber, Therefore, Sri Sujit Sen attended in the proceedings of personal hearing on the scheduled date. Sri Sujit Sen was heard in person in details pertaining to reversion from JTA (Drilling) to Drilling Assistant. Sri Sen also submitted a written statement containing 05(five) pages. The Additional Director General & HoD, ER, GSI after hearing Sri Sujit Sen, Drilling Assistant and going through his written statement is of the view that Sri Sujit Sen

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had not completed the required residency period of 08(eight) years when he was promoted to the post of JTA (Drilling) on 26.4.2013. **As per rules, any order issued by Government can be modified or withdraw if it is not as per codal provisions.** Since Sri Sujit Sen along with other employees at various GSI offices were promoted to vacant posts by mistake, the Review DPC was held on 27/4/2017 at various offices of GSI, uploading said letter in GSI Portal. As per the provision contained in DoPT OM NO. 22013/1/97-Estt(D), dated 13.4.1998, Review DPC can be held where ineligible person is considered by mistake & where some procedural irregularities were committed by DPC. Based on these provisions & instructions from the office of the DG,GSI, the Additional Director General & HoD, ER constituted a Review DPC and the said DPC recommended for reversion of Sri Sujit Sen to the post of Drilling Assistant and accordingly recommendation was accepted by the Additional Director General & HoD, ER, GSI which is as per set Rules and procedures. All the allegations made by Sri Sujit Sen are baseless and not based on facts.

Therefore, on the recommendation of Review Departmental Promotion Committee held on 27.4.2017, the Addl. Director General & HoD, GSI, Eastern Region hereby reverts back to the following incumbent to the post of Drilling Assistant (now re-designated as Drilling Assistant Gr.II) from the post of JTA (Drilling) w.e.f. 26.4.2013 as detailed given below. After reversion he will be placed in the pre-revised Pay Band PB-1, Rs.5200-20,200/- with Grade Pay of Rs.2000/-.

S.No.	Name of incumbents	Date of promotion based on earlier DPC held on 26.4.2013 for promotion to the post of JTA (D)	Date of reversion from the post of JTA (D) to Drilling Assistant (now redesignated as Drilling Assistant Gr.II) as per the Review DPC held on 27.4.2017
1	Shri Sujit Sen	26/4/2013	26/4/2013

6. As the Hon'ble High Court has given 2 weeks not to act on the order passed for reversion the applicant has again approached CAT in the present OA seeking an interim order staying the reversion.

7. It has already been stated above that the final relief and the interim relief effectively lead to the same result i.e. reversion should not take place now.

8. It is apparent that as per this office order dated 10.10.2017 reversion order resulted because of mistakes made in the original order and according to the respondents mistakes can be corrected. This is borne out by the Hon'ble Supreme Court's order given in the case of **VSNL -vs- Ajit Kumar [2008 (11) SCC 591]** that " **it is well settled that a bonafide mistake does not confer any right on any party and it can be corrected.**"

9. Ld. Counsel for the applicant has depended on the interim relief, given according to her, in similar cases by CAT, Hyderabad Bench (page 73 of OA) and CAT Jaipur Bench (page 74(A) of OA). Both these orders have been given

by Single Member Bench. However, we have already taken a view in this Bench earlier consisting of Hon'ble Justice G.Rajasuria, Judicial Member and Ms. Jaya Das Gupta, Administrative Member that interim orders cannot act as precedent.

10. The Hon'ble Apex Court has repeatedly directed that interim relief cannot be given in the garb of final relief sought. Some of the directions of Hon'ble Apex Court in the matter are given below :

i) **Public Services Tribunal Bar Association -vs- State of U.P. & Anr.**
[2003 SCC (L&S) 400]

" 25. He has a right to approach the High Court under Article 226 of the Constitution of India for redressal of his grievance for interim relief. Power to grant interim relief from the Tribunal has not been taken away completely. It has only been taken away partially. Referring to the following judgments viz. (i) Delhi Cloth & General Mills Co. Ltd. v. Shri Rameshwar Dyal & Another reported in 1961 (2) SCR 590, (ii) U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan reported in 1993 Supp. (10) SCC 483; and (iii) State of Haryana v. Suman Dutta reported in 2000 (10) SCC 311, it was contended that this Court has consistently been of the view that final relief could not be given at the interim stage. In case the order of suspension or termination or dismissal or removal is stayed at the interim stage it amounts to allowing the petition itself at the interim stage. This Court in State of Haryana's case(supra) has held that order of termination could not be stayed by interim order. In case any public servant is finally ordered to be reinstated after quashing the order of termination, removal, dismissal, suspension etc., he can be compensated by the courts by appropriately moulding the relief whereas in cases where the order of removal, dismissal, termination etc. is stayed at the interim stage but later on the petition is dismissed then the courts cannot mould the relief to undo the mischief resulting from the interim order passed. Under the circumstances it was contended by him that taking away of the jurisdiction to grant interim relief against an order of suspension, dismissal, removal, deduction of rank, compulsory retirement or reversion of a public servant or to grant interim relief against an order of transfer or against an adverse entry made in the record is not violative of Article 14 & 16 of the Constitution.

34. In Delhi Cloth and General Mills Co. Ltd. case (supra) this Court examined the point as to whether a workman could be ordered to be reinstated as an interim measure pending final adjudication by the Tribunal under the Industrial Disputes Act. In the said case the employer dismissed the workman for disobeying the orders of the managing authority. The workman filed an application before the Industrial Tribunal under Section 33-A of the Industrial Disputes Act, 1947 contesting his dismissal on various grounds, whereupon the Tribunal passed an order to the effect that as an interim measure the workman be permitted to work and if the management failed to take him back his full wages be paid from the date he reported for duty. The employer challenged the order of the Tribunal by filing a writ petition before the High Court which was dismissed. On appeal by a certificate of the High Court it was held that the **order of reinstatement could not be given**

as an interim relief because that would be giving the employee the very relief which he would get if order of dismissal is not found to be justified. Order passed by the Tribunal was held to be manifestly erroneous and set aside. It was observed:

"...We are of opinion that such an order cannot be passed in law as an interim relief, for that would amount to giving the respondent at the outset the relief to which he would be entitled only if the employer failed in the proceedings under s. 33-A. As was pointed out in Hotel Imperial's case (1960(1) SCR 476, ordinarily, interim relief should not be the whole relief that the workmen would get if they succeeded finally. The order therefore of the Tribunal in this case allowing reinstatement as an interim relief or in lieu thereof payment of full wages is manifestly erroneous and must therefore be set aside..."

36. In Suman Dutta's case (supra) this Court set aside the order passed by the High Court staying the order of termination as an interim measure in the pending proceeding. It was observed:

"...We are clearly of the opinion that the High Court erred in law in staying the order of termination as an interim measure in the pending writ petition. By such interim order if an employee is allowed to continue in service and then ultimately the writ petition is dismissed, then it would tantamount to usurpation of public office without any right to the same...."

38. "From the above quoted decisions, it is evident that this Court has consistently been of the view that by way of interim order the order of suspension, termination, dismissal and transfer etc. should not be stayed during the pendency of the proceedings in the Court.

39. Sub-section (5-B) provides that the Tribunal shall have not the power to make an interim order (whether by way of injunction or stay or in any other manner) in respect of an order made or purporting to be made by an employer for the suspension, dismissal, removal, reduction in rank, termination, compulsory retirement or reversion of a public servant. Dismissal, removal, termination and compulsory retirement puts an end to the relationship of employer and employee. In case of suspension, reduction in rank or reversion the relationship of employer and employee continues. Interference at the interim stage with an order of dismissal, removal, termination and compulsory retirement would be giving the final relief to an employee at an interim stage which he would have got in case the order of dismissal, removal, termination and compulsory retirement is found not to be justified. If the order of dismissal, removal, termination and compulsory retirement is set aside then an employee can be compensated by moulding the relief appropriately in terms of arrears of salary, promotions which may have become due or otherwise compensating him in some other way. But in case the order of dismissal, removal, termination and compulsory retirement is found to be justified then holding of the office during the operation of the interim order would amount to usurpation of an office which the employee was not entitled to hold. The action becomes irreversible as the salary paid to the employee cannot be taken away as he has worked during that period and the orders passed by him during the period he holds office (because of the interim order) cannot also be put at naught. **The Legislature in its wisdom thought it proper not to confer the power to grant interim relief on the Tribunal. State Legislature had the legislative competence to constitute a service tribunal and it was for it to define the parameters of the jurisdiction of the Tribunal. An employee is not left without any remedy.** Judicial

review of an order regarding which the jurisdiction of the Tribunal is barred would be available by approaching the High Court by filing petition under Article 226 or 227 of the Constitution of India. In an extreme and rare case where the order is passed mala fide or without following the procedure under the law then the employee can certainly approach the High Court under Article 226 of the Constitution for the interim relief. The High Court in such an extreme and rare case may in its wisdom stay the operation of the said order. In the case of suspension, reduction in rank or reversion the relationship of employer and employee remains. Normally, the suspension is made during a contemplated or a pending enquiry. During the suspension period the employee is entitled for the suspension allowance. If the suspension continues for indefinite period or order of suspension is passed mala fide then it would be open to the employee to challenge the same by approaching the High Court under Article 226 of the Constitution of India. In case the order of reduction in rank or reversion is set aside then the employee can be compensated by adequately moulding the relief while giving the relief at the final stage. Power of the Tribunal to grant interim relief has been taken away qua certain matters not completely. The power has been taken away in matters where the grant of said relief at the interim stage would result in giving the relief which would normally be given while disposing of the case finally. Simply because in a rare cases of microscopic number a case is made out for stay of orders of suspension, transfer, reduction in rank, reversion or termination, dismissal and compulsory retirement and the employee is liable to approach the High Court for interim stay by itself is no ground to strike down the law enacted by a Legislative which is within its competence to enact.

41. Sub-sections (5-B) and (5-C) are not arbitrary as contended by the counsel for the appellant as this Court in earlier cases has taken the view that orders of suspension, dismissal, removal, reduction in rank, termination, compulsory retirement or reversion of a public servant normally should not be interfered with at an interim stage as the employee can be suitably compensated in case the order of suspension, dismissal, removal, etc. is found not to be in order. The cases in which the operation of orders of dismissal, removal, termination etc. is stayed by way of interim order is later on upheld at the final stage then it results in wrong usurpation of the office by the employee during the operation of the interim order. This act becomes irreversible and the employer cannot be suitably compensated by moulding the relief at the final stage. In an extreme and rare case where the order is *prima facie* on the face of it is mala fide or bad in law then it is open to a public servant to approach the High Court by filing a writ petition under Article 226 of the Constitution of India for stay of such an order. The employee is not left without any remedy. In an extreme and rare case an employee is to approach the High Court for interim relief resulting in some extra expense by itself is no reason to strike down the Sub-section (5-B) being arbitrary and violative of Articles 14 and 16 of the Constitution of India.

(ii) IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1788 OF 2009
(Arising out of SLP(C) No. 22196 of 2007)

2W

Mehul Mahendra Thakkar @ KariaAppellant

Versus

Meena Mehul Thakkar @ KariaRespondent

ORDER

Leave granted.

2) The order passed by the High Court of Bombay in Civil Application No. 238 of 2007 filed in Family Court Appeal No. 128 of 2007 dated 5.10.2007 is the subject matter of this appeal.

3) By the impugned order, the court has directed the Court Receiver to take possession of the flat from the appellant and induct respondent-wife in the flat during the pendency of the appeal.

4) In the appeal filed, the appellant has called in question the correctness or otherwise of the findings and the conclusion reached by the Family Court in Petition No. A-1072/2000 dated 6.2.2007, wherein the Family Court has reached the conclusion that both the husband and wife are joint owners of flat bearing No. 303, Rajesh Nagar Co-operative Housing Society Ltd., Borivali (West), Mumbai.

5) Even before giving a verdict on the findings and the conclusions reached by the Family Court, by way of interim relief, the court has granted the main relief itself. This, in our opinion is unsustainable. It is settled legal position, that by way of interim relief, final relief should not be granted till the matter is decided one way or the other.

6) In view of the above, we allow this appeal and set aside the order by the High Court in Family Court Appeal No. 128 of 2007 dated 5th day of October, 2007. In view of the peculiar facts and circumstances of this case, we request the court to dispose of the appeal as early as possible and at any rate within an outer limit of six months from the date of receipt of copy of this court's order.

Sd/-

(Tarun Chatterjee, J.)

Sd/-

(H.L.Dattu, J.)

(iii)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4196-4197 OF 2012

(Arising out of SLP(C) Nos. 26581-26582 of 2011)

1 Super Cassettes Industries Ltd. ... Appellant

Vs.

2 Music Broadcast Pvt. Ltd. ... Respondent

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JUDGMENT

" 21. Mr. Sibal also submitted that apart from the decisions rendered in the case of Morgan Stanley Mutual Fund (supra), the Supreme Court had held on several occasions that while entertaining matters, **final relief ought not to have been granted at the interim stage**. In fact, as submitted by Mr. Sibal, the courts will not imply a power in a particular provision of the statute if the legislative intent behind the statute suggested a contrary view. Learned counsel submitted that implying a power to exercise the powers under Section 31 of the Act was not the legislative intent which is easily discernible. It was urged that implying such a power would transform compulsory licensing to statutory licensing without any statutory mandate to do so. Mr. Sibal also reiterated the principle that power would not be implied to displace a pre-existing vested statutory right and the court would not, therefore, exercise such powers as a statutory right unless a statute expressly allowed the same. The power to over-ride such pre-existing right had to be in express terms and could not be implied. Various other decisions were referred to by Mr. Sibal, which will only amount to repetition to what has already been stated.

42. In the instant case, the power being sought to be attributed to the Copyright Board involves the grant of the final relief, which is the only relief contemplated under Section 31 of the Copyright Act. Even in matters under Order XXXIX Rules 1 and 2 and Section 151 of the Code of Civil Procedure, an interim relief granting the final relief should be given after exercise of great caution and in rare and exceptional cases. In the instant case, such a power is not even vested in the Copyright Board and hence the question of granting interim relief by grant of an interim compulsory licence cannot, in our view, arise. Mr. Salve's submission that the substratum of the scheme of Section 31 is commercial in nature and only involves computation of the charges to be paid to the holder of the copyright who withholds the same from the public, is no answer to the proposition that under Section 31 only an ultimate relief by way of grant of a licence on payment of reasonable charges to the copyright owner to publish and/or broadcast the work could be given. **To grant an interim compulsory licence during the stay of the proceedings would amount to granting the final relief at the interim stage, although the power to grant such relief has not been vested in the Board.**

43. It is no doubt true, that Tribunals discharging quasi-judicial functions and having the trappings of a Court, are generally considered to be vested with incidental and ancillary powers to discharge their functions, but that cannot surely mean that in the absence of any provision to the contrary, such Tribunal would have the power to grant at the interim stage the final relief which it could grant."

11. Therefore as per repeated directions of Hon'ble Apex Court (supra) no interim relief is given now. However, the reversion obviously shall be subject to the final outcome of the case.

12. Reply to be given by the respondents within 3 weeks. One week for rejoinder if any.

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13. List the OA for hearing before the Bench on 13.12.2017.

(JAYA DAS GUPTA)

ADMINISTRATIVE MEMBER

in

(MANJULA DAS)

JUDICIAL MEMBER