
(2002) 10 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 1997 of 2002

Shaikh Jabbar Abbas

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-10-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2002) 4 ALLMR 734 : (2003) 2 BomCR 159 : (2003) BomCR(Cri) 662 : (2003) 1 BOMLR 237 : (2003) 96 FLR 606 : (2003) 1 MhLj 543

Hon'ble Judges : R.M. Lodha, J;D.B. Bhosale, J

Bench : Division Bench

Advocate : G.S. Walia, instructed by Rahul Walia, for the Appellant; Suresh Kumar, for respondent Nos. 1 to 3 and L.M. Jha, for the Respondent

Judgement

R.M. Lodha, J.—The matter was posted today for confirmation of interim relief but in the light of the objection taken by the respondents that petitioner has adequate and efficacious remedy of challenging the order of reversion before the Central Administrative Tribunal (the Tribunal) u/s 19 of Administrative Tribunals Act, 1985 (for short, "Act of 1985"), we thought it fit and proper to decide the writ petition finally.

2. The petitioner principally is aggrieved by the order dated 27-6-2002 whereby he had been reverted from the post of junior clerk to the post of Helper/Khalasi. The said order dated 27-6-2002 seems to be based on the order of the Tribunal dated 13-12-2001 passed in Original Application No. 945/1977 in which petitioner was not party. The petitioner challenges the said order of Tribunal passed on 13-12-2001 as well before us.

3. By office order dated 7-6-1996 the petitioner who was working as Helper/Khalasi and had already empanelled as office clerk was promoted from class IV to class III as junior clerk and posted at Solapur. One Shri Ahemadali Mohiddin filed Original Application No. 945/1997 before the Central Administrative Tribunal, Mumbai Bench, Mumbai. In the said Original Application besides Union

of India, the Divisional Railway Manager and the Assistant Engineer (respondent Nos. 1, 2 and 3 respectively). Shri Sham Hanmanthu was impleaded as respondent No. 4. The said Ahemadali Mohiddin in the original application filed before the Central Administrative Tribunal sought direction that he be held to have passed selection for class III service and placed above Shri Sham Hanmanthu with consequential benefits. The Tribunal by its order dated 13-12-2001 disposed of original application thus:--

"7. In the light of the foregoing discussions, we dispose of this O.A. with a direction to respondents to consider applicant's case for selection for Group C category with effect from the date on which Shri Sham Hanmanthu was so considered, in accordance with the rules and instructions on the subject, under intimation to applicant within three months from the date of receipt of a copy of this order and to extend to applicant such consequential benefits as will flow in accordance with those rules and instructions. However, if anybody is adversely affected by the implementation of these instructions, he should be given an opportunity of being heard before the directions are implemented., The O.A. stands disposed of accordingly. No costs."

4. The Tribunal, thus, directed the respondents 1 to 3 therein to consider Ahemadali Mohiddin for selection to Group C category with effect from the date on which respondent No. 4 therein Shri Sham Hanmanthu was so considered and give all consequential benefits to the applicant therein. The Tribunal, however, observed that if anybody is adversely affected by the implementation of the Tribunal's direction, he should be given an opportunity of being heard before the directions are implemented. Pursuant to the order passed by the Tribunal on 13-12-2001, the petitioner was given show cause notice on 17-6-2002 which reads thus :

"Central Railway Office of the Divnl. Rly. Manager (P), Solapur. No. SUR/P/Admn/Cl.IV to Cl. III/Section Date : 17-6-2002

To,

Shri Shaikh Jabbar Abbas, Jr. Clerk S.S.E (S and T) (Const.) SUR Solapur.

Sub : O.A. No. 945/97 before the Hon"ble CAT/BB/filed by Shri Ahemadali Mohiddin v. UOI and Ors.

You had volunteered to appear for selection to the post of Junior Clerk, Grade Rs. 950-1500 (RPS) against 33.1% Group D to Group-C quota in response to notification bearing number even dated 3-11-1995. You were called to appear for selection vide this Office letter of even number dated 23-3-1996. The selection was held on 11/05 and 12/05 and you had appeared for selection. As a result of the said selection you were empanelled for the post of Jr. Clerk Gr. Rs. 950-1500 (RPS)/3050-4590 (RSRP), in various Departments vide letter No. SUR/P/Con./Sele/Gr.D to Gr.C/Admn. Dt. 16-5-1996. You were ordered to be promoted.

One of the candidate Shri. Ahemadali Mohiddin, Gangman, SE(P-WAY) Gulbarga

who had appeared for the said selection along with you and others were not empanelled then, had filed a case in CAT/Mumbai which has been registered against OA No. 945/97.

The Hon''ble CAT/Mumbai decided O.A. vide judgment dated 13-12-2001 and directed Railway Administration to consider the said applicant with effect from the date on which Shri. Sham Hanmanthu, another empanelled employee was so considered in accordance with the Rules and instructions extending all consequential benefits. Following the directives of CAT, the said applicant is eligible to be empanelled for the post of Jr. Clerk Grade Rs. 950-1500 (RPS)/ Gr.Rs. 3050-4590 (RSRP) and is interpolated at Merit position No. 10 in the combined seniority.

As a consequence of the CAT's orders the revised seniority of the affected employees in the said panel is given below.

Sr. No. Order of Merit Name S/Shri Caste Design. Office/Sin Date of Regu. in Group-D

01 10 Ahemadali Mohiddin G/Man PWI(M)/GR 20-3-1989

20-1-1989

02 11 Sham Hanmanthu SC KH IOW/SDB 20-1-1989

03 12 Amjad Hussain KH IOW/SDB 18-3-1989

04 13 Raghvendra Laxmi Narayan KII.HP CSI(M)SUR 18-5-1989

05 14 Prakash Dattatraya Surdi HH.HP CSI/SUR 26-9-1989

06 15 Koli Suresh Chandra ST DSL KH Sr. DME(D)/ SUR 19-10-1989

07 16 Arun Bhimrao Kamble SC W/Man CPWI/ MRJB 7-4-1990

08* 17 Shaikh Jabbar Abbas H.Kh. CSI(C)/ SUR 26-3-1991

*Continuation of your name in the panel is subject to extant instructions and Rules on the subject, since Shri Ahemadali, an extra element has been interpolated in the panel as per CAT/Mumbai's directives.

In case you have any objections/representations to make in respect to above refixation of seniority, you may do so within 10 days from the date of receipt of this letter, failing which it shall be presumed that you have no representations to make. The matter shall be decided accordingly as per the extant Rules and regulations on the subject.

Please acknowledge the receipt.

Sd/- (R.C. Barse) For DRM(P)/ Solapur."

5. The petitioner sent reply to the show cause notice on 26-6-2002 in following terms :--

"Date: 26-6-2002

To,

DRM(P) Solapur.

Sub : O.A. No. 945/97 before honourable CAT/BB Filed by Shri Ahemadali Mohiddin vs. UOI and others.

Ref : Your Lr. No. SUR/P/Admn/Cl. IV to Cl. HI selection dated 17-6- 2002.

2003. Respected Sir,

I, the undersigned Shaikh Jabbar Abbas working as Jr Clerk under SSE (Const) Solapur beg to submit few lines for your kind and sympathetic consideration please.

Sir, a Notification for filling up of vacancies of Jr. Clerk in Gr. Rs. 950-1500 (RPS) was issued vide Circular No. SUR/P/Admn/Cl.IV to Cl. III dated 3-11-1995. As per the terms and condition mentioned in the circular I was eligible for the said selection and I have empanelled vide letter dated 16-5-1996.

Further I have been posted as Jr. Clerk in S and T department and posted under DSTE(C)SUR vide O.O. No. 65/96 dated 17-6-1996. I am continuously working under DSTE(C) SUR with satisfaction of my supervisors. I have completed six years regular service in the said department. At present I am running age of 44 years. The promotion orders issued vide letter dated 17-6-1996 from group "D" to group "C" as per the selection procedure and on that basis I have empanelled and as per the merit assigned I have been issued orders.

In view of the above I request your honour I may be continued further as Jr. Clerk in S & T department under construction organisation. I am having big family no earning hand in my family except me. So I may not be disturbed from the same.

Thanking you,

Yours faithfully,

Sd/- (Shaikh, Jabbar, Abbas Jr. Clerk, S & T(C) Solapur.)"

6. By the order dated 27-6-2002, as already noted above, the petitioner was reverted from the post of Junior clerk to his original post as Helper/Khalasi.

7. The order dated 27-6-2002 reads thus :

No. SUR/P/Admn/Cl. IV to Cl. III/Promotion. Office Order No. 50/2002

In (terms of Judgment/Orders of Hon''ble CAT/Mumbai Bench, Mumbai on O.A. No. 945/97 decided on 13-12-2001 the applicant i.e. Sri. Ahemadali Mohideen, G/ Man under SE (P-Way) GR is to be placed on par with Sr. Sham Hanmanthu in the panel of office clerks declared on 16-5-1996.

Accordingly as per directives and Order of Hon''ble CAT Mumbai Bench, the name of Shri Ahemadali Mohiddin is interpolated in the panel of Jr. Clerks of P/Br. and placed below Shri. Gavali Sanjay Purshottam and above Shri Amjad Hussain. The interpolation of the name of Shri. Ahemadali Mohiddin is as per the option given in the application.

Shri Ahemadali Mohiddin is deemed to be promoted as Jr. Clerk on par his immediate Junior already promoted on proforma basis. He will be eligible for seniority at par with his immediate junior.

In view of the above, the following promotion/version, transfer and posting order are issued with immediate effect.

1. Shri Ahemadali Mohiddin Gang Man, SE (P-Way) GR is promoted as Jr. Clerk in Grade Rs. 3050-4590 (RSRP) transferred and posted in the DPO's Office, SUR, P/Quarter section Vide Sr. No. 3.

2. Shri Sk. Jabbar Abbas, Jr. Clerk under CSI(C) SUR is reverted and posted back to his original post as Helper Khalasi under CSI(C) SURSSE(C)/SandTSUR.

3. Shri P. D. Surdi, Jr. Clerk, DPO Office/SUR is transferred and posted vide Shri. Jabbar Abbas Sr. No. 2.

The above promotion order in favour of Shri. Ahemadali Mohiddin is subject to outcome of various CAT/High Court/Supreme Court cases pending.

The above promotion order in favour of Shri. Ahemadali Mohiddin is also subject to not undergoing any effective punishment or any case contemplated against him.

The charges taken place may be intimated to this office.

This has the approval of the Competent Authority.

(R.C. Barse) Asstt. Personnel Officer, Solapur."

8. It is this order which is impugned in the present writ petition.

9. The learned counsel for the petitioner strenuously contended that as the order dated 27-6-2002 has been passed pursuant to the order passed by the Central Administrative Tribunal on 13-12-2001 and the petitioner is seeking to impugn even the correctness of the order of the Tribunal dated 13-12-2001, writ petition is the only available remedy to the petitioner for redressal of his grievance. Is the contention of learned counsel acceptable?

10. It is obvious that the legality and correctness of order dated 13-12-2001 passed by the Central Administrative Tribunal cannot be challenged directly before the Central Administrative Tribunal by the parties to the proceedings wherein the order was passed but the petitioner was not party therein but the principal grievance of the petitioner is in relation to the order of reversion dated 27-6-2002. In our considered view, the reversion of the petitioner from the post

of Junior Clerk to Helper/Khalasi has given rise to independent cause of action to the petitioner which can always be assailed by the petitioner in an application u/s 19 of the Act of 1985. Even the Tribunal was not oblivious to the situation that in carrying out the directions given by them in the order dated 13-12-2001 somebody who is not party may be adversely affected and, therefore, they observed that if anybody was adversely affected by the implementation of the directions, he should be given an opportunity of being heard before the directions were implemented. We find no impediment in holding that the order of reversion has given rise to independent cause of action to the petitioner and, such order is capable of being challenged in the application u/s 19 by the petitioner irrespective of the Tribunal's decision dated 13-12-2001.

11. In *K. Ajit Babu and Ors. v. Union of India and Ors.* (1997) 65.S.C.C 473 the appellants before the Supreme Court challenged the seniority list prepared on the basis of the decision rendered by Central Administrative Tribunal, Ahmedabad on 14-8-1987 by means of an original application u/s 19 before the Central(Administrative Tribunal. The Tribunal held that the persons who are not party to a decision, but are affected by the decision of the Tribunal are not entitled to file an application u/s 19 of the Act, but can only file a review petition seeking review of the decision adversely affecting, them and consequently rejected the application u/s 19 summarily. The question under consideration before the Apex Court was : What remedy is available to affected persons who are not parties to a case, yet the decision in such a case adversely affects their rights in the matter of their seniority. Dealing with this aspect, the Apex Court in paragraphs 4, 5 and 6 of the report held thus: "4. As stated earlier, the appellant has challenged the impugned seniority list prepared on the basis of the decision rendered by the Central Administrative Tribunal, Ahmedabad in Transfer Application No. 263 of 1986 dated 14-8-1987, by means of an application u/s 19 of the Act wherein there was no prayer for setting aside the judgment dated 14-8-1987 of the Administrative Tribunal. It is true that the judgment given by the Central Administrative Tribunal, Ahmedabad in TA No. 263 of 1986 would have come in the way of the appellant. Often in service matters the judgments rendered either by the Tribunal or by the Court also affect other persons, who are not parties to the cases. It may help one class of employees and at the same time adversely affect another class of employees. In such circumstances the judgments of the Courts or the tribunals may not be strictly judgments in personam affecting only the parties to the cases, they would be judgments in rem. In such a situation, the question arises : What remedy is available to such affected persons who are not parties to a case, yet the decision in such a case adversely affects their rights in the matter of their seniority. In the present case, the view taken by the Tribunal is that the only remedy available to the affected persons is to file a review of the judgment which affects them and not to file a fresh application u/s 19 of the Act. Section 22(3)(f) of the Act empowers the Tribunal to review its decisions. Rule 17 of the Central Administrative Tribunal (Procedure) Rules (hereinafter referred to as "the Rules") provides that no

application for review shall be entertained unless it is filed within 30 days from the date of receipt of the copy of the order sought to be reviewed. Ordinarily, right of review is available only to those who are party to a case. However, even if we give wider meaning to the expression "a person feeling aggrieved" occurring in Section 22 of the Act whether such person aggrieved can seek review by opening the whole case has to be decided by the Tribunal. The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking Order 47 of the CPC may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of the party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all times to come. Public policy demands that there should be an end to law suits and if the view of the Tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the CPC if filed within the period of limitation.

5. The Tribunal rejected the application of the appellant merely on the ground that the appellant was seeking setting aside of the judgment rendered by the Central Administrative Tribunal, Ahmedabad in the case of P. S. John (supra) in TA No. 263 of 1986. It is here that the Tribunal apparently fell in error. No doubt the decision of the Tribunal in the case P. S. John was against the appellant but the application; filed by (the appellant u/s 19 of the Act has to be dealt with in accordance with law.

6. Consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of the "Doctrine of Precedent". The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is, that the cases should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application u/s 19 of the Act is filed and the question; involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in the earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger Bench/Full Bench and place the matter before the Chairman for constituting a larger Bench so that there may be no conflict upon the two Benches. The larger Bench, then, has to consider the correctness of the earlier decision in disposing of the later

application. The larger Bench can overrule the view taken in the earlier judgment and declare the law, which would be binding on all the benches (see John Lucas). In the present case, what we find is that the Tribunal rejected the application of the appellants thinking that the appellants are seeking setting aside of the decision of the Tribunal in Transfer Application No. 263 of 1986. This view taken by the Tribunal was not correct. The application of the appellant was required to be decided in accordance with law."

12. The Apex Court, thus, did not approve Central Administrative Tribunal's view that the persons who are not party to a decision, but are affected by the decision of the Tribunal can file review petition seeking review of the decision adversely affecting them. It was held by the Apex Court that whenever an application u/s 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in the earlier cases and decide the application accordingly either by agreeing with the view taken in the earlier judgment or it may dissent and if it dissents then the matter can be referred to the larger Bench/Full Bench and the larger Bench then has to consider the correctness of the earlier decision in disposing of the later application. In the present case, obviously the grievance of the petitioner that his reversion is not in accordance with the law can always be examined in the application u/s 19 of the Act of 1985 and the petitioner can always raise the plea before the Tribunal that the judgment dated 13-12-2001 cannot bind him as he was not party to the said proceeding and in any case as it may happen some time that judgment of Tribunal may affect the persons who are not parties to the case, if that be so, then as noted above legal position laid therein can always be assailed by the affected party and the Tribunal may agree with the earlier view or dissent and if it dissents, the matter can be referred to larger bench and such bench shall then decide the correctness of the earlier decision. In the circumstances, it is not necessary for the petitioner to directly challenge the judgment of the Tribunal dated 13-12-2001 since he was not party in the proceeding wherein the said judgment was passed. He is aggrieved by the reversion order dated 27-6-2002 which in our considered opinion, he can always challenge in the proceeding u/s 19 of the Act of 1985.

13. Consequently, we discharge the rule with liberty to the petitioner to pursue remedy u/s 19 of the Administrative Tribunals Act, 1985. For a period of four weeks, the ad interim order passed by this Court shall remain operative to enable the petitioner to seek appropriate interim relief from the Tribunal in the proceeding u/s 19 of the Act of 1985.

14. With the aforesaid observations, writ petition is disposed of. The parties may be provided with ordinary copy of this order duly authenticated by Court Associate on payment of usual copying charges.