
(2005) 03 BOM CK 0140

In the Bombay High Court

Case No : Writ Petition No. 2356 of 1998

Union of India (UOI) and Others

APPELLANT

Vs

T.R. Krishna Murthy

RESPONDENT

Date of Decision : 28-03-2005

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2005) 4 BomCR 193 : (2005) 3 MhLj 180

Hon'ble Judges : S.P. Kukday, J; F.I. Rebello, J

Bench : Division Bench

Advocate : Suresh Kumar, instructed by T.C. Kaushik, for the Appellant; S.P. Saxena, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

F.I. Rebello, J.—The Union of India by the present petition seeks to impugn the order dated 22nd December, 1997 passed by Central Administrative Tribunal. The issue before CAT was whether the judgment of the Full Bench of the Central Administrative Tribunal in the case of S.S. Sambhus v. Union of India and Ors. (1992)19 ATC 571 should also be made applicable to employees sent on deputation and who are holding a post higher than what was held by them in the parent department, when they are to be considered for promotion.

2. The Full Bench of the CAT had taken a view that where a person before regular promotion was holding a higher post, then whilst considering the C.Rs., the grading of such a person in comparison with others in the zone of consideration, the grading of the person holding the higher post should be at one stage higher than what is his grading in the higher post. In other words if it is good then it should be treated as very good. The judgment of the Full Bench was challenged before the Apex Court which proceeded to dismiss the Special Leave Petitions. The Apex Court also in an unreported judgment in Shri Prem Sinha Gupta and etc. etc. v. Union of India and Ors. etc. etc., Special Leave to Appeal (Civil/Cr/No. 5259/91 with SLP (C) Nos. 10447/92 and other petitions, while

disposing of the matters observed as under :--

"We are satisfied that the formula evolved by the Full Bench of the Central Administrative Tribunal is the proper and just one having regard to the facts and circumstances and the practicalities of the situation. We do not think any interference is called for with said formula. The petition for Special Leave are accordingly dismissed."

The Apex Court in Shiv Kumar Sharma and Another Vs. Union of India (UOI) and Others, , when a similar issue arose observed as under :--

"We do not propose to express any opinion on the merit of the matter, but we see no difficulty in accepting the submission of the counsel that the UPSC should be directed to reconsider their cases in the light of the judgment of the Full Bench of the Central Administrative Tribunal approved by this Court so that a proper assessment can be made by the UPSC."

It is thus clear that the proposition" as laid down by the Full Bench of the Central Administrative Tribunal now stands accepted by the Apex Court.

3. The petitioners, however, seek to distinguish the application of principle as laid down in Sambhus's case on the following grounds :--

(i) Ad-hoc promotions are made strictly on seniority-cum-fitness basis.

(ii) Ad-hoc Promotees are considered for regular promotion along with their juniors not holding any higher ad-hoc appointments and without giving any special consideration for their higher ad-hoc status.

(iii) ACRs of juniors not holding ad-hoc appointments may have a better write-up on account of their long service in the same grade/post.

Submission is that this would not apply where a person is sent on deputation for the reason that the practice of deputation is a normal phenomenon in Central Government Civil Services whereas ad-hoc promotion being granted only when there is a vacancy to be filled in urgently and it cannot be filled up with normal procedure.

4. We may now note a view facts in the present case. The respondent was selected to be sent on deputation to a higher post than the post that he was holding in his department. The post he was working on deputation at the time of his consideration for promotion was the post of Works Manager which was equivalent to Deputy Controller of Defence Accounts in his parent Department. At the time when he was sent on deputation he was holding the post of Accounts Officer till June, 1983. The Departmental Promotion Committee met for selection to the post of Assistant Controller of Defence Account (ACDC). This post was lower in rank to the post of Deputy Controller of Defence Accounts in the parent Department. The D.P.C. considered his grading in the higher post for consideration for promotion to the post of Assistant Controller of Defence Accounts. The D.P.C. did not select him and consequently on account of his non-

selection the petitioner preferred O.A. before the Central Administrative Tribunal, which by the impugned order allowed the Original Application.

5. The question, therefore, is whether the principle applied for consideration of the criteria/grading for promotion in a case where a person holds an ad hoc promotion on a higher post can also be extended to a case an Officer on deputation to a higher post. We are specifically dealing with a category of cases, where a person is sent on deputation to higher post and not to an equivalent post. Whether the same principle which is applicable in a case of ad hoc promotion, therefore, should also be made applicable to a case of persons on deputation to higher post is the issue. It is true that in the matter of ad-hoc promotion it being to meet the exigency of the situation, the normal procedure followed is that the senior most in the seniority list is considered. It is not as if the senior most must accept the promotion. He may for various reasons choose not to accept the promotion. If he accepts the promotion then when a regular vacancy arises, the principles laid down by CAT has to be followed.

In a case of deputation also it is not as if an Officer is randomly selected. The normal procedure is to ask eligible officers, to volunteer for being sent on deputation. The choice is thereafter made from such officers who volunteer and may be in a case where there is a necessity the concept of voluntariness may not be there. The fact, however, remains that whether on ad-hoc promotion or on deputation the person is working in the higher post. Let us, therefore, examine the judgment firstly of CAT and then of the Apex Court to find out whether any distinction can be made. Before CAT arose a situation of comparison of a person working in the lower post. CAT in its judgment noted that the limited controversy which it was called upon to decide, was whether an officer working on ad-hoc basis in a higher post his assessment or C. R. in the higher post should be considered on a comparative merit with those working in lower posts. The Members of the Tribunal noted that sole ground for holding that selection as arbitrary is that the applicant and respondents before it were not placed in equal footing i.e. the assessment of the applicant was made on performance while working on the post of A.S.W. while on the other hand the assessment of the respondents was made while they were working on the post of Surveyor Assistant Grade I. Answering the issue the Full Bench observed that comparing the quality of performance of a candidate at Class III level of SA with the quality of performance of another at Class I level of ASW on equal footing will be comparing the incomparable and will be illogical, irrational and violative of Article 14 of the Constitution. The Full Bench then proceeded to observe that enormity of hostile discrimination suffered by the applicants in these cases, calls for serious consideration. Considering that incomparable were being compared, the learned Members of the Full Bench then proceeded to answer the issue as has been set but earlier.

A reading of the principle laid down in the Judgment would indicate that though the matter arose out of an ad hoc promotion, the method of appointment is

immaterial. What is material is comparison of the grades of a person holding higher post and of a person holding lower post. It is this principle that was for consideration of the Full Bench of CAT. C.A.T. held that comparing incomparables is illogical, irrational and violative of Article 14 of the Constitution of India. Shiv Kumar Sharma (supra) was also a case of Officers holding dual charge or additional charge. In those cases the Apex Court was pleased to hold that the principle carved out by the Full Bench of the CAT should also be made applicable in their cases. Having so noted in our opinion the distinction sought to be made on behalf of the petitioner Union of India, between the cases of those who were appointed by way of ad hoc promotion and by way of deputation is devoid of merit. The method by which they were appointed is immaterial. The only material consideration in our view is whether the candidates who are under consideration were holding comparable posts or rather holding similar posts. In our opinion, therefore, the principle laid down by CAT in its Full Bench judgment as approved by the Apex Court must also apply in a case of an officer sent on deputation and holding higher post. We, therefore, find no merit in this petition.

6. We may mention that the respondent has since retired and was unrepresented. Considering the importance of the issue involved we asked Shri S.P. Saxena, Advocate of this Court to assist the Court as Amicus Curiae. We place on record our appreciation of the assistance rendered to this Court by the learned Amicus Curiae.

7. Rule discharged. No order as to costs.