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R.N. Chippa

VERSUS

Union of India & Ors.

through :

2.

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VERSUS

Union of India & Ors.

through :

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

1. Pendulum has gone from one end to the other in this case fought by the petitioner for the last number of years. May be these are the vicissitudes of a litigation and one cannot help the situation in which the petitioner is placed today. We say so on taking realistic view of the matter in the light of law on the subject, as laid down by the Supreme Court. The petitioner, therefore, has to eschew the harsh reality, though it appears to be somewhat inequitable in his case.
2. It is not necessary for us to spell out the factual matrix of this circuitous litigation in great detail as the Full Bench of the Central Administrative Tribunal (CAT) has delineated those facts with substantial clarity and without compromising on details. We, therefore, shall state the facts in a capsulated manner, but not at the cost of clarity at the same time. While doing so, we may start with the dates of events, as are deciphered by the learned Full Bench of the CAT in its impugned judgment dated 3.5.2005, because the glimpse thereof tells the tale behind this litigation.

1987 There were 11 posts of Research Officer (Map) in the year 1987. All the 11 posts were filled by the regular incumbents.

11.3.1987 One Shri Mohd. Abbas, Research Officer (Map) went on deputation to the post of Research Officer (Drawing)

29.9.1987 Against this vacancy, Shri M.L. Kumawat was promoted as Research Officer (Map)

1989 One Shri S.D. Tyagi, Research Officer (Map) was promoted as Map Officer.

25.9.1989 The petitioner was promoted as Research Officer

(Map) in a temporary capacity until further orders after superseding his seniors.

- 1990-91 Six temporary posts of Research Officer (Map) were created in connection with 1991 Census.
- 10.3.1992 Shri Mohd. Abbas was reverted back to his cadre post of Research Officer (Map) on completion of his deputation period
- 18.5.1992 Seniority List of Research Officer (Map) was issued wherein the petitioner, Respondent No.3 in the second OA is shown at Serial No. 12 (meaning thereby 11 regular posts of Research Officer (Map) were already occupied by the persons above the petitioner and he was spare being over and above the sanctioned strength of 11. It is clear he was adjusted against the newly created temporary posts of 1990-91 in the year 1992.
- 31.12.1993 The six temporary posts came to an end. Accordingly, the petitioner, who was at Serial No. 12 in the seniority list of Research Officer (Map) and junior most, was reverted back to the post of Senior Geographer.
- 31.1.1994 Shri R.P. Singh took charge of higher post of Map officer on promotion thus 1 vacancy of Research Officer (Map) became available on 31.1.1994.
- 6.10.1994 The petitioner proceeded on deputation to the post of Research Officer (Drawing) (without challenging his reversion)
- December 1994 Three persons, namely, Shri R.P. Mishra and Shri K.C. Sharma Bhagabati (applicant Nos. 1 & 2) in OA No. 505/2004 along with one Shri R.K. Chourajit Singh, Senior Geographers were promoted to the posts of Research Officer (Map). The petitioner was considered but not recommended by the DPC.
- June 1995 The petitioner filed OA No. 1168/1995 without impleading applicant Nos. 1 & 2 who had already been promoted as Research Officers (Map) in the meantime after they were duly selected by the DPC. They had thus acquired vested right on the said posts and were necessary parties.
- 28.7.1997 Applicant No.3 was promoted as Research Officer (Map) on regular basis (even at this stage the

petitioner was considered but not recommended by the DPC) but neither these facts were brought to the notice of Hon'ble Tribunal by the petitioner nor by the official respondents.

3. To sum up the factual narration, as described in the aforesaid sequence, the first basic fact which is to be borne in mind is that there are 11 posts of Research Officer (Map). The feeder cadre from where promotions to Research Officer (Map) are made is known as Senior Geographer. The petitioner, in the year 1989, was working as Senior Geographer and was eligible for consideration to the post of Research Officer (Map). It is not in dispute that all 11 posts were filled up and occupied by the regular incumbents. However, on 11.3.1987, one Mr. Mohd. Abbas went on deputation and against his vacancy Mr. M.L. Kumawat was promoted as Research Officer. In 1989, another Research Officer, namely, Shri S.T. Tyagi was promoted to the next higher post of Map Officer. With his promotion, one vacancy of Research Officer (Map) became available. Petitioner was considered along with others by the regularly constituted Departmental Promotion Committee (DPC), which recommended the name of the petitioner, though there were certain senior officers also. Thus, the petitioner was found to be more meritorious than other officers, including respondent Nos. 3 to 5 herein, and was promoted as Research Officer (Map) vide orders dated 25.9.1989. A notification to this effect was also issued sometime in November 1989. In the year 1990-91, six more temporary posts of Research Officer (Map) were created to cope

with the work of 1991 census. These temporary posts were time bound and after the census work was to be over, these posts were to come to an end, which happened on 31.12.1993

4. Coming back to the case of the petitioner, on 10.3.1992, Shri Mohd. Abbas, who had gone on deputation, joined the parent cadre after the completion of his deputation period. He was, as noticed above, working on regular basis as Research Officer (Map) and was sent on deputation in the year 1987. With the joining of Mr. Abbas and his occupying the position, the petitioner became surplus as he was junior most and on Mr. Abbas joining, all 11 posts stood occupied. The petitioner was, however, not reverted at that time and was accommodated against six temporary posts of Research Officer, which were created in the year 1990-91. However, as pointed out above, on 31.12.1993, those temporary posts also came to an end. The Department, at this stage, was left with no alternative but to revert the petitioner to the post of Senior Geographer as no post of Research Officer (Map) was available as on that date to retain the petitioner on that post. The petitioner did not immediately challenge his reversion, though he made certain representations. In the meantime, as he got the opportunity to go on deputation to the post of Research Officer (Drawing) in October 1994, he proceeded on deputation. When his representation against reversion was rejected, he approached the Tribunal and filed application under Section 19 of the Administrative Tribunals Act, 1985, which was registered as OA No. 1168/1995. This OA was allowed by the

Division Bench of the Tribunal. The main reason for setting aside the reversion order was that even on 31.12.1993, one post of Research Officer (Map) was available inasmuch as Shri R.P. Singh was promoted as Map Officer vide orders dated 7.12.1993. According to the Tribunal, in these circumstances, as on 31.12.1993, post of Research Officer became available on promotion of Shri R.P. Singh to the next higher post and there was no reason to revert the petitioner to the post of Senior Geographer and he could not have been accommodated/adjusted to the post created on promotion of Shri R.P. Singh. It would be relevant to point out at this stage that the petitioner had also, in the said OA, challenged his non promotion to the post of Research Officer (Map) in the year 1994. It so happened that on the reversion of the petitioner to the post of Senior Geographer on 31.12.1993 and when he was working in that capacity on that date, *albeit* on deputation with effect from October 1994, three posts of Research Officer (Map) became available and the DPC was held for consideration of those candidates who fell under the zone of consideration. In that DPC, respondent Nos. 3 & 4 and one Shri R.K. Chourajit Singh were promoted to the post of Research Officer (Map), though the petitioner was considered, but not recommended by the DPC. Therefore, in the OA filed by him in the year 1995, the petitioner had challenged the recommendations of DPC as well. However, the Division Bench of the Tribunal, while disposing of the said OA, did not touch this aspect as relief was granted to the petitioner declaring his reversion as illegal. At the

same time, it is also worth mentioning that though the petitioner had challenged the recommendations of DPC, he had not impleaded respondent Nos. 3 & 4 and Shri R.K. Chourajit Singh as parties in the said OA.

5. The Department decided to implement the aforesaid judgment of the tribunal and at that stage respondent Nos. 3 to 5 came to know about the judgment of the Tribunal. They, in these circumstances, also approached the Tribunal and filed OA No. 505/2004. It initially came up before the Division Bench of the Tribunal and the Division Bench, while brushing aside the technical objection of the petitioner to the maintainability of the said OA in view of the judgment of the Supreme Court in the case of *K. Ajit Babu & Ors. v. Union of India & Ors.*, (1997) 6 SCC 473, deemed it proper to refer the matter to the Full Bench as one coordinate bench could not upset the judgment of another coordinate bench. In these circumstances, orders dated 18.2.2005 were passed by the Division Bench referring following questions for determination by the Full Bench :-

- “(a) Whether the decision rendered on 23.8.1999 in OA No. 1168/1995 in the matter of **R.N. Chhipa vs. Union of India & Ors.**, is correct in law and on facts of the case?
- (b) If the answer is in the negative, then whether the same decision is to be set aside? If so, to what extent?”

6. The Full Bench has, by reasons of its judgment dated 3.5.2005, decided the aforesaid questions in favour of the respondent Nos. 3 to 5. Challenging that judgment the petitioner has filed WP (C) No. 10524/2005. After the aforesaid decision of the Full Bench, matter

was remanded to the Division Bench for disposal of the OA. The Division Bench, obviously referring to the aforesaid judgment of the Full Bench, allowed the OA filed by the respondent Nos.3 to 5 herein vide its judgment dated 14.11.2006. Another writ petition, i.e. WP (C) No. 18906/2006 is filed by the petitioner challenging the said judgment of the Division Bench.

7. The aforesaid narration of the facts would clearly demonstrate that in both the writ petitions, subject matter remains the same and we have to deal with the singular issue relating to the reversion of the petitioner.
8. Perusal of the judgment of the Full Bench would indicate that it has given three reasons holding the reversion of the petitioner as valid, namely :-
 - (a) In the year 1989, the petitioner was given promotion to the post of Research Officer (Map) in a temporary capacity and, therefore, he did not acquire any right thereon. Though the petitioner was promoted in the year 1989, when Mohd. Abbas joined back his parent cadre on 10.3.1992 after completion of his deputation period, no post of Research Officer (Map) was available. As on that date, including the petitioner, there were 12 persons occupying the post of Research Officer (Map) as against the sanctioned strength of 11. The petitioner, in these circumstances, who was the junior most, was shown at S.No. 12, but was not reverted as in the meantime six temporary

posts of Research Officer (Map) were created in the year 1990-91 and he could be adjusted to one of those temporary posts. However, when these posts came to an end on 31.12.1993, the petitioner, being the junior most, for want of any available post of Research Officer (Map), had to be necessarily reverted.

(b) The next vacancy of Research Officer (Map) became available only on 31.1.1994 when Shri R.P. Singh took over the higher post of Map Officer. This happened after the petitioner had already been reverted. In these circumstances, it was not possible to again give back the petitioner the post of Research Officer (Map) as in the meantime there were other persons who were in the zone of consideration and it was necessary that fresh DPC is convened for considering all those persons falling under the zone of consideration, including the petitioner, in view of the judgment of the Supreme Court in the case of *Union of India & Ors. v. Tara Chand*, (1995) 6 SCC 589. However, even when the petitioner was considered along with others, he was not recommended for promotion.

(c) The petitioner had not brought the aforesaid facts to the notice of earlier Division Bench which passed judgment dated 23.8.1999 in favour of the petitioner in his OA.

9. Mr. Sudarshan Rajan, learned counsel appearing for the petitioner, has challenged the aforesaid findings of the Tribunal. On the first aspect, his submission is that promotion of the petitioner in the year

1989 was on regular basis and not on temporary basis or as a stop-gap arrangement.

As far as this aspect of the matter is concerned, we are one with Mr. Rajan. It is not in dispute that vacancy on regular basis had fallen vacant on promotion of Mr. S.D. Tyagi as Map Officer. Against this vacancy the eligible officers were considered. It is also not in dispute that a DPC was constituted to consider the candidature of all eligible persons, in which respondent Nos. 3 to 4, though senior to him, were also considered. Thus, a proper selection procedure was followed in respect of the vacancy available on regular basis and the petitioner was given promotion to the said post on the basis of that selection process. The notification which was issued, in fact, is a clincher as in no uncertain terms it stipulates the nature of promotion by mentioning that it is on a '*Regular Basis*'. This notification reads as under :-

“ NOTIFICATION

On the recommendation of the Departmental Promotion Committee, the President is pleased to appoint Sh. R.N. Chhipa, Senior Geographer in the Office of the Registrar General, India, New Delhi on the post of Research Officer (Map), in the same office on a regular basis in a temporary capacity with effect from 25.9.1989 (FN) until further orders.

2. Sh. R.N. Chhipa will be on probation for a period of two years.

(MAHENDRA NATH)
JOINT REGISTRAR GENERAL, INDIA”

10. No doubt, in the Office Order dated 25.9.1989, the words '*regular basis*' do not find mention. The Full Bench of the Tribunal was swayed by the expression '*in a temporary capacity*' and '*until further*

orders'. However, that would not make any difference. It is the gazette notification which is issued pursuant to the promotion of the petitioner which will hold the field. This notification has been issued after taking approval of the President of India. Furthermore, in this notification it is also mentioned that the petitioner will be on probation for a period of two years. Stipulation regarding probation was not even necessary if the promotion was on a regular basis. No doubt, in the impugned judgment of the Full Bench, it has also observed that it had called for the records of the DPC held on 5.9.1989 which shows that selection was made for officiating promotion to the grade of Research Officer (Map). We are not in a position to comment about the same as no such records are made available before us. Be that as it may, even as per the provisions of Section 20 of the General Clauses Act it is the ultimate orders which are issued by means of a notification which would be determinative of the nature of promotion given to the petitioner.

11. At the same time, we are of the view that the final conclusion arrived at by the Full Bench would remain the same and nature of promotion of the petitioner would not make any difference. As indicated above, on return of Mr. Mohd. Abbas, the petitioner had become surplus and could not be adjusted against the 11 regular posts of Research Officer (Map). Even in the seniority list of Research Officer (Map) issued on 18.5.1992, the petitioner was shown at Sr.No. 12. He, however, could save the day for himself only because there were six temporary posts available as on that date. The result

was inevitable when those posts came to an end on 31.12.1993. It is at this stage that second submission of the petitioner is that even on 31.12.1993 another post of Research Officer (Map) became available as Shri R.P. Singh stood promoted to the post of Map Officer vide orders dated 7.12.1993. However, what this argument misses (which was glossed over by the Division Bench also in its earlier judgment dated 23.8.1999) is that Shri R.P. Singh joined the higher post only on 31.1.1994. Thus, notwithstanding the promotion orders, he continued to work as Research Officer (Map) from 7.12.1993 to 30.1.1994. Thus, as on 31.12.1993, Shri R.P. Singh was occupying the post of Research Officer (Map) and as on that date no such post of Research Officer (Map) was available and, therefore, there was no occasion to accommodate the petitioner against that post.

12. In this backdrop, it is important to note that when the petitioner was reverted to the post of Senior Geographer with effect from 31.12.1993, he started working on this lower post and continued to work till 6.10.1994 when he proceeded on deputation to the post of Research Officer (Drawing). Therefore, when the DPC met in December 1994 to consider the candidature of eligible persons to the post of Research Officer (Map), it had to consider all available candidates and the petitioner could not have been promoted without undergoing the selection process. This is the position in law, which is explained by the Apex Court in the case of *Tara Chand* (supra) in the following words :-

“Learned counsel appearing for the respondents, however, placed reliance on the fact of orders issued to the respondents regarding satisfactory completion of probation and contented that in view of such orders, the respondents cannot be reverted. We do not think that we can accept this contention of the learned counsel for the respondents. On the facts of this case, we have seen that the order of promotion itself in unmistakable terms indicated that the promotions were temporary and then the fact of abolition of posts created for fixed period is not in dispute. In any event, that fact of abolition of posts is now established by document produced before us, namely, the letter of Registrar General of India dated 30.11.1993 extracted above. In view of the established position that the posts temporary created to which posts respondents were temporarily promoted having been abolished the respondents cannot raise any objection for the consequential reversion orders. We answer the question posed in the beginning in the negative.”

13. Resultantly, we find that these writ petitions are bereft of any merit and the view taken by the Full Bench and as followed by the Division Bench thereafter while allowing the OAs of the respondent Nos. 3 to 4 cannot be faulted with and, therefore, is to be maintained.

These writ petitions are accordingly dismissed.

14. However, before we part with, it is necessary to point out that since the petitioner continued to work on the post of Research Officer (Map) after the judgment of the Division Bench dated 23.8.1997 in OA No. 1168/1995, he was not considered for promotion on regular basis to the said post. On 27.8.1997, respondent No.4 was promoted to this post and even at that time the petitioner was considered, but not recommended by the DPC. Because of the aforesaid outcome of the OA filed by the respondent Nos. 3 to 5, any DPCs which were held subsequent to 1997 and in which the petitioner was not considered for promotion to the post of Research

Officer (Map), it becomes incumbent upon the part of the respondent to consider his candidature for the said post and if he is found fit for promotion, he has to be given promotion to the post of Research Officer (Map) from the date his juniors were promoted with all consequential benefits.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

January 29, 2009
nsk

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 18906/2006

% Decided on : January 29, 2008

R.N. Chippa

. . . Appellant

through :

Mr. Sudarshan Rajan, Advocate

VERSUS

Union of India & Ors.

. . . Respondents

through :

Mr. H.K. Gangwani, Advocate
for the respondent Nos. 1 & 2.
Mr. L.R. Khatana, Advocate
for the respondent Nos. 3 to 5.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

For orders, see WP (C) No. 10524/2005

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

January 29, 2009

nsk