

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.577 OF 2015**

Goa Port & Doc Employees Union,
Through its President,
Shri Augusto M. D'Costa,
son of Jose A. D'Costa,
aged 55 years,
having office at M.P.T.
Administrative Building,
Adjacent to canteen,
Headland Sada- 403 804. .. Petitioner

V/s

Mormugao Port Trust,
Through its Chairman,
Mormugao Harbour,
Goa 403 803. .. Respondent

Mr. Ashwin D. Bhobe and Ms. S. Bhobe, Advocates for the petitioner.

Coram:- C. V. BHADANG, J.

Date:- 19th October, 2015

ORAL ORDER :

By this petition, the petitioner is challenging the award dated 01/09/2014 passed by the Central Government Industrial Tribunal (CGIT), Mumbai in Reference No.CGIT2/39 of 2003. By the impugned award, the reference made to the CGIT has been dismissed.

2. The brief facts, necessary for the disposal of the petition, may be stated thus :

That by an order dated 18/07/2003, Government of India, Ministry of Labour and Employment had referred the following dispute to the CGIT for adjudication :

" Whether the action of the management of Mormugao Port Trust, Goa in transferring Shri Uday C. Halarnkar, Welder from MOHP to Baina Workshop, without giving him promotional benefits is legal and justified ? Whether the Management's action has resulted victimisation/ discrimination in the matter of promotion and transfer vis-a-vis other employees junior to the disputant? If so, what relief the workman is entitled for?"

3. It appears that the Goa Port and Dock Employees Union, which was the second party before the CGIT, had filed a statement of claim (Exh.6). It was contended that the workman Shri Uday Halarnkar was employed by the first party as a Liftman on adhoc basis in the year 1979. He continued to work as such, till he was appointed as Welder on regular basis with effect from 14/10/1980. The workman was eventually confirmed in the service, after his initial probation period. He was then posted as a Welder in the Mechanical Ore Handling Plant (MOHP), where he worked for a period of 18 years. The workman was, thereafter

transferred on promotion as a Welder(HS) by an order dated 30/09/1998. It was contended that one Mr. Francisco Lobo, who was also working as a Welder(HS) at MOHP, was junior to Shri Uday Halarnkar, was illegally promoted as a Welder (HS), by an order dated 30/07/1993. It was the material case that after the promotion of the workman, he was transferred to Baina Workshop. However, Francisco Lobo, who was working at Baina Workshop, was brought to MOHP as Welder (HS) on promotion. Similar was the case with one Mr. N. V. Dabholkar, working on Shipping Section at MOHP, who was brought on transfer as Welder to the Shipping Section to the general MOHP section, vide order dated 26/10/1998 and 18/11/1998 respectively.

4. It thus appears that the short grievance was that while in respect of Shri Uday Halarnkar, the Management insisted for him to be transferred to Baina Workshop, in respect of some other workmen, though junior, were brought on promotion from Baina Workshop to MOHP. It appears that the workman had made a representation to the Management to retain him on promotion at MOHP. However, in spite of vancancy being available, the same was not considered and that vacancy was filled in by bringing Mr. Lobo, because of which, the workman could not be promoted and retained at MOHP. It was thus contended that the action of the

Management was illegal and unjust. On behalf of the workman, it was prayed by the second party that the promotion order dated 02/01/1992 and memorandum dated 04/08/1992 transferring the workman on promotion outside MOHP be quashed and set aside, with a direction to the Management to promote him as Welder(HS), with effect from 20/01/1992 and retain him within the MOHP area, with consequential benefits with retrospective effect from 20/01/1992.

5. The claim was resisted on behalf of the Management. It was contended that as the workman was the senior most employee, he was promoted against the said vacancy, which had occurred in the post of Welder(HS) at Baina Workshop, which the workman refused to accept. Because of this, the workman was debarred from promotion for a period of one year until the occurrence of the vacancy. In the year 1992, he was again promoted to the post of Welder (HS) at Baina Workshop, when he again refused his promotion, consequent to which, he was again barred for a period of one year. During this period, a vacancy at MOHP arose and Mr. Lobo was promoted as Welder (HS) against the said vacancy and there was no violation of promotion rules. In the year 1998, the workman was promoted a third time as Welder (HS) and transferred to Baina Workshop. That order was

challenged by him unsuccessfully on the ground that the workman has worked at MOHP for a period of 18 years and was interested in being retained at the MOHP itself. It was contended that there is common seniority maintained between the MOHP and Baina Workshop and the services of the workmen are transferable inter se and the workman could not have refused the promotion and the consequent transfer to Baina Workshop on account of availability of some additional financial benefits in the MOHP Section.

6. The learned CGIT raised in all five issues. The learned CGIT answered issue nos.1 and 2 in the negative and proceeded to dismiss the reference. Feeling aggrieved, the petitioner is before this Court.

7. I have heard Shri Bhobe, the learned Counsel for the petitioner. With the assistance of the learned Counsel, I have perused the impugned judgment and award.

8. The only submission is that Mr. Lobo and Mr. Dabholkar, although were juniors, were brought on promotion to MOHP, while in so far as the workman is concerned, when he was promoted, he was transferred to Baina Workshop. It is submitted

that this shows victimisation of the workman.

9. On hearing the learned Counsel for the petitioner and on perusal of the impugned award, I do not find that the submission can be accepted. Indisputably, the workman was promoted on four occasions when he refused to be transferred from MOHP to Baina Workshop. Once it is not in dispute that MOHP and Baina Workshops are the departments of the first party and there was inter-transferability between the employees having common seniority list, it is difficult to accept that only because on promotion, the workman could have refused the same. The incident of promotion is depending upon the vacancy available in the establishment. Thus, when the petitioner was entitled to be considered for promotion, if the vacancy had arisen at Baina Workshop, no exception can be taken to the action of the management of the workman on promotion, being asked to work at Baina Workshop. It was not disputed that on account of refusal by the workman, he was debarred from being considered for promotion, when a promotional post at MOHP fell vacant. It appears that the petitioner is interested in both i.e. getting promotion as well as being retained at MOHP. A bare perusal of the challenge before the CGIT would show that the second party had sought to challenge a memorandum dated 04/08/1992 and

20/01/1992 in the year 2003. The CGIT has found that there are no circumstances showing that by the promotion policy any undue advantage was given to the any of the workmen, who were similarly situated. In that view of the matter, the case of victimisation has rightly been negated. On perusal of the impugned judgment, I do not find that any case for interference in the exercise of extra-ordinary jurisdiction is made out.

10. In the result, the Writ Petition is hereby dismissed.

C. V. BHADANG, J.

SMA