

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3198 OF 2002

Union of India	...Petitioner
Versus	
V.G. Nair and ors.	...Respondents

Mr. Suresh Kumar for the Petitioner.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 22nd MARCH 2018.

ORAL JUDGMENT:

1] Heard Mr. Suresh Kumar, learned counsel for the petitioner.

2] The petitioner - UOI challenges the impugned judgment and orders dated 5th November 2001 and 11th December 2001 made by the Central Administrative Tribunal (CAT) in O.A. No. 188 of 2001 instituted by respondent No.1 V.G. Nair in the matter of seniority in the cadre of Commercial Inspector. By the impugned judgment and order, the CAT, at paragraphs 9 and 10 (operative portion) has held as follows:

"9. We also find that ante-dated promotion granted to private respondents is with a view to give them

advantage or march over the persons working in the grade of CIs and CCs in other divisions for promotion to the grade of ACM. The Hon'ble Supreme Court in their decisions cited supra have held the view that the question of seniority should not be reopened after a lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. In the instant case the seniority has been disturbed after a lapse of 11 years which is bad and is not sustainable in law and therefore, it is liable to be quashed and set aside.

10. For the reasons stated above, we allow this OA and quash and set aside the corrigendum dated 29.12..2000. There shall be no order as to costs."

3] On behalf of the petitioner- Union of India, Miscellaneous Petition No. 984 of 2001 was taken out before the CAT seeking for modification of the order dated 5th November 2001 disposing of O.A. No. 188 of 2001. By order dated 11th December 2001, Miscellaneous Petition No. 984 of 2001 was dismissed by the CAT. Hence, the present petition by the UOI to challenge the orders 5th November 2001 and 11th December 2001 in O.A. No. 188 of 2001.

4] At this stage, it is pertinent to note that Shri. M.P. Dube, Commercial Inspector, who had been impleaded as respondent No.3 in O.A. No. 188 of 2001 before the CAT had also instituted Writ Petition No. 5636 of 2001 to

question the very same impugned judgment and orders dated 5th November 2011 and 11th December 2001 made in O.A. No. 188 of 2001, since the directions in the impugned judgment and orders had directly affected Shri. M.P. Dube. The said petition was directed to be tagged and heard along with the present writ petition, since the challenge was to the one and the same impugned judgment and orders.

5] By order dated 21st March 2012, Writ Petition No. 5636 of 2001 was dismissed for non-prosecution.

6] Since, the main issue before the CAT in O.A. No. 188 of 2001 was concerning *inter se* seniority in the cadre of Commercial Inspectors and further since the petition instituted by the Commercial Inspector, who was directly affected by the directions in the impugned judgment and orders stands dismissed, there is no good reason to interfere with the impugned judgment and orders, at the behest of the UOI and that too, at this belated stage. Admittedly, there was no interim relief granted either in

the present writ petition or in Writ Petition No. 5636 of 2001, which came to be dismissed on 21st March 2012.

7] In such matters, where the dispute is between the employees, *inter se*, the Government has to play an impartial role and act as *amicus curiae*. Therefore, at the behest of UOI and that too at a belated stage, there is no case made out to interfere with the impugned judgment and orders.

8] In ***Sub-Inspector Rooplal and anr. vs. Lt. Governor through Chief Secretary, Delhi and ors. - (2000) 1 SCC 644***, the Hon'ble Supreme Court has made the following observations at paragraph, which are quite apposite in the circumstances.

"24. Before concluding, we are constrained to observe that the role played by the respondents in this litigation is far from satisfactory. In our opinion, after laying down appropriate rules governing the service conditions of its employees, a State should only play the role of an impartial employer in the inter-se dispute between its employees. If any such dispute arises, the State should apply the rules laid down by it fairly. Still if the matter is dragged to a judicial forum, the State should confine its role to that of an amicus curiae by assisting the judicial forum to arrive at a correct decision. Once a decision is rendered by a judicial forum, thereafter the State should not further involve itself in litigation. The

matter thereafter should be left to the parties concerned to agitate further, if they so desire. When a State, after the judicial forum delivers a judgment, files review petition, appeal etc. it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, we feel the respondent has taken more than necessary interest which is uncalled for. This act of the State has only resulted in waste of time and money of all concerned."

(emphasis supplied)

9] Even otherwise, we have considered the contentions of Mr. Suresh Kumar based upon Rule 228 of IREM in the context of powers of the petitioner to redress the situation arising out erroneous promotion. There is no doubt that the petitioner - UOI posses ample powers to set right the error. However, the existence of power is one thing and its exercise, quite another. In the first place, such power is required to be exercised within a reasonable period and not after inordinate delay as was found in the present case by the CAT. Secondly, it is also necessary that the parties who are likely to be affected by the exercise of such powers must be offered sufficient opportunity to demonstrate how the original decision was not at all erroneous or in any case, why such power ought not to be exercised at a belated stage or otherwise.

10] The exercise of power under Rule 228 of IREM, may, in a given case, visit some employees who have already secured promotions or who have already been placed in senior positions with serious civil consequences. There is nothing in Rule 228 of the IREM, which excludes the application of principles of natural justice and fair play prior to exercise of power conferred by such a rule. In the present case, there is nothing on record to indicate that the Government had complied with principles of natural justice and fair play prior to the exercise of powers under Rule 228 of IREM. Such exercise, undoubtedly, had purported to visit the respondents serious civil consequences. Besides, as has been rightly observed by the CAT, power under rule 228 of IREM was sought to be exercised after inordinate delay and without any valid explanation for such inordinate delay. We do not detect any error in the reasoning or approach of the CAT and therefore, there is no case made out to interfere with the impugned judgment and order, even on merits.

11] For all the aforesaid reasons, there is no case made

out to interfere with the impugned judgment and order.
This petition is therefore, dismissed. Rule is discharged.
There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)