

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

WRIT PETITION NO. 7138 OF 2004

Mohan Motiramani and ors. ...Petitioners
Versus
Union of India and ors. ...Respondents

Mr. Rahul Walia for the Petitioners.
Ms Neeta V. Masurkar a/w. Mr. S.G. Thakar and Ms Nieyaati
V. Masurkar for the Respondent - UOI.

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

DATE : 08.08.2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 7.08.2003 made by the Central Administrative Tribunal (CAT), Mumbai dismissing O.A. No. 737 of 1997 instituted by the petitioners questioning show cause notice dated 10.2.1997 requiring the petitioners to show cause as to why seniority should not be revised in pursuance of the order of the Hon'ble Supreme Court in case of ***Union of India v/s. M.Bhaskar - 1996 (1) SC SLJ 141.***

3] Mr. Rahul Walia, learned counsel for the petitioners, submits that the respondents proposed to revise seniority by taking into consideration the retrospective promotions granted to some employees. He submits that the decision in case of *M.Bhaskar (supra)* does not apply to the case of the petitioners and therefore, the respondents were not entitled to revise the seniority list which had already attained the finality. In any case, Mr. Walia submits that there is absolutely no justification to order any recovery of amounts from the petitioners by alleging over payment. He submits that this is clearly not a case where any over payment has been made. In any case, he submits that this is not a case of any over payment has been made on account of fraud or misrepresentation attributable to the petitioners. He, therefore, submits that the impugned judgment and order made by the CAT warrants interference.

4] Ms Neeta Masurkar, learned counsel for the respondent - UOI, submits that the challenge to a show cause notice was entirely premature and the O.A should have been dismissed on the said ground alone. In any case, she submits that the seniority was proposed to be revised in

terms of binding decision of the Hon'ble Supreme Court in case of *M. Bhaskar (supra)*. She submits that the petitioners were beneficiaries of over payment and the respondents were entitled to recover such over payments as held by the CAT. She, therefore, urges for dismissal of this petition.

5] The rival contentions now fall for our determination.

6] The applicants/petitioners were recruited as Assistant Station Masters (ASI). Thereafter, they applied for 10% vacancies available for departmental candidates to the post of Traffic Apprentices. They passed the written test and interview and also completed the training prescribed for this purpose. They were ultimately appointed as Traffic Assistants with effect from 27.7.1984. They contend that the seniority list was correctly prepared and there was no warrant to disturb the seniority list at the behest of some employees, who were never selected to be appointed as Traffic Assistants. They point out that Mumbai Division of Western Railway have correctly fixed the seniority but the Headquarter of the Western Railway have incorrectly disturbed the seniority position.

7] The Railway Board issued circular dated 15.5.1987 on the recruitment of Traffic and Commercial Apprentices. This circular was interpreted by the Hon'ble Supreme Court in case of *M. Bhaskar (supra)* . The relevant observations at paragraphs 7, 8 and 18 read as follows:

"7. From the aforesaid, it is clear the memorandum of 1987 was really not one of revision of pay of the Traffic/Commercial Apprentices, as has been understood by those Tribunals who have conceded the higher grade. Mrs. Sharda Devi's effort to satisfy us that the higher pay scale was a revision on the basis of what finds place in para 2(ii) of the 1987 memorandum is founded on misapprehension inasmuch the inclusion in that sub-para that "Traffic Apprentices absorbed in the cadre of Section Controllers in scale of Rs. 470-750/1400-2600 (RP) will be fixed at starting pay of Rs. 1600 pm on absorption", does not mean that these Section Controllers were given the pay Scale of Rs. 1600-2600, as urged by the learned counsel. All that was conveyed by this statement was that the Section Controllers, even though getting the revised scale of Rs. 1400-2600, their starting pay would be Rs. 1600. This was so required, according to Shri Malhotra appearing for the appellant, because the Trained Apprentices could become eligible for the post of Section Controller only when having two years Yard's experience in the grade of Rs. 455-700. It is this pay scale which had become on revision Rs. 1400-2300 the unrevised pay scale of Section Controller was Rs.470-750, which on revision became Rs. 1400-2600. So, what has been stated in para 2(ii) does not support the case of the respondent that the memorandum of 1987 really dealt with the revision of pay of all the Traffic/Commercial Apprentices.

8. We, therefore, hold that the Tribunal which allowed the benefit of pay scale of Rs. 1600-2660 to all the Traffic/Commercial Apprentices irrespective of

the grade of the posts held by them, not only misunderstood the memorandum of 1987, but this conceived the provisions relating to the recruitment and promotion of these Apprentices as finding place in the Establishment Manual. Indeed, somehow or other they were oblivious of what has found place in the Manual in this regards.

....

....

18. Despite the aforesaid conclusion of ours, we are of the view that the recovery of the amount already paid because of the aforesaid judgments of the Tribunals would cause hardship to the concerned respondents/appellants and, therefore, direct the Union of India and its officers not to recover the amount already paid. This part of our order shall apply (1) to the respondents/appellants who are before this Court; and (2) to that pre-1987 Apprentices in whose favour judgment had been delivered by any CAT and which had become final either because no appeal was carried to this Court or, if carried, the same was dismissed. This benefit would be available to no other”.

8] The same view was reiterated by the Constitution Bench of the Hon'ble Supreme court in case of ***E.S.P. Rajaram and ors. Vs. Union of India and ors. - 2001 SCC (L&S) 352.***

9] From the rulings in *M.Bhaskar (supra)* and *E.S.P. Rajaram (supra)*, it does appear that Apprentices in case of Traffic/Commercial Apprentices means “direct recruits”. In view of these rulings, we cannot say that proposal to revise the seniority list suffers from any legal infirmity. Similarly,

since the CAT has merely followed the rulings in *M.Bhaskar (supra)* and *E.S.P. Rajaram (supra)*, again, we cannot say that the view taken by the CAT on the issue of seniority is in excess of jurisdiction or otherwise warrants interference.

10] However, insofar as the issue of recovery is concerned, we agree with the contention of learned counsel for the petitioners that this is not a case of over payment or in any case, this is not a matter where the so called over payment is relatable to any fraud or misrepresentation on the part of the petitioners. Taking into consideration the posts held by the petitioners, we apply the principles laid down by the Hon'ble Supreme Court in case of ***State of Punjab and ors vs. Rafiq Masih (White Washer) and ors. - (2015) 4 SCC 334*** and restrained the respondents from recovering any amounts already paid to the petitioners in pursuance of the seniority position prior to its revision.

11] Accordingly, whilst we do not interfere with the impugned judgment and order on the issue of seniority, we restrain the respondents from making recoveries in respect of alleged over payment made to the petitioners.

12] Rule is made partly absolute to the aforesaid extent only. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)