

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

WRIT PETITION NO. 14243 OF 2017

The Union of India and anr. ...Petitioners
Versus
Ramesh D. Sondulkar ...Respondent

Mrs. Anjali Helekar i/b Mr. A.A. Garge for the Petitioners.
Mr. Rahul Walia for the Respondent.

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

DATE : 05.06.2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 22.06.2017 made by the Central Administrative Tribunal (CAT) allowing O.A. No. 124 of 2016 instituted by the respondent questioning his reversion from the post of Staff Car Driver (Grade II) to the post of Staff Car Driver (Ordinary Grade) and the consequent recovery

of pay and allowances.

4] Ms Anjali Helekar, learned counsel for the petitioners, submits that the very promotion of the respondent was made subject to the decision of the Ministry on the conversion of sanctioned post of Staff Car Driver (Ordinary Grade). Since, the sanction was not forthcoming, reversion and consequent recovery of pay and allowances came to be ordered. Ms Helekar submits that in such matters where the respondent had accepted the promotion with full knowledge as to the nature of such promotion, the CAT was entirely unjustified in granting the respondent relief relying upon the doctrine of legitimate expectation. She relies upon the ruling of the Division Bench of this Court in **Anjali C. Dhamangaonkar vs. Municipal Corporation of Greater Bombay and ors - 2010 (3) Mh.L.J. 220** to submit that in a case of this nature, the doctrine of legitimate expectation is inapplicable.

5] Ms Helekar further submits that the post to which the respondent was promoted was not even a sanctioned post. She submits that after the respondent's promotion with

effect from 13th July 2009, by order dated 26th March 2015, the only Staff Car Ambassador stood condemned. She submits that now, there is no car available with the department and consequently, there is no need for a driver Grade-II. Ms Helekar submits that all these aspects have not been considered by the CAT and therefore, the impugned judgment and order warrants interference.

6] Mr. Walia, learned counsel for the respondent, submits that the petitioners did not even comply with principles of natural justice and fair play prior to issuing the order dated 14th October 2015 purporting to revert the respondent and recover his pay and allowances. Mr. Walia submits that the action of reversion after 7 years from the date of promotion is *ex-facie*, illegal and in defiance of doctrine of legitimate expectation. Mr. Walia submits that the order for recovery of pay and allowances is also *ex facie* , arbitrary and unreasonable. Mr. Walia submits that this is not at all a case where the respondent has drawn any excess payment on account of any misrepresentation or fraud on his part. Mr. Walia submits that there is no error much less jurisdictional error in the view taken by the CAT

and therefore, this petition may be dismissed.

7] The rival contentions now fall for our determination.

8] For the view which we propose to take, it is not necessary to delve into great details of the matter. In any case, there is no dispute that the petitioners themselves promoted the respondent to the post of Staff Car Driver (Grade - II) with basic pay scale of Rs.2400 plus usual allowances with effect from 13 July 2009. There is not even an allegation of any misrepresentation or fraud on the part of the respondent. The respondent has discharged duties in the promotional post until, the petitioners, by order dated 14 October 2015 purported to revert him to the post of Staff Car Driver (Ordinary Grade). This reversion order was not even preceded by minimum compliance with principles of natural justice and fair play. In these circumstances, we agree with the CAT that the petitioners were not at all justified in ordering any recovery of pay and allowances from the respondent. Such recovery is *ex facie*, arbitrary, illegal and void. We therefore, endorse the order of the CAT restraining recovery and directing the refund of the amount

if already recovered, with interest at the rate of 10% per annum.

9] Whilst, in the facts and circumstances of the present case, we have some *prima facie* reservations as regards the application of doctrine of legitimate expectation, we agree with the contention of Mr. Walia that the order dated 14 October 2015 reverting the respondent could not have been made without affording the respondent opportunity to show cause in the matter. We, therefore, endorse the view taken by the CAT that the order dated 14 October 2015 is required to be set aside for want of compliance with principles of natural justice and fair play.

10] Since, we are basically setting aside the order of reversion for want of compliance with principles of natural justice and fair play, we need to clarify that such setting aside will not preclude the petitioners from issuing, if they so desire, a show cause notice to the respondent and thereafter, taking action as may be permissible under the law with regard to the respondent's retention in the promoted post. At this stage, we express no further opinion

on this issue except to clarify that the order dated 14 October 2015 stands set aside for want of compliance with principles of natural justice and fair play.

11] We clarify that in the facts and circumstances of the present case, we do not deem it appropriate to grant the petitioners any liberty to recover pay and allowances from the respondent since, as noted earlier, this is not a case where the respondent, has secured the higher pay and allowances by practising any misrepresentation or fraud. Besides, upon setting aside the order dated 14 October 2015, the respondent legitimately continues in the post of Staff Car Driver (Grade-II) and therefore, is entitled to draw salary in the said grade.

12] Mr. Walia, learned counsel for the respondent, without prejudice, has contended that the respondent has already completed more than 20 years as Staff Car Driver and therefore, is entitled to benefits of Assured Career Progression Scheme. He submits that on this basis, the respondent, in any case, is entitled to the basic scale of Rs.2400/- as revised from time to time. Mr. Walia submits

that if this scale is granted to the respondent, then, perhaps, the issue of promotion and reversion might become redundant. At this stage, it will not be appropriate for us to go into this issue. However, we expect the petitioners to apply their mind to this issue as well, in case, the petitioners desire to pursue the matter any further by issuing a show cause notice to the respondent. We clarify that all defences of the respondent are expressly kept open since, at the present stage, we have not adjudicated the same.

13] For all the aforesaid reasons, this petition is disposed of with the following order:

(a) The impugned judgment and order of the CAT setting aside order dated 14 October 2015 is hereby confirmed on the ground that the order dated 14 October 2015 was made without compliance with principle of natural justice and fair play;

(b) The impugned judgment and order made by the CAT quashing the recovery of pay and allowances from

the respondent and directing refund, if already recovered with interest at the rate of 10% per annum is also confirmed;

(c) The petitioners are however, granted liberty to issue show cause notice to the respondent only on the aspect of his reversion from the post of Staff Car Driver (Grade II) to Staff Car Driver (Ordinary Grade), if they so desire. All defences of the respondent are specifically kept open. It is clarified that the show cause notice shall be restricted to the issue of reversion and not to the issue of recovery of pay and allowances;

(d) In case, the show cause notice in the aforesaid terms is indeed issued by the petitioners, the petitioners are at liberty to dispose of the same by taking into consideration the without prejudice contention on behalf of the respondent in the matter of Assured Career Progression Scheme pay scale;

(e) Now that the order dated 14 October 2015

stands quashed and the respondent's promotion as Staff Card Driver (Grade - II) stands revived, the petitioners to pay to the respondent in the pay scale of such promotional post;

14] Rule is disposed of in the aforesaid terms. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)