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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 405/86
T.A. No. 198

DATE OF DECISION 1-9-1988

Shri Mahesh Chandra Bhargava Petitioner

Applicant in person Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri M.M. Sudan Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr.P. K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr.S. P. MUKERJI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER


(P.K. KARTHA)
VICE CHAIRMAN(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

(10)

O.A. 405/86Date of decision 1-9-1988

Shri Mahesh Chandra Bhargava Petitioner

Vs.

Union of India Respondent

Applicant in person Advocate for the
Petitioner(s)Shri M.M. Sudan Advocate for the
Respondent(s)CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. S.P. MUKERJI, ADMINISTRATIVE MEMBER.

(The judgment of the Bench delivered by
Hon'ble Shri S.P. Mukerji, Administrative
Member)

In this application dated 26th May, 1986 under Section 19 of the Administrative Tribunals Act, the applicant, a Jr. Accounts Officer under the Delhi Administration, has prayed that he should be given retrospective promotions in the Sales Tax Department of Delhi Administration with effect from the dates his immediate junior Shri K.K. Gupta was promoted as Stamp Auditor and then as Assistant Sales Tax Officer.

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He has also prayed that on the basis of such promotions, the consequential benefit of seniority in the different grades including the Delhi and Andaman and Nicobar Islands Service may be given as also arrears of pay and other benefits.

2. The brief facts of the case are as follows. The applicant was appointed as Senior Clerk in the office of the Commissioner, Sales Tax by the order dated 23.3.1952. He was selected and appointed as Sub-Inspector, Weights & Measures in the Directorate of Industries & Labour by the order dated 8.8.1955. He went on deputation in January, 1959 as Divisional Inspector, Weights & Measures under the Government of Madhya Pradesh and remained there on deputation till 1964, when on health grounds, he applied to be brought back to his parent department on the condition that all his promotions which would have been due to him if he had remained in the Sales Tax Department, Delhi, would be given to him. The office of the Commissioner, Sales Tax indicated that the admissibility of the various service benefits would be considered and determined according to the rules, only after his reversion to his original post of Senior Clerk in that department. The parent department also informed the Madhya Pradesh authorities that the applicant had been declared quasi permanent with effect

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from June, 1955, in his parent department. The applicant's grievance is that after his rejoining the Sales Tax Department, the respondents have been dilly dallying in taking any decision about his ^{5/} promotions which he had missed while on deputation with the Madhya Pradesh Government. He retired on 31st July, 1986. The applicant's grievance is that the respondents did not promote him to the next higher post of Stamp Auditor with effect from 16.8.60 when he was on deputation with the Madhya Pradesh Government, but when his junior Shri K.K. Gupta was so promoted. The applicant was promoted to the equivalent grade II ministerial of the DANI service on 16.11.1968. His claim is to get promotion as Stamp Auditor with effect from 16.8.60 and thereafter as Assistant Sales Tax Officer in 1966, on the basis of the dates when Shri K.K. Gupta and others junior ^{5/} to him were so promoted. He has explained that the respondents have been delaying his ^{5/} promotion on the ground that he had not produced any evidence to show proficiency in Urdu. He indicated that he was informed in March, 1982 that his case was decided vide the memo dated 8.10.75. When he represented that he had never received ^{5/} memo, a copy of the memo (Annexure-II to the application) was sent to him in May, 1982. The memo ^{5/} did not contain any decision, but indicated that he was "required to furnish a certificate, Diploma or

Degree of recognised Institution in support of the fact that he had qualified certain examinations in Urdu prior to his eligibility for promotion". Immediately thereafter, he submitted a certificate from his college (Annexure-N) showing that he had studied and passed Urdu till VIIIth class. He followed it up/representing that he had not only studied Urdu upto VIIIth, but had also cleared the language paper with higher standard in the departmental examinations of 1965 & 1966. The matter was referred to the Finance Department, who in their letter dated 27th March, 1984 (Annexure-P) communicated the advice of the Services department and advised that further action as deemed fit may be taken. The applicant has made a grievance of the fact that the respondents instead of taking any further favourable and Services action on the aforesaid/opinion of the Finance Department, allowed him to retire without the benefits claimed.

3. The respondents have not denied the factual position indicated above by the applicant, but has argued that the claim is time barred as he is claiming promotion after a lapse of more than 19 years. They have explained that he was considered for promotion as Inspector both on the executive as well as on ministerial side, but was not found suitable on the executive side and was graded so low/the ministerial side that his turn did not materialise. They have conceded that he was rejected for promotion as Stamp Auditor as he did not

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produce any documentary evidence in support of his
about it
claim. He was informed in 1975.

4. We have heard the arguments of the applicant and the learned counsel for the respondents and gone through the documents carefully. So far as the question of limitation is concerned, the respondents have argued that his case was decided by their letter of 6th March, 1975, in which he was informed that he was required to furnish a certificate etc. in support of the fact that he had qualified in certain examination in Urdu. To our mind this was not a decision, but an advice and did not close the case. When in 1982 he represented again, the respondents, that is, the Commissioner of Sales Tax referred the case by his letter of 17th November, 1982 to the Finance Department of Delhi Administration, who on their part referred the matter to the Services department who advised as follows:-

" Proficiency in Urdu does not connote any standard of school or college certificate upto any class. It simply means that one should read and write that language correctly and such proficiency can be achieved without any regular study in school or college. There have been a number of very good Novelists who were hardly primary pass. In Sales Tax, there used to be departmental examination and knowledge in Urdu was one of the prescribed papers. It may be ascertained whether this official qualified that test".

The applicant in his letter dated 19.11.1984 (Annexure-Q-1) requested the respondents to take a decision on the basis of communication of the Finance Department dated 27.3.84. He followed it up by reminders dated December, 1984 and January, 1986. Even if we take the period of

limitation from 19.11.84, he should have filed this application before the Tribunal within one year from the date of expiry of six months from 19.11.84.. The period of limitation thus expired on 19.5.86. The application have been filed on 26th May, 1986. There has been delay of seven days which in the circumstances of the case, we find fit for condonation.

5. It is clear from the advice of the Services department as quoted above that the applicant was not required to pass any qualifying examination in Urdu, but was only to prove that he could read and write in that language. The certificates produced by him from his College at (Annexure-N) and the facts of his having passed the departmental examination with the language paper in Urdu with higher standard should have been deemed to be good enough by the respondents for considering him for promotion as Stamp Auditor.

In the facts and circumstances, we allow the application and direct that the applicant should be considered by a Review Committee for promotion as Stamp Auditor with effect from 16.8.60, when his junior Shri K.K. Gupta was so promoted. If he is selected, he should be given proforma promotion as Stamp Auditor and seniority in the grade of Stamp Auditor and considered further for promotion as Assistant Sales Tax Officer by another Review DPC as in 1966 when Shri K.K. Gupta and others

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junior to the applicant were so considered. If he is so promoted, he should be given seniority in the grade of Assistant Sales Tax Officer on the basis of such promotion and considered for appointment to DANI Service in accordance with his seniority. He should also be given arrears of pay and allowances from the respective dates of his promotions on the above lines, subject to adjustment of the pay and allowances already drawn by him. His pension and other retirement benefits should also be recalculated on the basis of salary and allowances, which he would have drawn as a result of the promotions, if to which he would be entitled on the above lines. The decision about his promotion to various grades and to DANI and payment of arrears of pay and allowances as also of additional pension and retirement benefits, if any, on the above lines, should be completed within a period of six months from the date of communication of this order. There will be no order as to costs.

S. P. Mukerji
(S. P. MUKERJI)
ADMINISTRATIVE MEMBER

11/9/88
(P. K. KARTHA)
VICE CHAIRMAN (J)