

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A.NO. 1488/91.

DATE OF DECISION 26.9.1993Shri Harmesh Chandra, PetitionerShri B.B. Raval, Advocate for the Petitioner(s)

Versus

Union of India & Respondentthrough Ministry of Information & Broadcasting.Shri P.P. Khurana, Advocate for the Respondent(s)**CORAM**

The Hon'ble Mr. I.K. Rasgotra, Member (A)

The Hon'ble Mr. B.S. Hegde, Member (J)

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? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

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[Delivered by Hon'ble Shri B.S. Hegde, Member (Judicial)]

The applicant joined service in the Films Division
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at New Delhi as L.D.C. on 4.5.1962. He belongs to/reserved
community. The applicant, along with one Shri C.L. Dogra,
Respondent No. 3, was promoted as Superintendent against
of Supdt.
promotional post/on the panel drawn on 8.3.1985. The stand
of the applicant is that his posting at Bombay was delayed

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for the reasons that he was not relieved by his Delhi Office in public interest which resulted in Financial loss and future promotion eligibility, therefore, he filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (1) That the Respondent may be directed to give notional promotion or stepping up pay to applicant in the post of Superintendent from the date his junior Sh.C.S.Pathankar was promoted.
- (2) That Respondent No.2 may be directed to consider promotion of applicant as Asstt. Administrative Officer in the vacancy which fell vacant on 29.6.1988 vis-a-vis Sh. C.L.Dogra.

The applicant has also prayed for an interim order directing the respondent No.1 produce their file No.A-42020/54/89-F.(A) where the claim of applicant was conceded etc.

2. The main contention of the applicant is that the applicant and Respondent No.3 were considered for the post of Superintendent and accordingly, a panel was drawn on 8th March, 1985 and seniority list was published at the end of 1988. Both were placed on probation for a period of 2 years. The contention of the applicant is that he had cleared

probation in the post of Superintendent by the D.P.C. on 6.12.1987. Respondent No. 3 was appointed as Superintendent on 23.4.1985 and he was posted at Delhi. The applicant submits, the he being aggrieved by the order of the respondents vide dated 23.4.1991, filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the promotion of one Shri C.S.Patankar, Superintendent, on ad-hoc basis, junior to the applicant as well as against the illegal change of character roll of Shri C.L.Dogra, Respondent No.3 for the post of Assistant Administrative Officer. Therefore, he contended that Respondent No.2 should be directed to consider promotion of the applicant as A.A.O. in the vacancy which fell vacant on 29.6.1988 vis-a-vis Sh.C.L.Dogra and also notional promotion or stepping up pay in the post of Superintendent from the date on which his junior was promoted.

3. The Respondents, in their reply, raised certain preliminary objections stating that no

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cause of action has accrued in favour of the applicant against the Respondents hence the petition is required to be dismissed. Besides, that the application is belated one as he seeks relief with effect from 1982 and his representation was rejected vide dated 25.4.1989. Hence, it is time barred. They further contended, that Respondent No.3 was senior to the applicant in the post of T.A. and he was promoted to the post of Superintendent with effect from 24.3.1985 and posted at Delhi, whereas the applicant was promoted to the post of Superintendent vide order dated 10.4.1985 and was posted to Bombay and at that time no vacancy was available at Delhi to accommodate him. He joined the post of Superintendent in Bombay on 6.12.1985 at his own convenience after lapse of 8 months of his selection. The applicant never submitted any representation nor any application for earned leave or relieving order/application from Delhi to take over the post of Superintendent in Bombay. That itself shows, that he was not interested to join at Bombay and delayed intentionally for his own benefit. He was not keen

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to go out of Delhi. The allegations made by the applicant against Shri C.L. Dogra, Respondent No.3, are baseless and without any material or basis.

During ^{the} probation period in respect of Shri C.L. Dogra, Respondent No. 3 from 24.3.85 to 23.3.86

ACRs were written by one Shri D.N. Pande, the then A.A.O. and reviewed by Shri S.N. Singh, the then

A.O. The report contained certain adverse remarks which were communicated to him and he made representation against those adverse remarks which was

considered by the Appellate Authority and ordered for expunging the same. The second ACR during probationary period i.e. 3.7.86 to 23.3.1987 was written by Shri K.K. Gupta, the Assistant Administrative Officer and reviewed by Shri Girish Vaidya, the then J.C.F. There were no adverse remarks in this report.

On 21.3.1988, a DPC was held for considering promotion to two vacancies in the grade of Assistant Administrative Officer. At that time, only two persons in the feeder cadre were available for consideration.

The names of two persons were considered and

on their empanelment they were appointed to the post of A.A.O. Subsequently, in the month of May, 1988, one more DPC for the post of A.A.O. was held for considering the filling up of the vacancy which was expected to occur on promotion of one A.A.O. to the post of A.O. At that point of time, there was only one person in the feeder cadre of Superintendent eligible for consideration. That person was Shri C.L. Dogra. As his name was empanelled, he was appointed to the post. At that point of time, the applicant had not completed the period of 3 years as he joined the post of Superintendent on 6.12.1985.

4. In the light of the above, ^{the} two questions that arise for consideration ^{are} as to whether the applicant's allegation against Respondent No. 3 is based on any valid grounds and secondly, whether the Respondent is justified in giving ad-hoc promotion to Sh. C. S. Patankar, who is junior to the applicant ~~in~~ in the facts and circumstances of the case. As mentioned above, Respondent No. 3 was senior to the applicant in the post of T.A. and was posted to the post of Superintendent on 24.3.1985. Prior to the applicant, respondent No. 3 had completed his probation on 24.3.1987, incidently, that

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Respondent No.3 also belonged to reserved community.

Whereas in the case of the applicant his probation period
/three years was completed on 6.12.1987. Persons ^{who} ~~have not completed~~ ^{as}
service as Supdt., they cannot be considered for the
post of A.A.O. therefore, each case was considered
separately by the D.P.C. on its merits.

5. We have called for the service records of the
Respondent No.3 and have perused the same, and have also
heard the rival contentions of both the counsel and
carefully perused the records. On perusal of the record,
we find, that there were some adverse remarks in the
report of Shri Dogra from 24.3.85 to 23.3.1986, however,
the same were expunged by the Appellate Authority. Though
he completed his probation period on 24.3.1987, he was
considered for promotion to the post of A.A.O. only
in the year 1988 after completing three years of service
as Superintendent. Though the applicant contended that
the Respondent cannot write CR of Respondent No.3 as the
latter had worked less than 3 months i.e. from 1.1.1986
to 20.3.1986. It is true, that the respondent No.3 worked
for less than 3 months and thereafter he went on leave.

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However, ~~the~~ purpose of writing CR, leave period cannot be excluded. In that event of the matter, the contention of the applicant does not hold good as the period of the report was more than 3 months including leave period till 2.7.86. Further, the applicant's contention was that the CR of Sh. C. L. Dogra is not based on any material facts. His second contention is that his junior Shri. C. S. Patankar was promoted to the post of Supdt. on adhoc basis, which has resulted in higher pay to Shri Patankar than the petitioner.

The ad-hoc promotion was given to Sh. Patankar strictly on seniority-cum-fitness basis in so far as Bombay office is concerned as it was purely a local arrangement and he was the senior most in Bombay Office. It is an admitted fact, that due to administrative exigencies the post could not be filled up from 1982 to 1984 and had to be filled on ad-hoc basis purely on local arrangements just to avoid inconvenience to others. Therefore, they did not call applications from others. It is also an undisputed fact, that at the relevant time, the applicant was working in Delhi and ad-hoc arrangement were made in Bombay to carry out the day to day administration. The rule quoted by him is not

applicable in his case, as the applicant became eligible for consideration for the promotion to the post of A.A.O. on 6.12.1988. In view of this, it is not correct to compare his case with that of Shri Dogra as no injustice was done to the applicant. The representation submitted by the applicant was considered by the Ministry of Information and Broadcasting in consultation with the Ministry of Personnel & Public Grievances and Pension and also the Ministry of Finance whose advice in the matter is reproduced below:-

" It is normal practice prevalent in all the cadres that appointment against short-term vacancies are made by promoting the seniormost officer locally available, unless officers empanelled by DPC are available. If a junior officer serves in a higher post for a longer period (for whatsoever reasons) than the senior officer and on that account, the junior officer starts drawing more pay, the pay of the senior officer cannot be stepped up"

6. The above position was intimated to the applicant and he was informed vide their letter dated

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23.4.91 stating that his request cannot be acceded to purely on the ground that ad-hoc appointment was given to his junior who was stationed at Bombay which was purely a local arrangement, whereas the applicant working in Delhi and not in Bombay. The mere fact/^{that} junior had the benefits of ad-hoc promotion which does not affect the seniority of the applicant does not persuade us to doubt the veracity of the respondent.

7. The Learned counsel for the applicant, has cited various decisions in support of his contention. The learned counsel for the applicant has^{also} raised many objections in his rejoinder. His main grievance was against Respondent No.3 rather than the official Respondent. His first objection is that the report of the assessment report during probation is not to be communicated, secondly, Reporting/Reviewing Authority can write ORs of an officer if it ^{has watch for} ~~at~~ at least three months the work and conduct of the officer reported upon, and the officer reported upon, need not submit his self appraisal if the period of reporting/reviewing authority is less than 3 months. Thirdly, the officer who has signed this reply is not authorised to file the reply on behalf of the Respondents. In view of the

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averments and pleadings, we are of the opinion, that most of the contentions of the applicant are nothing but presumptions and not based on records and hence the same are not tenable. It is on record, that there was no request by the applicant for relieving him from Delhi Office so as to enable him to join at Bombay on the promotional post. Further, the inter-departmental correspondence adduced during the course of hearing by the learned counsel for the applicant has been objected to by the counsel for the respondents Sh. Khurana, stating that such correspondence, even if it is found to be correct cannot be taken note of having regard to the pleadings and relief prayed for, we are satisfied that interdepartmental correspondence cannot be relied upon and we do not take notice of the same.

8. In so far as limitation is concerned, the learned counsel for the applicant relied upon the following directions:-

1990(12)ATC 475 - J.P. Shukla Vs U.O.I.

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1988(6) ATC 148 - Piare Lal Tiwari Vs V.O.I.
1989(II) ATC 726- Madhukar Molly Vs U.O.I.
AIR 1979 SC1144 - Madras Post Trust V/s
Himanshu International.

Though the Respondents have stated that the petition is barred by time, considering the various events, e.g. representations and the reply from the Respondent vide dated 24.4.91 we hold, that the petition has been filed within the period of limitation and hence the principle laid down in S.S. Rathore's case is not applicable in the present case.

9. We have carefully gone through the various citations/rulings furnished by the applicant's counsel. In so far as Limitation is concerned, since the applicant received the impugned order on 23rd April, 1991 and he had filed this application within the period of limitation, as envisaged u/s 21(1)(3) of the Act, therefore, the contention of the Respondents that it is barred by limitation does not appear to be correct, therefore, such a contention is not tenable.

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10. Regarding his seniority, and stepping up of pay as mentioned earlier, the citations referred to above, do not fit into the facts of this case as he does not have any specific grievance against the Respondent No.3 nor against the Respondents. On perusal of records, we noticed ^{that} no undue favours have been shown to Respondent No.3 and he got his promotion as A.A.O. in his turn after putting the required years of service for the post of A.A.O. and the applicant's allegation that he had manipulated official records to his advantage has not been substantiated nor proved. Further, the records of the respondent 3 are substantially good except the year 1985 to 1986 with some adverse remarks which were ultimately expunged by the Appellate Authority. In this connection, the learned counsel for the applicant drew our attention to Bombay High Court's decision in Y.V. Thattai State of Maharashtra 1984(2) SLR 308, where it has been observed that normally it is not necessary to communicate the adverse remarks given during probationary period and this does not vitiate the competent authority's conclusion and assessment regarding the Govt. servants' indifferent and unsatisfactory — performance or otherwise. In the

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instant case, the adverse remarks during the 1st year probation was not on indifferent and unsatisfactory performance but on other grounds and hence the Appellate Authority had expunged the adverse remarks and, therefore, in the eye of law, there is no adverse remarks in so far as CRs of the Respondent No. 3. In any event, the Respondent No. 3 is senior to applicant, hence he cannot have any grievance against Respondent No.3.

11. In the conspectus of the facts and circumstances of the case, we are of the view, that the relief prayed ^{for} by the petitioner is vague and unenforceable, and there is no merit in the petition, therefore, the petition is required to be dismissed. Though his junior Shri Patankar was appointed purely on ad hoc basis, the applicant's seniority has not been affected, and, therefore, his contention that his pay should be stepped up could not be acceded to in the facts and circumstances of this case. Both the contentions fail and, therefore, we see

no ground to interfere in the administrative decision of the Respondents. He has also not assailed any order of the Respondents. This petition fails being devoid of merits and is dismissed. There will be no order as to costs.

(B.S. Hegde)
Member (J)

B.S. Hegde
5/7/93

(I.K. Rasgotra)
Member (A)

I.K. Rasgotra
5/7/93