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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~NEWWxDExLHM~~O.A. No. 436 OF 1987.
~~RAVxNo~~

DATE OF DECISION 22-3-1991

Suresh Anandji Bhindora, Petitioner

Mr. J.J. Yajnik, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent(s)

Mr. P.M. Raval, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

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

Suresh Anandji Bhindora,
Door Darshan Kendra,
Dwarka.

.... Applicant.

(Advocate: Mr. J. J. Yajnik)

Versus.

1. Union of India
(To be served through the
Secretary, Ministry of
Information and Broad Casting
Akashvani/Door Darshan Bhavan,
New Delhi)
2. The Chief Engineer,
Western Zone, AIR & Doordarshan,
Old C.G.O. Building,
101 M.K. Road,
Churchgate (E), Bombay-20.
3. The Station Director,
Door Darshan Kendra,
Thaltej, Ahmedabad. Respondents.

(Advocate: Mr. P. M. Raval)

JUDGMENT

O.A. No. 436 OF 1987

Date: 22-3-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

This Original Application has been filed under section 19 of the Administrative Tribunals Act, 1985 by the applicant, then a Junior Engineering Assistant in the All India Radio, against his supersession for promotion to seek relief of promotion from the date his immediate junior was promoted to the higher rank and all consequential pecuniary and service benefits flowing from such a relief.

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..... 2/-

2. The applicant was in fact promoted as Senior Engineering Assistant along with his colleagues B.G. Chauhan, A.M. Desai, H.S. Mehta and H.D. Chawda by an order dated 2.8.1983. However, all of them declined the promotion (for personal reasons as it involved transfer also) and all came to be debarred for promotion for one year as per rules. Ever since, the respondent has not been promoted and the efficiency bar due to be lifted on 1.5.1985 has also been enforced. In December 1985 his colleagues who had, like the applicant, refused promotion in 1983 came to be repromoted but the applicant was not repromoted. After this, more of his juniors came to be promoted by orders dated 29.12.1986 and May 1987 but not the applicant. The applicant's case is that with seniority-cum-fitness as the criterion for promotion and with his clean service record, there is no justifiable reason for the respondents to continue to deny him repromotion. He had earned an adverse remark in 1977 his representation against which is still not decided and in any case this adverse remark cannot be used to deny him repromotion as he had already been promoted in 1983 despite any such remarks. The applicant's fear is that the denial of repromotion may be prompted by malafide reasons as he had been constantly, along with some others, campaigning against widespread corruption in AIR which campaign attracted notice of politicians, political authorities and the print media and a CBI inquiry was started and he gave his evidence in the inquiry. The applicant was ultimately promoted as Senior Engineering Assistant

H M Suresh

by an order dated 23.12.1987 which contained names of 56 persons promoted. The applicant figures at serial No.1 in this order.

3. The respondents chose not to file their reply though the respondents' counsel had sought and was given ten days time for that on 14.10.1987. At the final hearing, none appeared for the respondents. Thus the application has gone uncontested for reasons best known to the respondents and their counsel giving rise to the inference in the circumstances that their position is patently indefensible. The outcome of this application thus has to entirely depend on the merits of the applicants' case not challenged or disputed by the respondents.

4. The applicant has shown by record that he was promoted as Senior Engineering Assistant by an order dated 2.8.83 even as his colleagues B.G.Chauhan, A.M. Desai, H.S. Mehta and H.D. Chavda were so promoted but all refused promotion and were debarred for promotion for one year in accordance with the rule on the subject. Thereafter, the applicant should have been considered for repromotion when similarly circumstanced B.G. Chauhan, A.M. Desai, H.S. Mehta and H.D. Chavda were repromoted by order dated 31.12.1985 immediately on completion of the debarring period. As respondents who chose not to contest the application have not ^{shown by} ~~that~~ anything happened between August 1983, the date of first promotion, and the date of repromotion of B.G.Chauhan, A.M. Desai, H.S. Mehta and H.D. Chavda on 31.12.1985 after completing the debarring period, which weighed with the respondents

M. M. Suresh

to single out the applicant from repromotion from the same date, the applicant has the legal right to repromotion from the same date 31.12.1985 more so because ^M ~~same~~ he has alleged malafides which have not even ^{denied} _M been deemed or disputed and therefore not shown as ^{had} _M not having ~~here~~ their play in denial of repromotion to the applicant.

5. The application therefore succeeds.

6. Before we add the operative part of this judgment we must express sense of concern at the respondents not contesting the application which alleges malafides said to be arising from the applicants' constantly campaigning against corruption in AIR. Besides, the cost of this uncontested outcome of the application will have to be borne by the exchequer.

7. We hereby direct the respondent No.1 to give ^M repromotion to the applicant to the rank of Senior Engineering Assistant with effect from 31.12.1985 with all consequential pecuniary and service benefits arising from it within three months from the date a copy of this order is received by Respondent No.1. We also order that the respondent No.1 shall pay interest on arrears of each month at the rate of 12% per annum, interest calculated upto 31st March, 1991.

8. We direct respondent No.1 to also pay within the period above the cost of this suit computed at Rs. 1000/- to the applicant.

R.C.Bhatt

(R.C.Bhatt)
Judicial Member.

M. M. Singh

(M.M. Singh)
Admn. Member

(12)

Date	Office Report	O R D E R
23-11-92		<p>Present & At the request of the respondents counsel Shri Akil Kureshi who has filed M.A. 379/92 and who wants to make further submissions, call on 14-12-1992.</p> <p><i>AC</i> <i>JK</i> (R.C. Bhatt) (N.V. Krishnan) Member (J) Vice Chairman.</p> <p>*AS.</p>
14-12-1992		<p>Shri Akil Kureshi for the respondents. Shri Vajnik ex for the applicant.</p>

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13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Promotion

O.A. No. 436/87
T.A. No.

DATE OF DECISION 4-1-1993

Shri S.A. Bhindora Petitioner

Shri J.J.Yajnik Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V.Krishnan Vice Chairman

The Hon'ble Mr. R.C. Bhatt Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

(14)

Shri S.A. Bhindora
Door Darshan Kendra
Dwarka

Applicant.

Advocate Shri J.J. Yajnik

Versus

1. Union of India
To be served through
Secretary Ministry of
Information and Broad casting
Akashwani/Door Darshan Bhavan
New Delhi
2. The Chief Engineer
Western Zone, AIR Door Darshan
Old C.G.O Building, 101, M.K. Road
Chruchgate (E) Bombay
3. The Station Director
Door Darshan Kendra
Thaltej Ahmedabad.

Respondents

Advocate Shri Akil Kureishi

ORAL JUDGEMENT

In

O.A. 436 of 1987

Date; 4-1-1993.

Per Hon'ble Shri N.V. Krishnan Vice Chairman.

Shri Akil Kureishi for the respondents had filed M.A. St. 421/92 to set aside the exparte order dated 22-3-91 in O.A. 436/87. This M.A. was filed on 28-9-1992. The respondents have also filed M.A. NO. 379/92 for condonation of delay occassioned in filing M.A. St. 421/92. Copies of

16

the M.A. have been served on Shri J.J. Yajnik Counsel for the original applicant.

2. Shri Yajnik submitted that as the original order has been passed on merits, the respondents should have taken recourse to a review of the original order. This was not conceded by Shri Akil Kureshi.

3. We have heard the parties. We have also seen the C.A.T (Procedure) Rules. We notice that the relevant provisions are Rule 15 and Rule 16 which concern the action to be taken by the applicant and the respondents respectively in such circumstances. Whereas the proviso to Rule 15, requires that if the order is passed on merits in the case of an applicant, he can get it vacated only by filing an application for review under Rule 17, there is no such provision in respect of similar orders passed on merits affecting the respondents.

This is clear from Rule 16. Therefore, in an ~~ex parte~~ matter decided on merits, respondents can file an application for restoration under Rule 16 & this application need not be a review application under Rule 7. Hence the M.A. St. 412/92 is not defective on this count.

4. In these circumstances, we have heard the learned counsel for the original respondents, Shri Akil Kureshi on merits on the reasons why the respondents could not appear on the date when O.A. 436/87 was fixed for final hearing. We have also perused the M.A. (St) No 421/92 which is the application under Rule 16. It is merely stated therein the respondents could not remain present before the Tribunal personally or through counsel and that they were not aware of the hearing. No other reason is given.

5. We notice that on 21-1-1988 Shri J.D. Ajmera Standing Counsel appeared for the respondents and stated that no cause of the applicant survived. There was no appearance for the respondents thereafter. The matter was listed on 8-2-1991 when the applicant's Counsel ~~alone~~ was present. Hearing was completed on 26-2-1991. The learned Counsel was to produce the copy of an order for which the case was adjourned to 7-3-1991 and finally to 22-3-1991 when judgement was passed. *Respondent was not a present on these dates*

6. Considering the manner in which the cause list is prepared in this Bench it ~~cannot~~ be stated that the respondents did not have any notice about the proceedings on 8-2-1991, 26-2-1991, 7-3-1991 and 22-3-1991. That apart, the Government Counsel have to attend to a number of cases each day; therefore, they are invariably present at least to see the cause list. It cannot be that the original respondents was not aware of the four date, on which the case was listed for hearing.

7. In fact, the absence of the Government Counsel ~~is a~~ was a surprise even to the Bench, because we also notice from para 6 of the original order that the Bench itself expressed its concern at the respondents not contesting the case because the application alleged malafide against the AIR said to have arisen from the applicant's constant campaign against corruption in the AIR. Perhaps, the respondents did not appear, in view of the earlier submission of Shri J.D. AJMERAI on 21-8-1988 that no cause of the applicant survived..