

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 496 of 1992
~~**P.A.NO.**~~

DATE OF DECISION 3rd January '97

<u>B. B. Sakarwala</u>	Petitioner
<u>Mr. J. J. Yagnik</u>	Advocate for the Petitioner [s]
Versus	
<u>Union of India & Others</u>	Respondent
<u>Mr. Akil Kureshi</u>	Advocate for the Respondent [s]

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

The Hon'ble Mr. A. K. Mishra, Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

NO

B. B. Sakarwala
Upper Division Clerk
B-10, Mahavir Flats
Nr. Sujata Flats, Shahibaug
Ahmedabad.

Applicant

Advocate: Mr. J.J. Yagnik

Versus

1. Union of India
(to be served through the
Secretary, Ministry of
Commerce, Udyog Bhavan,
Maulana Azad Road
New Delhi.
2. The Joint Chief Controller
of Imports and Exports
New CGO Building
Bombay-20.

Respondents

Advocate: Mr. Akil Kureshi-

JUDGEMENT

IN

O.A.NO. 496 of 1992

Dated : 3rd January 1997

For Hon'ble Mr. K. Ramaswamy, Member (A):

The application has been filed against non-grant of promotion to the applicant as Licensing Assistant. The applicant has been working for about 21 years of service with the respondent department. By order dated 5th November 1992 (A-3) the Departmental Promotion Committee had not found him suitable for promotion to the post of Licensing Assistant.

The short facts of the case are as under:-

The applicant had been promoted to the post of Upper Division Clerk w.e.f. 26.11.1980. The said promotion was ad hoc and provisional and by order dated 6.1.1981 according to the applicant ~~26.11.81~~ the D.P.C. had already promoted him to the post of U.D.C. However, in 1985 one Mr. Jaya Nair came to be promoted by order dated 15.11.85. This promotion

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had been challenged by the applicant also in O.A. 128 of 1986 stating that the C.B.I. investigation or pendency of cases registered under Prevention of Corruption Act registered in February 1986, could not debar the applicant from being considered for promotion. Subsequently, the petitioner also came to be discharged in the corruption case by order of Metropolitan Magistrate Ahmedabad and in the appeal also this order came to be confirmed. This particular order was followed by another OA/474 of 90 wherein it was again ordered that the D.P.C. should be reconvened to consider the case of the applicant. However, after such reconsideration also the respondent department had found it not possible to promote the applicant. The present applicant has thereafter chosen to seek voluntary retirement also on ^{1.11.93}~~1.11.93~~. The respondent department in their reply have stated that the basic contention about some official junior to the applicant having been promoted was not correct. While some ad hoc promotion had become necessary, the fact remains that as per their revised seniority the present applicant had no case for promotion on the ground of seniority. The D.P.C. had not found him fit enough for promotion after reconsideration.


Heard the learned counsel for the applicant as well as respondent.

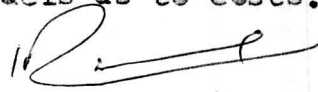
Whether the case of the applicant should have been considered by the respective D.P.C. at the relevant time inspite of the pendency of a criminal case under the Preventive Corruption Act or pending C.B.I. inquiry has already been settled by this Tribunal in its order, in OA 128/86 and OA/474 of 1990 referred

earlier. It had been held that the department in not following the sealed cover procedure was in the wrong and if the applicant was found suitable, on review D.F.C., then notional promotion should be given to the applicant. Accordingly, case of the applicant for promotion was considered and reviewed by the D.F.C. held on 9.10.92 by which time the seniority situation in respect of the applicant had also become clear. It was seen that Mrs. Nair was found to be senior to the applicant. It has been further averred in the submission that the applicant was found eligible to the post of U.D.C. itself only w.e.f. 24.11.1983. The applicant had also therefore chosen to seek voluntary retirement w.e.f. 1.11.91.

In view of the revised seniority position and the fact that the applicant had not been able to challenge the revised seniority position vis-a-vis Mrs. Nair's case against whose promotion the applicant had sought consideration for promotion as Licensing Assistant, the Tribunal sees no reason to interfere with the decision of the respondent department particularly when it is not clear as to whether the department would have liked to proceed departmentally against the applicant after the conclusion of the criminal proceedings. The applicant had obviously ^{pre-empted} ~~pre-empted~~ any decision in this regard by choosing to seek voluntary retirement. The application is therefore disallowed.

There would be however no orders as to costs.


(A.K. Mishra)
Member (J)


(K. Ramamoorthy)
Member (A)