

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/48/1993

Date of Decision: 07-09-2000

Shri M.J.Ninama : Petitioner (s)

Mr.M.S.Trivedi : Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

Ms.P.E.Sheth : Advocate for the Respondent(s)

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The Hon'ble Mr.P.C.Kannan : Member(J)

The Hon'ble Mr.G.C.Srivastava : Member (A)

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?

N.D.

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Shri M.J.Ninama
Section Supervisor,
C-7/57 P & T Complex,
Satellite Road,
Jodhpur Char Rasta,
Ahmedabad-380 015.

: Applicant

Advocate: Mr.M.S.Trivedi

Versus

1. Union of India,

Notice to be served through its Secretary ,
Ministry of Communication,
Department of Post,
New Delhi-110 001.

2. The Chief Post Master General,

Gujarat Circle,
Ahmedabad-380 001.

: Respondents

Advocate: Ms.P.B.Sheth

JUDGMENT

OA/48/93

Date: 07-9-2000

Per: Hon'ble Mr.P.C.Kannan

: Member(J)

We have heard learned counsel for both sides.

2. This is the third round of litigation. The applicant who is working as Section Supervisor is aggrieved with the action of the Respondents in not giving him promotion as Section Supervisor from the select list of the year

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1983 when the applicant completed 10 years of service and his promotion had fallen due, in accordance with orders of the Supreme Court. The applicant seeks the following reliefs:-

" (B) That the Hon'ble Tribunal be pleased to quash and set aside order dated 9/5/1991 passed by the respondents considering the applicant fit for promotion to the Section Supervisor w.e.f. 1.10.1984;

(C) That the Hon'ble Tribunal further be pleased to direct the respondent, his subordinates to consider the case of the applicant for promotion and all other consequential service benefits as per the direction given by the Hon'ble Supreme Court on 9.5.1990 in I.A. No.1 of 1990 in Civil Appeal No.889 of 1988."

3. The applicant who entered the department as U.D.C. was earlier charge sheeted under the CCS (CCA) Rules and after due inquiry he was removed from service on 19.12.1981. The appellate authority reduced the punishment to that of compulsory retirement vide order dated 13.8.82. This order was challenged before the Gujarat High Court in SCA No.4053/82. The Hon'ble Court, after hearing both sides quashed the punishment order and directed the department to hold denovo proceedings. As a result of denovo proceedings, the applicant was imposed the punishment of compulsory retirement on 3.6.1985. On appeal again the said punishment order, the appellate authority modified the punishment to "reduction to L.D.C. cadre for 5 years." . This appellate order was challenged before this Tribunal in OA/103/86 and the same was dismissed on 29.10.1986. The

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applicant thereafter filed Special Leave Application in Civil Appeal No.889/1988 before the Hon'ble Supreme Court which was disposed of on 25.8.88 with the following order:-

" In the case of M.J.Ninama the penalty of reduction in rank is set aside and he shall be restored to the post which he held before the imposition of the penalty. However, for the period, if any, served by him in the lower post pursuant to the penalty imposed on him, he shall not be entitled to the difference of salary."

4. The Hon'ble Supreme Court in IA No.1 of 1990 clarified its earlier order vide order dated 2.5.1990 (Annexure A-1). The relevant portion of this order reads as follows:-

" The effect of the judgment is that the reduction in rank has been set aside and he has been deemed to be continuing in the post which he held before the reduction in rank was ordered. On that footing he would be entitled to all his service benefits including promotion, pay fixation and increments as and when they would have fallen due."

5. In the light of the above order, the competent authority issued certain clarificatory order. The applicant was also given deemed promotion from 1.10.1984 & i.e. the date on which his immediate junior was promoted. The applicant in this O.A. submits that his promotional benefit is purely based on clear and specific directions of judgment dated 2.5.90 delivered by the Hon'ble Supreme Court of India. He fulfilled the required terms ~~and~~ 10 years service condition in March, 1983 and hence his due promotion of Section Supervisor has fallen due from the select list of the year 1983 executed by D.P.C. and kept in sealed cover procedure.. But the applicant is considered fit for the promotion in Section Supervisor cadre with effect from 1.10.84, the date from which his junior Shri S.J.Damor was promoted, which is quite certainly contrary to the direction of the judgment dated 2.5.90.



6. The applicant therefore contends that he should be considered and given promotion from March, 1983 when he completed 10 years of service and ~~because~~ due for promotion in accordance with the directions of the Hon'ble Supreme Court. The applicant submits that the action of the Respondents is violative of the order of the Apex Court.

7. The Respondents in their reply have denied all the allegations and stated that the applicant was due for promotion on or after 23.3.83 when he completed 10 years of service. No D.P.C. meeting was conducted in 1983. The D.P.C. meeting was conducted in 1984 in which the following candidates were considered and promoted:-

	<u>Date of Promotion</u>
1. Shri S.B.Pandit	14.9.84
2. Shri D.M.Desai	14.9.84
3. Shri G.K.Parmar	13.8.84
4. Shri S.J.Damor	1.10.84

8. The Respondents have further stated that S/Shri S.B.Pandit, D.M.Desai and G.K.Parmar were senior to the applicant and S.J.Damor was the next junior to the applicant. In the facts and circumstances, the applicant was given deemed promotion from 1.10.84 i.e. the date on which his immediate junior was promoted. The Respondents therefore contend that the applicant cannot be given promotion from March, 1983.

9. We have considered the rival contentions and examined the pleadings. The only surviving grievance of the applicant is that he should be given

promotion as Section Supervisor from 23.3.83 when he completed 10 years of service as U.D.C. and became eligible for promotion. The facts show that three seniors to the applicant also became eligible for promotion and that no DPC was conducted in the year 1983. In 1984, after holding DPC, the Respondents had considered four eligible officers and promoted them. Among the four officers, three were admittedly senior to the applicant and were promoted in September, 1994. Shri Damor, who is next junior to the applicant was promoted on 1.10.84. In the facts and circumstances, the Respondents issued the impugned order dated 9.5.91:-

" Certified that Shri M.J.Ninama Section Supervisor, O/O Postmaster General, Rajkot region, Rajkot is considered fit for promotion to the Section Supervisor w.e.f. 1.10.1984 i.e. the date of promotion in Section Supervisor cadre by treating him as having been promoted to that grade him the date which his junior Shri S.J.Damor Section Supervisor was promoted to Section Supervisor cadre i.e. w.e.f. 1.10.84.

The benefit of fixation of pay under FR-27 should be given to the official i.e. the pay may be fixed notionally from that day but arrears of pay, if any will be confirmed only for the period he actually worked in this Section Supervisor post."

10 We find that the case of three officers who were senior to the applicant was also considered in 1984 by the duly constituted DPC and they were promoted. The applicant has not referred to any rules/instructions of the department in terms of which he ought to have been promoted in 1983 over his seniors. In our considered view the case of the applicant has been duly considered by the Respondents in accordance with the directions of the Apex Court and the rules and was given due promotion w.e.f. 1.10.84.

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11. We therefore, hold that the OA is devoid of any merit and accordingly dismissed. No costs.

G.C.Srivastava
(G.C.Srivastava)
Member (A)

P.C.Kannan
(P.C.Kannan)
Member (J)

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(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

CA/TA/RA/CP/ 48193 of 200M. J. Hinanya

APPLICANT(s)

VERUS

U.O. I. S.

RESPONDENT(s)

I N D E X - S H E E T

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Certified that the file is complete in all respects.

Signature of S.O. (J)

Signature of Dealing Hand.