

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 466
T. A. No.

199 1

DATE OF DECISION 23.4.92.

K. O. Varghese Applicant (s)

Mr. M.R. Rajendran Nair Advocate for the Applicant (s)

Versus

The Manager, Govt. of India Press,
Koratty and others Respondent (s)

Mr. Mathews J. Nedumpara, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, 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. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The grievance of the applicant is against the refusal on the part of the respondents to grant him promotion as Machine Assistant when his juniors were promoted to that category. The applicant was originally appointed as Machine Inker in a temporary capacity w.e.f. 1.3.1973 in the scale of pay of Rs. 75-110. This post was later re-designated as Machine Attendant. In the seniority list Annexure-I published in 1982, the applicant's rank was 37. Annexure-I list shows that several persons such as S/Shri Benjamin Varghese, O.A. Balan, V.M. Joy and N.K. Unni were promoted as Machine Attendant w.e.f. 27.7.84 but

the applicant was denied promotion to this category.

Hence, he has submitted Annexure-II representation on 7.9.1985 before the Manager, Govt. of India Press, Koratty.

This representation was disposed of by Annexure-III reply stating that his case could not be considered as he was not found fit for promotion because of the currency of punishment issued as per order dated 21.5.1985. The applicant again submitted another representation Annexure-IV.

This was also turned down by Annexure-V stating the same reason. On the expiry of the punishment of withholding of increment, the applicant again submitted representation Annexure-VI. This was answered by Annexure-VII Office Memorandum stating that his case will be submitted to the Manager for decision. The applicant submitted further

representation and he received Annexure-VIII O.M. dated

He has not so far been promoted as Machine Assistant. ⁶
30.12.88/Without challenging any of these communications,

he has filed this application with the following prayers:

"i) to declare that the applicant is entitled to be posted in the category of Machine Assistant with effect from the date of such posting of his juniors on ad hoc /regular basis and direct the respondent to promote and post the applicant as Machine Assistant with retrospective effect from the date of such promotion/posting of any of his juniors with all consequential benefits including arrears of salary.

ii) grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant, and

iii) grant the cost of this Original Application."

2. The definite stand taken by the respondents in this case is that the applicant could not be promoted to the post of Machine Assistant since he is found guilty of

improper conduct and disciplinary proceedings were initiated against him and he was found guilty. They have further submitted that the applicant could not be promoted to the upgraded post of Machine Assistant for the simple reason that on evaluation of all aspects, the competent authority in 1983 and 1984 found him not suitable to be promoted as Machine Assistant. After the currency of punishment awarded/xxxxxx, the applicant's request could not be favourably considered because of lack of vacancy. There were two disciplinary proceedings against him which commenced from 1982 and the applicant was undergoing punishment upto March, 1988 except for a short interval. Hence, it was neither possible nor desirable to keep the vacancy indefinitely for the applicant who was considered twice for promotion along with other Machine Attendants, his juniors and seniors and the DPC rejected his case having found unsuitable.

3. We have heard the arguments and considered the documents. The learned counsel for the respondents placed for our perusal the files. On going through the files, it is seen that the competent authority ~~xxx~~ considered the applicant for promotion/but denied the same to him on his poor performance and because of account of the vigilance/disciplinary case pending against him. When his case was considered for promotion, it is seen that the respondents have not adopted the 'sealed cover procedure.' However, since it is an admitted fact that the applicant was undergoing punishment during the relevant time, even if the sealed cover procedure' was adopted, the

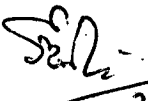
position would not have changed till March 1988 when the currency of punishment expired . But had the sealed cover procedure been followed in 1985, 1986, 1987 and 1988 and any vacancy of Machine Assistant had been filled up by promotion of his juniors, the applicant could have claimed opening of the sealed covers and consideration of his case for promotion against any one of the vacancies filled up by his juniors during these years, on the basis of the assessment in the sealed cover and the outcome of the disciplinary proceedings. The absence of vacancies after 1988 would not have mattered and the applicant could have been promoted against any of pre-1988 vacancies and his promotion could have been given effect to against that vacancy after March 1988. By not considering the applicant for promotion under the sealed cover procedure during 1985-88 when his juniors were considered , the applicant's rights have been grievously ignored.

4. In the facts and circumstances we allow the application to the extent of directing the respondents to consider the applicant for promotion during each of the years 1985-88 when his juniors were considered, by assessing his confidential reports and keeping in view the outcome of the disciplinary proceedings. If he is found fit for promotion in any of these years, he ^{becomes eligible to} ~~should~~ be promoted with effect from the date his junior was promoted in that year but it should take effect from March 1988 when the currency of the punishment was over. If he is not found fit for promotion during 1985-88, he should be considered for promotion against subsequent

5

vacancies in accordance with law. There will be no order as to costs.


23.4.92.
(N.D.HARMADAN)
JUDICIAL MEMBER


23.4.92
(S.P.MUKERJI)
VICE CHAIRMAN