

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW BOMBAY BENCH~~
NEW BOMBAY BENCH

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T.A. No. 384/87

DATE OF DECISION 5.4.1988Mr.M.C.Khole

Petitioner

Applicant in personAdvocate for the Petitioner(s)

Versus

Union of India through Secretary, Respondent s
Deptt. of Defence Production and another.

Mr.R.K.ShettyAdvocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C.Gadgil, Vice C hairman

The Hon'ble Mr. J.G.Rajadhyaksha, Member (A)

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?

Yes

No

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

TR.A.NO. 384/87

Mr.M.C.Khole
1324 Shukrawar Peth,
Pune - 2.

Applicant

V/S.

Union of India
through
The Secretary
to the Govt. of India,
Deptt. of Defence Production,
New Delhi,

2. The Controller,
Controllerate of Inspection
(Ammunition), Kirkee
Pune - 3.

Respondents

CORAM : Hon'ble Vice Chairman B C Gadgil
Hon'ble Member (A) J G Rajadhyaksha

Appearances :

Applicant in person

Mr.R.K.Shetty
Advocate
for the Respondents

JUDGMENT

Dated : 5.4.1988

(PER: J G Rajadhyaksha) Member (A))

Regular Civil Suit No. 1060 of 1981 of the file of the Civil Judge, Senior Division, Pune has been transferred to this Tribunal for decision.

2. The applicant (original plaintiff) has a grievance about the fixation of his seniority as Draughtsman Grade III consequent upon respondents' action nullifying his promotion w.e.f. 17.8.1973 as Draughtsman Grade II.

Thus he loses not only promotional prospects but the promotion which he had already got and enjoyed for seven years. The brief facts leading to the dispute are as follows.

The applicant joined service on 12.4.1962 as a Tracer in the Chief Inspectorate of Armaments, Kirkee. In due course, he was promoted as Draughtsman Grade III, sometime in July, 1970. He was empanelled for promotion to Draughtsman Grade II and declared as such on 14.7.1973. Earlier, on 6.7.1973 applicant who had completed, by then, 3 years of service as Draughtsman Grade III indicated his willingness to go on promotion to Madras as Draughtsman Grade II. He was, accordingly, promoted and posted to Madras where he joined w.e.f. 17.8.1973 or thereabout. After spending 7 years in Madras as Draughtsman Grade II, when the applicant returned to Kirkee, to his parent organisation, he found that he was still kept at Sr.No. 22 in the seniority list of Draughtsman Grade III which was published on 22.8.1980. He, therefore, went on representing without any results and, therefore, he filed the present Civil Suit. It was his contention in the application (original plaint) that since he had been promoted in August, 1973, he had superseded other Draughtsmen Grade III, and, therefore, should have been shown appropriately in the seniority list at Sr.No. 9 instead of being at Sr.No. 22.

3. The dispute can be resolved on a short point. There are several averments made by the applicant in his application as well as in the written arguments that he has submitted both in the Civil Court and before us, accompanied by copies of certain documents. Similarly, the written statement filed by the respondents to resist the application also contain averments and documents. It is not

necessary for us to go into all the documents and all the averments either in the plaint and in the written statement or in the arguments of the parties.

4. The applicant's case, as contended by him, is that having been promoted as Draughtsman Grade II on or about 17.8.1973 and having continued to work as such, he was entitled to be treated as Draughtsman Grade II all along, and respondents have erred in including him in the seniority list of Draughtsman Grade III, thereby denying him the benefit of the revised pay scales which came into effect on 1.1.1973 and also denying him benefits of service as Draughtsman Grade II as also the future promotion as Draughtsman Grade I. The respondents have maintained that the Pay Commission recommended certain pay-scales for personnel. The department gave the pay-scale of Rs.425-700 for Draughtsman Grade II who were in the pay scale of Rs.250-380. For those Draughtsmen who were Draughtsman Grade II in the scale of Rs..205-280, the scale prescribed was Rs.330-560. Similarly, for Draughtsman Grade III whose original scale was Rs.150-240, the scale now prescribed was Rs.330-560. Thus by amalgamating the lower stratum of Draughtsman Grade II and Draughtsman Grade III in one single scale of Rs.330-560, the effect was that the scale of Draughtsman Grade II (Rs.205-280) stood abolished and that the promotion of the applicant to Draughtsman Grade II, therefore, stood nullified and he was entitled to promotion only as Draughtsman Grade II in the scale of Rs.425-700 in due course. He could be considered for that only on the basis of his seniority as Draughtsman Grade III, which they maintained had been correctly fixed. The only point which needs consideration is the applicant's claim that he was empanelled and

accordingly promoted as Draughtsman Grade II on 17.8.1973 when all his colleagues in the cadre of Draughtsman Grade III, though senior to him remained as Draughtsman Grade III, having refused to go outside Pune on promotion. It is also his contention that by their refusal these personnel forfeited their right to promotion as well as panel seniority for prescribed periods and, therefore, he should be considered as having superceded them and shown in the appropriate place in the cadre of Draughtsman Grade II. Admittedly, applicant was empanelled and was promoted and sent to Madras as Draughtsman Grade II. Since this clearly was a promotion, it is now not permissible for the respondents to contend that that promotion stood nullified because of the amalgamation of scales which were notified much later. Further, it is seen that the recommendations of the Third Pay Commission were brought into effect by administrative orders issued as late as December, 1973, to be precise on 29.12.1973. We do not see any reason why the action taken by the respondents to promote applicant as Draughtsman Grade II in August, 1973 should be allowed to ^{be} ignored by them altogether on the basis of certain administrative orders. The recommendations of the Third Pay Commission have been implemented w.e.f. 1.1.1973. Even if the contention of the respondents that applicant was only Draughtsman Grade III on 1.1.1973, is to a certain extent correct, their case that applicant's promotion on 17.8.1973 stood nullified is, however, not acceptable. We feel that considerable injustice has occurred in the case of the applicant by this stand of the respondents that he continued to be Draughtsman Grade III. As we have already observed, since we do not feel that it is proper to treat his promotion as nullified, he will have to be treated as Draughtsman Grade II in the scale of Rs.205-280 ^{at least} ~~at least~~ w.e.f. 17.8.1973. ...5

It will be significant also to observe that on the date of notification, (emphasis ours) he was a Draughtsman Grade II in that scale. If, therefore, Draughtsman Grade II were upgraded to the scale of Rs.425-700 and further out of the combined seniority list of Draughtsman Grade II in the lower scale (Rs.205-280) and Draughtsman Grade III in the scale of Rs.150-240, the first 50% were entitled to go into the scale of Rs.425-700, the position of the applicant at the time of notification will have to be taken into account by the respondents, and if on the basis of his having been promoted to the scale of Rs.205-280 on 17.8.1973 he comes within the first 50% of the combined seniority list, he would be entitled to the scale of Rs.425-700, if not from 1.1.1973, at least from 17.8.1973. We therefore pass the following orders :-

O R D E R

1. The application is partly allowed.
2. The applicant who was promoted as Draughtsman Grade II w.e.f. 17.8.1973, should be appropriately placed above those in the Cadre of Draughtsmen Grade III who had not been ^{so} promoted as Draughtsman Grade II on or before that date.
3. On this basis, Respondents should examine whether applicant comes within the first 50% of Draughtsmen Grade II in the combined Cadre and scale of Rs.330-580, and having then placed him in the appropriate position, consider him for further promotions to the higher scale of Rs.425-700 (Draughtsman Grade II) and further to the Grade I as and when due.

4. All consequential benefits as regards pay and allowances, arrears thereof because of his retrospective upgradation and promotion shall automatically follow.
5. In the circumstances of the case we pass no orders as to costs.

B.C. Gadgil
(B.C. GADGIL)
Vice Chairman

[Signature]
(J.G. RAJADHYAKSHA)
Member (A)

*Delivered in open Court
today.*

[Signature]
546988.