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# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 696/87

~~XXXXXXXXXX~~

198

DATE OF DECISION 15/10/90

Madhusudan Govind Waknis ... Petitioner

Shri Y.G.Waknis ... Advocate for the Petitioner(s)

Versus

Union of India & ors ... Respondent


Shri S.R.Atre ... Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. M.Y.Priolkar, Member (A)

The Hon'ble Mr. D.K.Agrawal, 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 ? ✓

  
 ( D.K.Agrawal )  
 Member(J)

15/10/90

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

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Original Application No.696/87

Madhusudan Govind Waknis

... Applicant

vs.

Union of India & Ors.

... Respondents.

CORAM : Hon'ble Member (A), Shri M.Y.Priolkar  
Hon'ble Member (J), Shri D.K.Agrawal

Appearances:

Shri Y.G.Waknis, Advocate,  
for the applicant and  
Shri S.R.Atre, Advocate,  
for the respondents.

JUDGEMENT:

Dated : 15-10-90

{Per. Shri D.K.Agrawal, Member (J)}

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed praying three reliefs, firstly, expunction of adverse remarks for the year 1979, secondly, for quashing the order passed by the opposite parties granting him increment at the stage of pay of Rs.1000/- with effect from 1.1.1983 instead of 1.1.1980 and thirdly, for promotion to the post of Senior Superintendent, Central Excise with effect from 1.11.1980, the date his next junior was promoted to the said post.

2. Briefly the facts are, the chargesheet dated 17.10.1979 was issued to the applicant. After enquiry penalty dated 7.6.1980 was imposed on the applicant withholding increments for two years with cumulative effect. The said order of punishment was, however, set aside on appeal by the President by the order dated 16.1.1984. Meanwhile the applicant retired from service on 30.4.1983. The applicant's contention is that since he has been exonerated, he is entitled to promotion to the post of Senior Superintendent, Central Excise w.e.f. 1.11.1980, the date his next junior was promoted in the said post.

*D.K. Agrawal*

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3. The opposite parties have contested the petition on two grounds, firstly, the prayer for expunction of remarks was barred by time and secondly, that applicant has no vested right to be promoted to the post of Senior Superintendent, Central Excise on adhoc basis. The opposite party has clearly contended and rather it is not disputed that no junior to the applicant was regularly promoted to the post of Senior Superintendent of Central Excise. The promotion from 1.11.1980 was only a stop-gap arrangement which continued upto the time of applicant's retirement i.e. 1.11.1983.

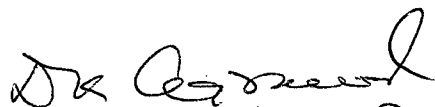
4. We have heard the learned counsel of the parties. The prayer for expunction of adverse remarks for the year 1979-80 is clearly barred by time. The applicant never challenged the adverse remarks before any forum available to him before passing of Administrative Tribunals Act. It was for the first time that the applicant has challenged the said adverse remarks by means of the present petition dated 16.10.1987. As regards the refusal of the competent authority to grant an increment at the stage of Rs.1000/-, we have perused the proceedings of Departmental Promotion Committee meetings held on 26.2.1980, 21.8.1980 and 1.10.1980. In all these proceedings the applicant was not allowed to cross efficiency bar at the stage of Rs.1000/- only for the reason that he was facing the departmental enquiry or on account of the fact that the punishment awarded by the disciplinary authority of withholding of two increments with cumulative effect was in force. The applicant was denied adhoc promotion on the post of Senior Superintendent for the same reason. We have perused the proceedings of the Departmental Promotion Committee dated 4.10.1980, 14.9.1981 and 7/8.9.1982, the reason given out is the same

*Dr. Aggarwal*

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ie. the applicant was undergoing punishment. Since the penalty order has been set aside by the order dated 16.4.84, the question is as to whether the claim of the applicant should be considered afresh as if he was never required to face an enquiry or he has never undergone the punishment meted out to him by the disciplinary authority dated 7.6.1980. We are of the opinion that a review DPC be held again to consider the grievance of the applicant in respect of earning an increment w.e.f. 1.1.1980 as well as adhoc promotion to the post of Senior Superintendent w.e.f. 1.11.1980 and the recommendations of the review DPC be duly considered by the appointing authority. If found suitable the applicant would be entitled to all consequential benefits arising therefrom.

5. In the result, we allow the application in part. The prayer for expunction of remarks is rejected as time barred. In respect of the prayers for increment from 1.1.1980 and adhoc promotion to the post of Senior Superintendent, Central Excise, w.e.f. 1.11.1980 we hereby direct that a review DPC be held again <sup>w/within 3 months hereof ✓</sup> to consider the grievance of the applicant in the light of what we have said above in the judgement. There will be no order as to costs.

  
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( D.K. Agrawal )  
Member(J)



( M.Y. Priolkar )  
Member(A)