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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

~~QXAXXNOX~~

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~~TXAXXNOX~~ TR.A.NO. 496/87

DATE OF DECISION 8.10.1992

Shri Pandit Rajmal Johare Petitioner

Shri D.V.Gangal Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri V.G.Rege Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S.K.Dhaon, Vice Chairman

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? *ye*
2. To be referred to the Reporter or not ? *ye*
3. Whether their Lordships wish to see the fair copy of the *No* Judgement ?
4. Whether it needs to be circulated to other Benches of the *No* Tribunal ?

(S.K.Dhaon)
Vice Chairman

mbm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

TR.A.NO. 496/87

Shri Pandit Rajmal Johare ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice S.K.Dhaon
Hon'ble Member (A) Shri M.Y.Priolkar

Appearance

Shri D.V.Gangal
Advocate
for the Applicant

Shri V.G.Rege
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 8.10.1992

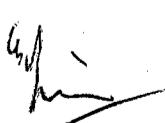
(PER: S.K.Dhaon, Vice Chairman)

On 28.1.1976 a process of selection of Class IV staff for promotion to Class III as office clerks in the grade of Rs.260-400(RS) was completed. A panel was published. One Rishi Kumar Tiwari and Bhika Namdeo Ahire were empanelled. The applicant who was also a competitor was not empanelled. It appears that the empanelment of Rishi Kumar Tiwari and Bhika Namdeo was subsequently annulled. They took the matter to the High Court at Bombay but were unsuccessful. On 27.11.1982 an order was passed to the effect that the posting of the applicant from Class IV to Class III would be regularised from the date of publication of the panel, namely, 28.1.1976. The effect was that the applicant was deemed to have been appointed as a Junior Clerk w.e.f. 28.1.1976. Thereafter, upon a proper written test held, the applicant was promoted as Sr.Clerk in the year 1983. The grievance here is that the appointment of the applicant as Junior Clerk w.e.f. 28.1.1976 should be given a logical effect in so far as he should be given notional promotions, not only to the post of Sr.Clerk but also Head Clerk, etc. on the footing that he was qualified to be considered for promotion on 28.1.1976.

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2. In the reply filed on behalf of the respondents, it is stated that the promotion was not automatic. It was subject to a selection test. Shri Rege has stated before us that between 1976 and 1983 no selection test took place. The first test which took place after 1976 was in the year 1983. The applicant was given a chance and he succeeded therein. Reliance is placed by the counsel for the applicant upon certain recommendations made by the Officer on Special Duty on Railway Board. We have gone through the same carefully and we are satisfied that it did not contain any direction that the applicant should be given a promotion from a back date. Even if such a direction had been given, it is doubtful whether the same would have been illegal. In Union of India & Ors. vs. K.K. Vadera & Ors. 1990(1) ALL INDIA SERVICES LAW JOURNAL page 106, it is laid down that in the absence of any statutory provision, a promotion should take effect from the date when a person is really promoted. Their Lordships held that they were not aware of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. Their Lordships emphasized that after a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. This decision, in our opinion, is ^{and} opposite but it clearly answers the arguments advanced on behalf of the applicant.

3. This application lacks merit. It is dismissed but without any order as to costs.

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(M.Y. PRIOLKAR)
MEMBER (A)

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(S.K. DHAON)
VICE CHAIRMAN