

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

CAMP AT NAGPUR

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T.A. NO: 266/87

DATE OF DECISION 20.11.1991

Brahamdas S. Mandpe Petitioner

Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Mr. Ramesh Darda Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. U.C.Srivastava, V/C.

The Hon'ble Mr. M.Y.Priolkar, M(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 ?

mbm*

U.C. Srivastava
(U.C. Srivastava)
V/C

(4)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
CAMP AT NAGPUR
* * * * *

Tr. A. No. 266/87

Brahamdas Shrawanji Mandpe,
(UDC) Auditor, Joint Director
of Audit, Post & Telegraphs,
Nagpur.

... Applicant

v/s

1. Joint Director of Audit,
Posts & Telegraphs, Nagpur.
2. Director of Audit,
Posts & Telegraphs, Delhi.
3. Comptroller & Auditor General
of India, New Delhi.
4. Ramkrishna Bhaskarrao Gajbhiye,
S.G. Auditor, D.A.P & T.,
Nagpur.

... Respondents

CORAM : Hon'ble Vice-Chairman, Shri Justice U.C.Srivastava
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

None present for the
applicant. Mr.Ramesh Darda,
Counsel for the respondents.

ORAL JUDGMENT:

Dated : 20.11.1991

(Per. U.C.Srivastava, Vice-Chairman)

The applicant was appointed as Lower Division Clerk on 22.11.1954 and was confirmed on the said post on 14.11.1955. Thereafter he was promoted to the post of Upper Division Clerk on 23.1.1968 in the scale of Rs.350-560. He completed 14 years of service in 1982 in this Auditor's grade and became eligible for promotion to the post of S.G. Auditor in the scale of 425-700. The applicant, who in the mean time earned certificate of merit, though was due for promotion as well as confirmation, submitted a representation on 31.1.1976 stating that he may be confirmed as Auditor but a reply was given to

him that as disciplinary proceedings are in progress and that is why he was not considered fit for confirmation. It appears that a minor penalty of withholding the increments of pay for a period of three years was imposed vide order dated 27.6.1976, without cumulative effect. After the said period the applicant made certain representations for the promotion but he was not promoted. In the mean time respondent No.4, R.B. Gajbhiye who admittedly junior to him and like him also a member of SC community was promoted against the one post on which the applicant was claiming promotion i.e. the post of S.G.Auditor with effect from 1.12.1980 vide order dated 16.2.1981 i.e. with retrospective effect. The applicant raised his voice against the same but failing to get any relief from the department he approached the Tribunal. Notwithstanding the fact that the applicant has completed 14 years of service and in view of the Ministry of Home Affairs notification the applicant became entitled for promotion post as he has completed 14 years length of service yet he was not considered for the same. Mr. Ramesh Darda who now appears for the respondents has contended that the applicant being within a period of punishment and the period of punishment has concluded on 31.12.79. The posts were created on 29.9.79 as such the applicant was not considered for promotion to the said post. It has been further stated that it was only after the period of punishment that the applicant could have been confirmed and after 1.1.80 i.e. after the punishment period was over the confirmation was not possible only due to want of a permanent vacancy in the cadre. Neither confirmation nor promotion was automatic and his case was within the zone of consideration for

promotion as S.G.Auditor against the only one reserved vacancy for SC during the year 1980 for 1980-81 panel. The respondent No.4 by virtue of his confirmation became permanent officer and was therefore ranked senior to the applicant who was only officiating under the Rule 17(2) of Brochure of reservation on SC/ST in services. The facts as stated above make it abundantly clear that full justice was not done to the applicant. After the said period of three years was over obviously the applicant became entitled for confirmation. It was the first mistake which was committed ~~on~~ ^{is} the part of the respondents/that without considering the applicant for ~~exemption~~ confirmation he was still shown to be a temporary Auditor. When the appointment of respondent No.4 was made the appointment order was issued in the year 1981 and he was appointed during 1980 i.e. several months after the punishment period was over. The applicant could have also been considered for the same. After the said period was over he could have been considered for confirmation. The respondents instead of waiting for 2-3 months for considering the applicant for confirmation as his period was going to be over hurriedly it appears confirmed the Respondent No.4. Thus, obviously some injustice has been done to the applicant and accordingly we direct the respondents that the applicant shall be deemed to have been confirmed with effect from the date punishment period was over and his case for promotion to the higher post shall also be considered and if necessary deemed promotion will be given to him with effect from the date his junior has been promoted. Let it be done within a period of three months from the date of communication of this order. No order as to costs.


(M.Y. Priolkar)
Member (A)


(U.C. Srivastava)
Vice-Chairman