

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH

O.A. No. O.A.706/87
F.A.--No.

198

DATE OF DECISION 27-6-1991

G.M.Kolamkar Petitioner

Applicant in person Advocate for the Petitioner(s)

Versus

Director General of Inspn. Respondent

New Delhi.
Mr.A.I.Bhatkar Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. P.S.Chaudhuri, 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 ?



(U.C.SRIVASTAVA)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.706/87

(11)

G.M.Kolamkar,
Examiner(H.S.Gr.III),
Inspectorate of Military Explosives,
Dehu Road,Pune - 412 113.

.. Applicant

vs.

Director General of Inspection
(DGI-Adm.7)
Government of India,
Ministry of Defence,
DHQ,PO New Delhi - 110 011.

.. Respondent

Coram: Hon'ble Shri Justice U.C.Srivastava,Vice-Chairman
Hon'ble Shri P.S.Chaudhuri, Member(A)

Appearances:

1. Applicant in person.
2. Mr.A.I.Bhatkar
Advocate for the Respondent.

ORAL JUDGMENT:

Date: 27-6-1991

Per U.C.Srivastava,Vice-Chairman

The applicant who was working in the Inspectorate of Weapons, Ambernath, as Examiner Gr.II was transferred to Inspectorate of Military Explosives, Dehu Road w.e.f. 17th December,1980 and was asked to report on the same date. As the transfer order was handed over through post it was possible for him to join only on 17-12-1980. Some other persons who were at Inspectorate of Armaments,Chandrapur were also transferred reported to IME Dehu Road. These persons were accepted on transfer on the basis of a trunk telephone conversation between Col.RSK Tatachari JD(A), New Delhi and Lt.Col.Raghavan the Inspector of Armaments, Chandrapur whereas the applicant proceeded on transfer on the basis of the order received in the normal course by post. Hence, according to the applicant they were able to report one week prior to his reporting.As such they were taken to be senior notwithstanding the fact that the distance between Ambernath to Dehu Road is only 80 kms & 3½ hours journey.

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2. The applicant states that thereafter he has been making complaints against the same but without any result. Copies of some of the representations are on record in which reference to earlier representations were also mentioned. The first representation is dated 1st March, 1985. Thereafter again a reminder was sent on 4-4-1985, 20-5-1985, 8-6-1985 & 28-9-1985. On 29th April, 1986 he was given reply to the representation and it was mentioned that ["]The seniority of Examiners in DGI Organisation are maintained Establishment wise. Seniority of individuals who join new establishments reckons from the date of their reporting to the new establishment. As Shri Kolamkar joined the new establishment later than the others, his seniority will be governed accordingly. Undertaking given by Shri Kolamkar in this regard also refers."["] The applicant protested against the same vide letter dt. 10th July, 1986 and requested his case may be considered sympathetically and injustice done to him should be mitigated and the seniority may be refixed considering the telephone message which was given to his colleagues and was not given to him. He continued to make representation against the same on 19-11-86, & 10-4-1987 and ultimately he approached this Tribunal claiming relief against the same.

3. On behalf of the respondents the usual plea of limitation for not allowing the case to be heard on merits was taken ^{and it was pressed} that the applicant has come to the Tribunal after several years. As it is ^{that} noticed against the posting the applicant has been making representation and it was only on 29th April, 1986 a reply was given for the first time which gave him fresh cause of action. ^{and that} ^{and after} it is thereafter making ^{that} certain representations he approached this Tribunal

(13) on 23-10-1987, even if limitation is counted from that date the delay is not much and the explanation given by the applicant is satisfactory and any delay if any is still there, it is condoned.

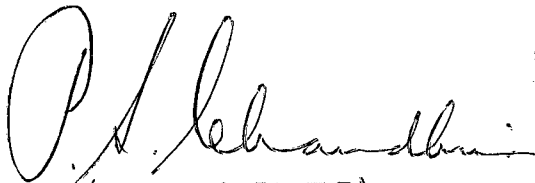
4. The respondents in their written statement have also justified their action on the ground made out in the reply dated 29-4-1986. Of course no such rules have been produced before us but it appears that the practice in the department is based on executive instructions. Such practice means that an employee after transfer is to be treated to be a new entrant in the new establishment even though the employer continues to be the same as in the old establishment. The practice prevailing in the department of even allowing a person to join on the basis of ^{an order by} telephone thereby giving him seniority over another employee whose transfer orders have reached him in the normal course by post is arbitrary. Besides, one may be residing close by and the other may be residing far away. The instruction or practice of giving seniority to persons from the date of joining the new establishment notwithstanding the fact that there may be genuine and incontrovertible reasons for taking a longer time to join the new establishment is arbitrary and violative of Article 14 of the Constitution. It is strange that even though the Constitution has come into force long ago but such a practice is still continuing in the department. It should not be allowed to continue.

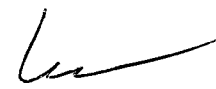
5. With the above observation the application is allowed and the respondents are directed to count the seniority of the applicant according to the settled principles of the seniority from the date of continuous appointment to the grade subject

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panel position and not from the date of joining at
the new post. There will be no order as to costs.


(P.S. CHAUDHURI)
Member(A)


(U.C. SRIVASTAVA)
Vice-Chairman