

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH

XXXXXX.

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T.A. No. 338/87.

DATE OF DECISION 19.4.1988

Shri B.R.Dhole

Petitioner

Shri Mohan Sudame

Advocate for the Petitioner(s)

Versus

General Manager, Ordnance Factory,
Jawaharnagar, Dist. Bhandara and
three others. Respondent s

Shri R.K.Shetty

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. M.B.Mujumdar, Member (J)

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

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

Tr.A.No. 338/87

Shri B.R.Dhole,
Ordnance Factory,
Jawaharnagar,
Dist. Bhandara.

Applicant

v/s.

1. General Manager,
Ordnance Factory,
Jawaharnagar, Dist.Bhandara.
2. S.D.Anthony,
Chargeman Gr.II,
Ordnance Factory,
Bhandara.
3. M.B.Todkar,
Chargeman Gr.II,
Ordnance Factory,
Ambazari, Nagpur.
4. R.N.Mukherjee,
Chargeman Gr.II,
Ordnance Factory,
Bhandara.

Respondents

CORAM: Hon'ble Member (A) Shri J.G.Rajadhyaksha
Hon'ble Member (J) Shri M.B.Mujumdar

Appearance

Mr.M.Sudame
Advocate
for the Applicant

Mr.R.K.Shetty
Advocate
for the Respondents

ORAL JUDGMENT

Dated: 19.4.1988

(PER: M.B.Mujumdar, Member(J))

Writ Petition No. 318/85 filed by the applicant
before the Nagpur Bench of the Bombay High Court is
transferred to this Tribunal under Administrative Tribunals
Act, 1985. ^{section 29 of the}

2. In the Writ Petition, the applicant has requested for directing the respondents to promote him as Chargeman Gr.II from the date on which his junior was promoted.

3. The applicant was working as Highly Skilled Workman. The DPC in its meeting held on 6.8.1982 recommended that 13 persons should be promoted to the post of chargeman Gr.II (Mech.). The panel of 13 individuals was prepared on the same day. In that panel the name¹ of the applicant was at Sr.No. 5. By an order dated 14.10.1983 M.K.Ghosh, S.D.Anthony and M.B.Todkar were promoted as officiating Chargemen Gr.II (Tech./Elec.). In the select list dt. 6.8.1982, M.K.Ghosh was at Sr.No. 3 and hence admittedly senior to the applicant. However, Anthony and Todkar were at Sr.No. 6 & 7 and hence junior to the applicant. By an order dt. 8.6.1982, R.N.Mukherjee was promoted as officiating Chargeman Gr.II (Tech./Elec.). Mukherjee was at Sr.No.9 in the select list and hence junior to the applicant. According to the applicant, he should have been promoted along with his juniors Anthony and Todkar on 14.10.1983. Being aggrieved by the order of their promotion, he made two representations dated 6.7.1984 and 27.7.1984. But his representations were not favourably considered and @hence he filed the Writ Petition in the High Court on 17.4.1984. The same is transferred to this Tribunal.

4. The respondents had filed the written statement when the Writ Petition was pending in the High Court. They have given three reasons for not promoting the applicant along with his juniors. The first is the pendency of the departmental proceeding against the applicant for keeping two goats in the quarter allotted to him. Second is the pendency of the Civil Suits filed by the children of the

applicant for not maintaining them. Third is the complaint made to the police that the applicant had killed his first wife on 10.3.1983. We will deal with these grounds one by one.

5. We have heard Mr.M.Sudame for the applicant and Mr.R.K.Shetty for the respondents. Mr.Shetty has also shown us the relevant record and orders.

6. After hearing the advocates for both the sides and considering the record carefully, we hold that there is no substance in any of the grounds which are given by the respondents for not promoting the applicant from the date on which his juniors were promoted.

7. Regarding the first ground, we may point out that by general order dated 15.10.1982, the General Manager of the Ordnance Factory, Bhandara at Jawaharnagar, where the applicant is serving, had directed that the employees working in the factory should not keep cattle in the quarters allotted to them by the factory. When the respondents carried out surprise check through their staff, some employees including the applicant were found keeping some cattle in the quarters allotted to them. The applicant was found to have kept one goat and one kid in the quarter allotted to him. Hence, a show cause notice was issued to him. The applicant replied to that notice and denied that he had kept the goats in his quarter. However, after verifying facts again, the respondents served a memorandum dated 25.7.1983 on the applicant along with a statement of one charge. The charge was that the applicant was asked to dispose of the goat and the kid but failed to do so and hence he had committed an offence by unauthorisedly keeping the goats in the quarter allotted to him. The applicant

replied to that charge on 2.8.1983 by pointing out that he had not kept any goat in his quarter and hence there was no question of violating the general order. Thereafter, by an order dated 20.1.1984 the General Manager dropped the charge framed against the applicant.

8. It is very clear that when the applicant was selected for the post of chageman Gr.II, no departmental enquiry was pending against him. The charge was framed on 25.7.1983 i.e. about 3½ months after he was selected. Moreover, the charge was finally dropped for one reason or the other. Hence, the respondents were not justified in not promoting the applicant from the date on which his juniors were promoted by the order dated 14.10.1983.

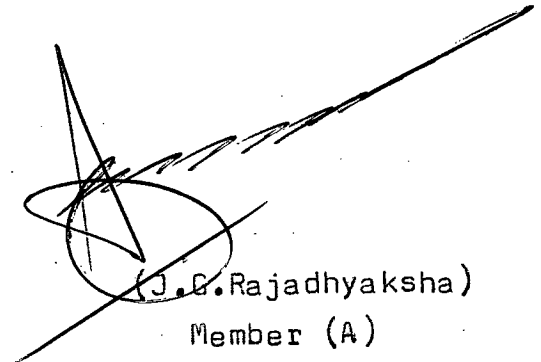
9. Regarding the second ground, it is the case of the respondents that the applicant's children had made a complaint to them on 30.12.1983 against the applicant that he was not maintaining them. It appears that the applicant's first wife, Shantabai died on 10.8.1983 leaving behind three sons, Rajendra, Mahendra and Narendra, aged 24, 18, & 16 years, respectively and a daughter Rekha of about 21 years of age. Out of them, Narendra had filed a Civil Suit No.15/84 against the applicant for maintenance. Rekha had filed a Civil Suit No. 4/84 against the applicant for maintenance. We are told by the applicant and his advocate that both the suits were compromised in 1985. Apart from this, when the applicant was selected on 6.8.1982 and when his juniors were promoted on 14.10.1983 both these suits were not pending in the Civil Court. However, even if the suits would have been filed earlier that would not have been legal ground for not promoting the applicant from the date his juniors were promoted. Hence, we do not find any force in the second ground also.

10. Coming to the third ground, the applicant's first wife, Shantabai, died on 10.8.1983. The children of the applicant made a complaint that the applicant had killed her by burning. Police were also informed about this. The offence was registered under Crime No. 39/83. After necessary investigation, the police have asked for "a Summary by making a report to the Sub-Divisional Magistrate on 29.8.1983". We do not know what type of summary the Police have requested for. The letter received by the General Manager of the Ordnance Factory dated 22.6.1984 from the Police Station Officer of the Bhandara Police Station shows that summary of the case is sent to the Court under outward No. 2525/83 dated 29.8.1983 and it is pending in the court of the Sub-Divisional Magistrate at Bhandara. It may be noted that the applicant was never arrested by the police regarding Crime No. 39/83. Police have not submitted any charge-sheet against the applicant for murdering his wife. In fact, the police have asked for a summary from an Executive Magistrate which shows that they do not want to prosecute the applicant in a criminal court for killing his wife. Hence, we do not find any substance in the third ground also. We may point out that the respondents by themselves had not taken any action against the applicant departmentally regarding the second and third grounds.

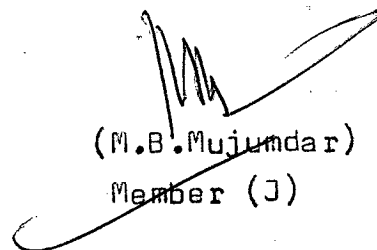
11. In the result, we hold that the respondents were not justified in not promoting the applicant from the date on which his juniors were promoted by the order dated 14.10.1983. The applicant will be entitled to promotion as Chargeman Gr.II from that date. Mr. Shetty for the respondents submitted that though the applicant may be promoted w.e.f. that date, he may not be paid salary from that date because he has not actually worked in the higher post from that date.

But he could not work not because of his own fault,
but because of the illegal view taken by the respondents.

12. We, therefore, direct the respondents to promote
the applicant as Chargeman Gr.II (Tech./Mech.) w.e.f.
14.10.1983 with all consequential benefits including
the arrears of pay and allowances. There would, however,
be no orders as to cost.



(J. G. Rajadhyaksha)
Member (A)



(M. B. Mujumdar)
Member (J)