

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 735/88

Transfer Application No: xx

DATE OF DECISION: 7.6.94

Rameshbhai B. Patel & another Petitioner

Mr. R S Mohite Advocate for the Petitioners

Versus

Union of India & 6 ors. Respondent

Mr. Rao for Mr. R M Agarwal Advocate for the Respondent(s)
for Respondents nos. 1 to 3

Mr. V.S. Masurkar
counsel for respondent no. 7
CORAM :

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman

The Hon'ble Shri M.R. Kolhatkar, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

O.A. NO. 735/88

Rameshbhai B. Patel & Another

..Applicants

v/s

Union of India & 6 ors.

..Respondents

Coram: Hon. Shri Justice M.S. Deshpande, Vice Chairman
Hon. Shri M.R. Kolhatkar, Member(A)

APPEARANCE:

Mr. R.S. Mohite,
Counsel for the applicants

Mr. Rao for Mr. R M Agarwal
Counsel for respondents 1 to 3

Mr. V.S. Masurkar
Counsel for the respondent no. 7

ORAL JUDGMENT:
(Per: M.S. Deshpande, Vice Chairman)

DATED: 7.6.94

By this application the Applicants nos. 1 and 2 question the order promoting Respondents nos. 4 to 7 as Group B officers to the post of Deputy Engineer from that of Section Officer on regular basis and seek a declaration that the applicants are eligible for the vacancies which occurred at serial no. 4 and 3 respectively and after calling for D.P.C. proceedings

dated 13.3.1986 and 17.6.1987 along with Annual Confidential Reports issue a direction to the respondent no.2 to grant promotion to the applicants to Group B post with retrospective effect from 6.10.1987 on officiating basis and for restraining respondents nos. 1 to 3 from making any regular appointments to the post of Deputy Engineer on regular basis either by promotion or by direct recruitment till the present application is decided.

2. It is not necessary to set out the facts in detail. Applicants nos. 1 and 2 and respondents nos. 4 to 7 were employed as Section Officers. By an order passed on 6th October 1987, Annexure A, respondents nos. 4, 5, 6 and 7 came to be promoted and posted as Deputy Engineer Group B on purely temporary basis on probation for a period of two years. According to the applicants they were eligible for being considered for promotion to the post of Deputy Engineer. With reference to respondent no.7 they contend that he was appointed as Section Officer on 2.1.1979 and as such had not attained eligibility in January 1987. Respondent no.6 belongs to Scheduled Caste. The learned counsel for the respondent no. 7 placed before us the order dated 29th July 1972 by which the applicants and the respondents nos. 4 to 7 came to be appointed on probation for a period of two years as per provisions contained in the recruitment rules vide the DPC proceedings dated 13.4.1992. In the order the names of the applicants have been shown at Sr. No. 5 and 6 while those of the respondent nos. 4 to 7 have been shown as sr. nos. 1 to 4.

3. Shri Mohite, learned counsel for the applicants stated that in view of this position the main relief would not survive and still the question of eligibility of respondent no.7 to be considered and appointed by the DPC would have to be taken into consideration.

4. In the counter filed by the respondent no.2 on behalf of respondents nos. 1 to 3 the position with regard to the DPC has been mentioned in paras 8 and 9. It has been stated that as soon as the vacancies arose the process for filling up the post was initiated in November 1986 and the first meeting of the DPC was held on 4.2.1987. But the DPC could not finalise the promotion and again meeting was held on 13.3.1987 and the recommendations made by the DPC were submitted to the appointing authority for approval. The appointing authority did not agree with the recommendations of the DPC and informed to reexamination and hence the matter was re-examined and the recommendations made in the DPC meeting dated 17.6.1987 were approved by the appointing authority on 1.8.87.

5. The submission of the applicants is that yearwise panel had not been prepared by the DPC in pursuance of the instructions for preparation of yearwise panel when they have not met over number of years, and those instructions appear at Appendix 29, page 457 of Chaudhri's Civil Service Regulation Vol.III.

6. What is to be determined is the actual number of regular vacancies that arose in each of the previous year/years immediately preceding and the actual number

of regular vacancies proposed to be filled in the current year separately. It has to consider in respect of each of the years those officers only who would be within the filed of choice with reference to the vacancies of each year starting with the earliest year onwards and prepare a 'select list' for each of the years starting with the earliest year onwards and prepare a consolidated 'select list' by placing the select list of the earlier year above the one for the next and so on.

7. In para 9 of the counter filed by Respondent nos. 1 to 3 it is stated that sufficient number of persons were not available for zone of consideration and the DPC did not feel it necessary to assess the suitability of candidates for yearwise selection. It is, therefore, clear that the Respondent no.7 came to be considered along with the other respondents though he could not have been within the zone of consideration for the vacancies which occurred prior to 31.12.1986. The respondent no.7's name has been clubbed with the other eligible candidates. Shir Mohite for the applicants does not make any grievance with regards to respondent nos. 4 to 6 because obviously the question of seniority has not been considered by the DPC and has not been raised in the present application. All that we need say is that the question of eligibility of respondent no.7 has been raised in the present application and he can be treated as eligible only after 31.12.1986. It would be on that basis that the entitlement of respondent nos. 4 to 7 shall have to be determined. We do not propose to undo entirely after such a lapse of time what has been done. In view of the order passed on 29th July 1992 appointing the applicants nos. 1 and

2 their main grievance has been met and we have clarified that the eligibility of respondent no.7 shall be determined only after 31.12.1986 since the applicants were eligible prior to that date.

8. With the above observations the application is disposed of. No order as to costs.

M.R.Kolhatkar

(M.R. Kolhatkar)
Member(A)



(M.S. Deshpande)
Vice Chairman

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