

(27)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 685/88

~~Transferred Application~~

DATE OF DECISION 13.10.93

Shri Bijay Narayan Singh Petitioner

Shri M.S. Ramamurthy Advocate for the Petitioners

Versus

Union of India Respondent

Shri P.M. Pradhan Advocate for the Respondent(s)

CORAM:

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

The Hon'ble Shri N.K. Verma, Member (A)

1. ~~Whether Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? *No*
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 ? *No*

*N.K.V.*

*(Signature)*  
(M.S. Deshpande)  
Vice Chairman

(28)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 685/88

Shri Bijay Narayan Singh

... Applicant.

V/s.

Union of India through  
Secretary,  
Central Board of  
Excise and Customs.  
Government of India,  
New Delhi.

Principal  
Collector of  
Central Excise,  
Bombay I  
Collectorate,  
Churchgate  
Bombay.

Collector of  
Central Excise,  
Bombay II  
Piramal Chambers  
Lalbaug  
Bombay.

... Respondents.

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

Hon'ble Shri N.K. Verma, Member (A)

Appearance:

Shri M.S. Ramamurthy, counsel  
for the applicant.

Shri P.M. Pradhan, counsel  
for the respondents.

ORAL JUDGEMENT

Dated: 13.10.93.

¶ Per Shri M.S. Deshpande, Vice Chairman ¶

The main relief sought in this application is that the applicant who was working as Superintendent, Group 'B' gazetted should be promoted to the post of Sr. Superintendent / Asstt. Collector as per order dated 11.11.83 when the first batch of officers belonging to his batch including his junior Shri Y.N. Rege, together with all consequential benefits and arrears of pay and to strike down the charge sheet dated 9.1.89 on the ground that it is illegal, arbitrary and malafide.

2. We have heard learned counsel for the parties. In view of the decision in the case of Union of India V/s. Jankiraman AIR 1991 2010, In the facts of the case, we find no difficulty because the chargesheet against the applicant was issued on 9.1.89 i.e. 5½ years after his promotion became due, and the contemplated enquiry cannot come in the way of promotion of the applicant. Another grievance of the applicant is that he was held up at the efficiency bar in the year 1984 and the D.P.C. kept its remarks in the sealed cover and the applicant was given the promotion with effect from 11.11.83. With regard to the charge sheet which was served on the applicant, we do not think that we should go into that aspect of the case. What was in fact denied to the applicant by the order dated 29.2.92 was the salary of 7½ months. He was reduced from Rs. 3300/- to Rs.3200/-. Shri Ramamurthy, learned counsel for the applicant stated that he was handicapped because of lack of instructions and he would not be able to assail the charge sheet and the order imposing penalty on the applicant. It is therefore not be possible for us to interfere with the finding of the Enquiry Officer which was recorded against the applicant and the penalty imposed on him.

3. We should have normally adopted the course suggested by the Supreme Court in Jankiram's case while modifying the memorandum issued by the Government which fell for consideration there. It reads:-

..." However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the

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authority denies arrears of salary or part of it, it will record its reasons for doing so...."

4. In the present case Shri Pradhan, counsel for the respondents was not in a position to produce the material documents on the basis of which the <sup>cerned</sup> conclusion of authority could have given its reasons in the light of the amended part of the memorandum. We may refer to the order sheet dated 22.2.93 in which it was pointed out by the Tribunal that the record of selection for the year 1983 was not available even on that day. Shri Pradhan was given a last chance with the warning that if the record is not produced, it will be open to the Tribunal to infer that the case of the applicant for promotion was not at all considered till the year 1983. Shri Pradhan states that inspite of several telex message which he has sent to the officers concerned, the record was not made available to him for ~~being~~ produced before the Tribunal. We, would therefore, be justified in holding that whatever record could be produced by the respondents, would not support the withholding of the monetary entitlement which would have become payable to the applicant by virtue of the notional promotion that would be granted to the applicant. In these circumstances, we cannot make a direction as contemplated by the modified memorandum mentioned in Jankiram's case.

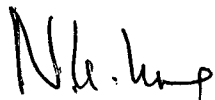
5. In the result, we direct the respondents to treat the applicant as Senior Superintendent/ Assistant Collector with effect from the date his Junior Shri Y.N. Rege was promoted as Senior Superintendent/ Assistant Collector as per order dated 11.11.80 issued by the Ministry of Finance and direct the respondents

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to grant him seniority, fixation and arrears of pay in the grade from November '83. The applicant will also be entitled to increments which would be payable to him by virtue of his notional promotion stated above. The arrears to which the applicant will be entitled shall be paid to the applicant within six months from the date of communication of the order to the respondents and retirement benefits such as Pension, Gratuity and other benefits based on the above shall also be paid as far as possible within the same time limit. There will be no order as to costs.



(N.K. Verma)  
Member (A)



(M.S. Deshpande)  
Vice Chairman

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M.P.No. 524/94 As  
Extension of time,  
fixed on 2/6/94.  
supersede

Date: 6.6.94 MP 524/94

Name for the applicant.

The P. M. Pradhans for the respondents.

MP allowed.

Time to implement the  
order granted upto 26.9.94

MP disposed of.

N.R. Kolhatkar  
(M.P. Kolhatkar) (M.S. Dushbharde)  
M(P) VC

~~M.P.No~~

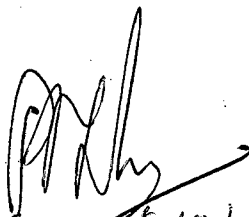
dt. 6/6/94  
order/Judgement despatched  
to Applicant/Respondent(s)  
on 14/6/94

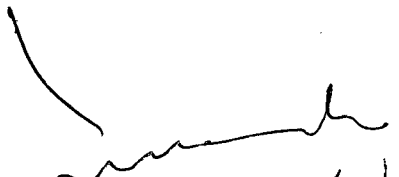
17/6/94  
M.P.No. 1049/94  
for extension of Time  
fixed on 21/10/94 23/1/95  
2/11/95

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Dated: 23/1/95.

Applicant by Sh. Ramesh Ramani, w/o.  
Respondents by Sh. S. S. Karkera.  
M.P. 1049/94 for extension of  
time does not survive as the time  
ought has ~~to~~ already been expired.  
M.P. disposed of.

  
(P.P. Srivastava)  
MCA

  
(M.S. Deshpande)  
V/c.