

Sureeyonder Reed  
from Regd No 1 to 4  
on 20/12/91 by hand  
In duplicate.

1-1-92

88  
24/12  
S

Mr. Gauri, Advocate for the  
applicant.

Mrs. Shetty for Mr. R. K. Shetty  
for the respondents.

On the request of Counsel for  
respondents matter adjourned  
to 2-1-92.

M LS  
(M.Y. PROLKAR) (U.C-SRIVASTAVA)  
M(A) VC

PT

2/1/92

Mr. Lave sent to apply  
Mrs. P.R. Shetty for resp

T. (R)

PT

2/1/92

None present for  
either Side  
Judgment Borneal  
to-day in open Court  
( 20/12/91 )

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

19

O.A. NO: 37188  
T.A. NO:

199

DATE OF DECISION 31/1/92

Shri V. R. Chavhan Petitioner

Shri M. V. Gami Advocate for the Petitioners

Versus

C.P.W.D & another, Respondent

Sur Shetty Advocate for the Respondent(s)

CORAM:

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

The Hon'ble Mr. M.Y. Prakhar, Member (A)

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

mbm\*

*U.C. Srivastava*

VIC

20  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY.

Original Application No.37/88.

Shri V.R.Chavan.

... Applicant.

V/s.

C.P.W.D. & Another.

... Respondents.

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

Appearances:-

Shri M.V.Ganu for the applicant.  
Smti Shetty for the respondents.

JUDGMENT:-

Dated: 3-1-1992

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

Against the appointment of Respondent No.5 on the ex-cadre post of ~~as~~ Emergency Divisional Accountant on ad hoc basis w.e.f. 28.1.1987. The applicant has approached this Tribunal praying that his promotion may be set aside and be declared illegal and the respondents be directed to pay him all the benefits, difference in salary which he would have got had he been appointed in his place.

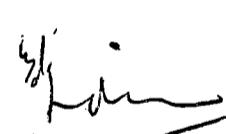
2. The applicant was UDC in the Ministry of ~~Urban~~ <sup>Central</sup> Public works ~~Development~~ <sup>Department</sup> and his name in the seniority list was No.44, while the name of the Respondent No.5 was at 97. The Respondent No.3 vide D.O. letter called upon the Superintending Engineers/Executive Engineers to prepare a list of names of UDCs working in C.P.W.D. who have put in 10 years service as UDCs and who ~~wik~~ are willing to be posted to any of the C.P.W.D. division in the Western Zone. The applicant also opted for the same. In January, 1987 a panel of several persons as Emergency Divisional Accountants on ad hoc basis <sup>was prepared</sup> of which 5 persons were junior to the applicant and when <sup>for dues</sup> undertakings were taken then the applicant learnt that his name was not being considered for appointment on ad hoc basis. He sent a letter to which reply was not given. The applicant has challenged his exclusion and the appointment of R-5

on the ground that he was much junior to the applicant and that the applicant fulfilled all the conditions and there were no adverse remarks against him and as such he should have been appointed on the said post.

3. The ACR of several persons i.e. 29 in number were considered, out of which only 8 were empanelled. The name of the applicant was not recommended along with 28 other persons some of them who are senior to him and although it was ex-cadre post but as temporary ad hoc appointment to the post of Emergency Divisional Accountant which belongs to a subordinate cadre Ministerial staff recruitment, promotion and transfer of subordinate cadre is managed by the Superintending Engineer and the rule of seniority for promotion does not apply to the appointment <sup>on</sup> of posts outside cadre, and ~~that is why~~ those who were better candidates were empanelled and the Respondent No.5 was considered <sup>better</sup> ~~than all~~ <sup>than</sup> ~~all~~ <sup>to him</sup> and that is why ~~his~~ appointment was given. The applicant has produced the entries of the record and from the same it is found that the applicant was considered to be good in 1985 to May, 1985 and outstanding from 30th May, 1985 to 31st December, 1985, but the R-5 was recommended out of turn during 82, 83, 84 and 85, while the applicant was considered to be very good and good in 1983 and 1984. The record of the R-5 was definitely better than the applicant. Moreover, that is why it appears that this temporary appointment was given to him, this temporary appointment obviously will not confer any right upon him and we have been informed that later on his appointment came to an end <sup>it is said</sup> though subsequently he was <sup>re</sup> appointed. The applicant

22

has no right to claim this ex-cadre post which was a temporary post as it was within the domain of the respondents to empanel those whom they considered better than other candidates. It is not the case of regular selection by ~~any~~ violation of rules. Consequently, the selection made cannot be said to be illegal. The applicant has placed reliance on the case of Union of India v. F.J.Fernandez, Commissioner of Income-tax decided by the Supreme Court of India SLP(Civil) No.3545/79 is also of no relevance to the present case, as the applicant contended that fall in standard should have been apprised <sup>if there was any</sup> and in the absence of the same was to be ~~is~~ omitted. Obviously, there was nothing wrong in the record of the applicant but, the record of the other person i.e. R-5 was better than him. This case is of no assistance to the applicant. In view of what has been stated we do not find any ground to interfere in the matter and the application is dismissed. There will be no order as to costs.

  
(M.Y.PRIOLKAR)  
MEMBER(A)

  
(U.C.SRIVASTAVA)  
VICE-CHAIRMAN.

B.S.M.