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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 284/88

~~Transfer Application No.~~

Date of decision 4.8.1993

Shri F.A.Pandlekar Petitioner

Shri Vijay Pradhan Advocate for the Petitioner

Versus

Union of India & Ors. 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~~ Ms. Usha Savara, Member (A)

1. ~~Whether the 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*

U. Savara
(MS.USHA SAVARA)
MEMBER (A)

M.S. Deshpande
(M.S.DESHPANDE)
VICE CHAIRMAN

(10)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

DA.NO. 284/88

Shri Fakir Abdulla Pandlekar

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Ms. Usha Savara

Appearance

Shri Vijay Pradhan
Advocate
for the Applicant

Shri P.M. Pradhan
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 4.8.1993

(PER: M.S.Deshpande, Vice Chairman)

The only question which arises for consideration in this application is whether by having proceeded on leave the applicant should lose the benefit of the promotion which was to go to 20 persons of the cadre by virtue of the seniority.

2. By the order dated 17.7.1986, 28 persons were promoted to Highly skilled Gr.II from the skilled grade and were placed in the highly skilled Gr.II in the pay scale of Rs.330-8-370-10-400-EB-10-480 w.e.f. 15.10.1984. The applicant whose name featured at Ex.'A' to the application was not to be in the promotion cadre inspite of his representation, instead he was asked to give a trade test which was prescribed for the next 15 persons of the cadre for their eligibility to the promotion in the same cadre. The applicant insisted that he was not liable to take trade test with the fact that he was not given desired promotion. The contention of the respondents is that what was necessary under the Annexure 'A' to the Ministry of Defence letter dated 8.4.1986 was that it was a one time benefit

which had to be allowed to all eligible functionaries covered under Ministry of Defence letter dated 15.10.1984.

3. According to Shri P.M.Pradhan, the learned counsel for the respondents, the applicant was on leave for 450 days from 31.7.1984 to 22.10.1985 and since he was absent on 16.10.1984, he could not have availed of the benefit which was to go to all eligible persons covered under letter dated 15.10.1984. It is difficult to accept this statement because the ~~word~~ ^{functionary} in the simple dictionary meaning ^{of functionary} as compiled in the concise Oxford Dictionary is: ~~a person~~ ^{a person} who has to perform official functions or duties; an official. Obviously, even if the applicant was to be on leave, he would be the person who had to perform official duties and did not cease to perform official duty. It was, therefore, highly ~~injustifiable~~ ^{unjustified} to deny the applicant his entitlement which ~~arose~~ ^{flowed} directly from the decision to promote 20 persons of the persons in the cadre entirely on the basis of their seniority. No trade test was prescribed for this category and applicant was justified in refusing to appear in the trade test.

4. We, therefore, allow the application and declare that the respondents' action in not promoting the applicant from Highly Skilled Grade to Highly Skilled Grade II w.e.f. 23.10.1985 is illegal and bad in law and wrongful and contrary to the rules, that the respondents' action in asking the applicant to take a trade test was wrong and contrary to the rules and direct the respondents to promote the applicant in Highly Skilled Gr.II w.e.f. 23.10.1985 with all consequential benefits arising from such promotion. No order as to costs.

(MS. USHA SAVARA) 4.8.85
MEMBER (A)

(M.S. DESHPANDE)
VICE CHAIRMAN