

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 736/88

198

~~Tax No.~~

DATE OF DECISION 24.9.1991

R. Sivathanu

Petitioner

Mrs. K.U. Nagerkatti

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. R.K. Shetty

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. M.Y. Priolkar, 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? *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*

MGIPRRND-12 CAT/86-3-12-86-15,000

U.C. Srivastava
(U.C. Srivastava)
V/C

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

* * * * *

Original Application No.736/88

Shri R.Sivathanu (O.S.Gr. I),
CWE, Kirkee, Pune 411 003.

... Applicant

V/s

1. Engineer-in-Chief,
Army HQ (Under Ministry of
Defence), DHQ, PO New Delhi.

2. Chief Engineer,
Southern Command,
Pune 411 001.

3. Commander Works' Engineer,
Kirkee, Pune 411 003.

... Respondents

CORAM : Hon'ble Vice-Chairman, Shri U.C.Srivastava
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

Mrs.K.U. Nagerkatti, Advocate
for the applicant and
Mr. R.K.Shetty, Advocate
for the respondents.

ORAL JUDGEMENT:

Dated : 24.9.1991

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

The applicant who is presently working as Office Superintendent (Gr.I) in C.W.E., Pune has approached the Tribunal praying for restoration of his rightful seniority over his juniors who as per review LPC of 1983 have been made senior and that he may be granted appropriate promotion with retrospective effect like his juniors and consequential financial benefits including allowances accruing to him as a result of restoration of his rightful seniority be also granted. The promotion with retrospective effect has been claimed by him on the basis of the judgement of the Central Administrative Tribunal, Madras Bench dated 5.12.1986 (Tr.A.Nos.177, 465 and 427/86) and that of by the Bombay Bench of the Tribunal in O.A. 521/87, A.G.Joglekar vs. Union of India

... 2/-

and ors. decided on 9.2.1988. The applicant joined the service of the M.L.S. as L.D.C. in December 1961 and was ultimately promoted to the post of Office Superintendent (Gr.II) on 12.7.1982 through the DFC held in March 1982. He was further promoted to Office Superintendent (Gr.I) with effect from 30.7.1988. In the year 1975 a DFC was held for considering promotion to the post of O.S.(Gr.II). The applicant was not considered as he was not within the zone of consideration being below in the list in which only persons whose names were upto thrice the number of vacancies within the list were to be considered. Selection made by the DFC was quashed by the Allahabad High Court with the direction that the seniority list should be drawn ~~to~~ in a particular manner and thereafter DFC again took place in the year 1980 and again the selection was challenged as it did not give effect to the directions given by the Allahabad High Court. The same was also set aside. Another DFC took place in the month of March 1982 for promotion of ULCs/Stenographers to O.S.(II). The applicant was considered and promoted to O.S.(II). Along with the applicant it appears that one N.Mahadevan who was junior to the applicant was also promoted subsequently i.e. on 29.10.1982. In the month of May 1983 another DFC was held for selection of 314 posts of O.S.(II) and those selected were given ante-dated seniority from 11.12.1975 in the post of O.S.(II). The grievance of the applicant is that of course his juniors have been given back dated seniority. The case of the applicant was considered by the review DFC which took place in the month of December 1983 and the applicant was selected. Subsequently against the grant of notional seniority some of the persons approached the Central Administrative Tribunal, Madras and the Madras Tribunal vide its judgement allowed the petition and gave a general direction in the following terms:-

"The respondents are therefore directed not to fix the interse seniority on the basis of notional promotion from 11.12.1975, as contemplated in the letter dated 5.9.1985, but to fix the seniority of the applicants taking into account the period of their officiation in the post of Office Superintendent Gr.II, on ad-hoc basis."

It appears that the directions given by the CAT, Madras was implemented by the respondents but one A.G.Joglekar who was quite senior in the seniority list feeling aggrieved from the implementation of the judgement of the CAT filed an application before this Tribunal referred to above. This Tribunal allowed this application observing while making reference to the decision of the CAT, Madras in the cases referred to above that:

"We are at a loss to understand as to how the department has not fixed the seniority of all the employees who were placed in circumstances similar to those who were the applicants before the Madras Bench. We would like to observe that the decision given by the Madras Bench of the Central Administrative Tribunal ought to have been applied by the respondents to all persons who were placed in the same situation as the applicants before the Madras Bench and it should not have become necessary for persons from that cadre to agitate their grievance individually, separately, before various Benches of the Tribunal."

It appears that the order passed by this Tribunal was not challenged and the seniority of Joglekar was refixed. The applicant was not a party before the CAT, Madras but after the decision of the Joglekar's case it appears that the


applicant's seniority was not fixed and he made a representation before the Department on 14.3.1988. The representation of the applicant with 15 others were disposed of on merits and it was rejected. It is thereafter that the applicant has approached the Tribunal. On behalf of the applicant it was contended that even though the applicant was not a party to the cases referred to above but the applicant and others were waiting for the relief and when the general directions were given by the Central Administrative Tribunal which was not challenged by the Union of India it was obligatory on the Union of India to give effect to the directions given by the Administrative Tribunals Madras and Bombay. But the same was not given effect to and that is why the applicant approached the Tribunal.

2. On behalf of the respondents it is contended that this is a belated application and may not be entertained. In this case the question of limitation would not arise as the representation of the applicant was entertained and was rejected on merits. In this connection reference may be made to the case of Sualal vs. State of Rajasthan, AIR 1977 SC Pg. 2050 where it was held that decision on belated application for review on merits would give fresh cause of action for limitation purposes. The same position arises in this case also. The representation of applicant was disposed of on merits wherefrom he has approached the Tribunal. If the judgement was not given effect to the position of someone in the seniority list is disturbed. The Union of India is responsible for giving rise to litigation in this behalf and not this Tribunal's order as contended by learned counsel for Union of India, after having committed to the decision of CAT,

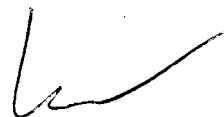
Madras. So far as the applicant is concerned, the applicant undoubtedly cannot compare his position with that of the Stenographers because they come from the other cadre. But in the instant case we have found that one N. Mahadevan who was promoted on 29.10.1982 while the applicant was promoted on 12.7.1982 has been given benefit of the said judgement and in the seniority list which has been referred to by the applicant's counsel as a part of her arguments. The position of the said Mahadevan has been shown as 424 and that of the applicant has been shown as 379. From the chart which has been appended with the counter affidavit it is clear that N. Mahadevan was junior to the applicant and in 1975 like the applicant he was also not within the zone of consideration. He was also considered and not selected in 1980 like the applicant and was selected in 1982. In the review DPC of 1983 which was only to give effect to the decision of the Allahabad High Court in respect of those who were within the zone of consideration in 1975 he too was not selected like the applicant as he was not within the zone of consideration but he was selected in the review DPC of December 1983. It has not been explained by the respondents as to why this discrimination has been done when Shri Mahadevan was junior to the applicant. In view of the fact that the junior has been given benefit of this promotion the case of the applicant also deserves consideration. Accordingly this application is allowed to the extent that in case Shri Mahadevan is junior to the applicant and he was not within the zone of consideration in the year 1975 and was not also promoted in the year 1980 but was promoted thereafter the applicant shall also be promoted like him and retain his seniority may be by adjusting the seniority which has been fixed by the

(11)

respondents. The application stands disposed of finally in these terms. In case the applicant's seniority is refixed and the applicant also gets promotion with retrospective effect the applicant will be entitled to other consequential benefits. No order as to costs.



(M.Y. Priolkar)
Member(A)



(U.C. Srivastava)
Vice-Chairman

v/-