

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 791/89

Transfer Application No:

DATE OF DECISION: 16-11-94

M. Rajaratnam

Petitioner

Shri. D.V. Gangal

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri. V.S. Masurkar

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

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 ?

M.R. Kolhatkar

(M.R. Kolhatkar)
M(A)

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY

Original Application No. 791/89

M. Rajaratnam

.. Applicant

Vs.

1. Union of India
through
Ministry of Communications,
New Delhi.

2. General Manager,
Bombay Telephones
MTNL, Bombay.

.. Respondents

CORAM : 1. Hon'ble Shri. B.S. Hegde, Member (J)

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

APPEARANCES

1. Shri. D.V. Gangal, Counsel
for applicant
2. Shri. V.S. Masurkar, Counsel
for respondents

JUDGMENT

DATED : 16-11-84

[Per. Shri. M.R. Kolhatkar, Member (A)]

This is an application under section 19 of the Administrative Tribunals Act, 1985. It is the case of the applicant that he was appointed as Engineering Supervisor in 1959. He passed the departmental qualifying examination in 1968 at the first attempt. He was promoted as Assistant Engineer

(B)

-2-

in December 1972 as per his turn but he has been held-up unjustifiably and illegally, so far as next promotion as Divisional Engineer is concerned. It appears that while working at Madras, the applicant was transferred to Surat which he carried-out but there was a delay in joining at the place of posting on transfer from 08/10/1978 to 05/12/1978 and the Department treated this period as not on duty inspite of specific orders of Madras High Court. It is not disputed that the date of decision of Madras High Court was 25.09.1984 and the same was implemented by the Department by their order dated 25.3.1987 vide Annexure 'F' which reads "In accordance with orders contained in Judgment of Hon. High Court dated 25.09.1984 on writ petition No. 4933 of 1981 the period of overstaying of Shri M. Rajarathnam, AE (formerly AE LD Trichy) from 8/10/1978 to 5/12/1978 is treated as on duty". It would thus be seen that it took three years for the Department to implement the order and

(14)

-3-

the order was implemented only after he approached the High Court again with a Contempt Petition. It was in view of the order dated 25.3.1987 that the High Court passed its subsequent order dated 3.4.87 and dismissed his C.P. The applicant states that he was entitled to be confirmed as Asstt. Engineer in 1977 and thereafter he was required to be considered for the post of Divisional Engineer but because of the over-stay in case referred to above, he was not confirmed in time and D.P.C held him up. He was only confirmed in 1983 and he is reported to be officiating as Divisional Engineer from 1989 although his juniors have been promoted long back.

2. The respondents have stated that the DPC for confirmation was held in March 1983 which assessed him as 'Not fit for confirmation' on the basis of his performance as reflected in his confidential reports for the period preceding June 1981. Subsequently, he was confirmed w.e.f. 1.2.83 based on the recommendations of the DPC held in March, 1985.

(B)

-4-

There is no delay in confirmation and promotion of the applicant as per the respondents. The respondents have also referred to the relevant rules which are the Telegraph Engineering Service (Class I) Rules, 1965 as amended in 1968. According to these rules, rule 2(a) defines 'approved service' as below :

2 (a). "approved service" in relation to any grade of the Service, means the period or periods of service in that grade rendered after selection for a long term appointment in that grade and includes any period or periods -

- (i) taken into account for purposes of seniority in the case of those persons appointed before the commencement of these rules ;
- (ii) during which an officer would have held a duty post in that grade but for his being on leave or otherwise not being available for appointment to the said post. "

3. The amended rule 26 provides putting in of eight years of approved service in Class-II before the officer can be promoted. The rule reads as under :

"26. Appointment by promotion to the Junior time scale in the service shall be made by selection on merit from amongst permanent officers of the Telegraph Engineering Service, Class-II ordinarily with not less than eight years approved service in Class-II, on the recommendations of a duly constituted Departmental Promotion Committee and in consultation with the Commission. The period of probation shall be two years "

14

(1b)

-5-

4. In his rejoinder, the applicant has stated that he has not been shown the seniority list till today although he asked for the same. He has suffered because from 1978 to 1987 the respondents did not consider his case because of ~~litigation in~~ Madras High Court.

5. We are not satisfied with the way the written statement has been filed ^{by respondents} in which all the requisite facts have not been brought out. However, on the basis of the available material, we have no hesitation in ~~concluding~~ that there has been a failure on the part of the Department to consider the implications of the Madras High Court judgment.

The effect of the Madras High Court judgment is that the period in question i.e. 8/10/78 to 5/12/78 is to be treated as on duty. Therefore, that period ^{"approved service"} in terms of rules is to be considered as quoted above. The D.P.C in March 1983 did not consider the case of the applicant because the judgment of Madras High Court D.P.C was not before that ^{and hence the overstayal of} the applicant was not regularised. When the DPC met in March 1985, the judgment of Madras High Court

was before it, [redacted] having been delivered on 03/04/1987 but the same was not implemented by the Department as noted above, till March 1987.

On receipt of the Madras High Court order dated 3.4.1987, taking note of the order of the Department dated 25.3.1987, the Department ought

to have held a fresh D.P.C because the effect of the overstayal has been wiped-out by the Madras

High Court judgment dated 25.9.84 read with subsequent order ~~judgment~~ dated 3.4.1987. In fact the effect of the

the Madras High Court judgment and the subsequent order passed by the Department dated 25.3.87 is or any of that all the adverse remarks recorded on the applicant and consequent subsequent to overstayal of the applicant are

to be ignored by the concerned D.P.C. There is no averment by the respondents that a review D.P.C has taken place [redacted] which has considered the matter as indicated by us. ~~as~~ above. We therefore consider that there is substance in the contention of the applicant that he has been wrongfully held-up by the Department ^{considered} for being ~~for~~ for promotion. We therefore dispose of this O.A by passing the following order :

(18)

O R D E R

The application is allowed.

Department is directed to hold a review

D.P.C on the footing that the service

of the applicant from 8.10.78 to 5.12.78

was "approved service" and he was eligible

for promotion in his turn on this basis

by ignoring all adverse remarks arising

from his alleged overstayal. For this

purpose, the respondents are directed to

convene a review D.P.C for promotion in

1981 at the earliest or on such an

earlier date according to rules, when

the applicant became eligible and came in the

zone of consi-

(deration) for promotion. If the review

DPC is so held & holds the applicant fit

for promotion, the respondents are directed

to give proforma promotion to the applicant

from that date and give all consequential

benefits to the applicant on proforma basis.

If the applicant becomes entitled
to payment of arrears, the same
should be confined to one year prior
to the date of filing of this O.A.

Order should be complied with by
the Department within four months
from the date of communication of
this order. There will be no order
as to costs.

M.R. Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.S. Hegde
(B.S. HEGDE)
MEMBER (J)

J*