

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 508/89

~~Transferred Application No~~

DATE OF DECISION 27th January 1994

ARUN KUMAR SIDHPURI Petitioner

MR. M.S. RAMAMURTHI Advocate for the Petitioners

Versus

UNION OF INDIA & ORS. Respondent

MR. P M PRADHAN Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri JUSTICE M.S. DESHPANDE, VICE CHAIRMAN

The Hon'ble Shri M.R. KOLHATKAR, MEMBER (A)

1. ~~Whether Reporters of local papers may be allowed to see the Judgement ?~~ ✓
2. To be referred to the Reporter or not ? ✓
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 ? ✓

M R Kolhatkar  
MEMBER (A)

(M)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6  
PRESCOT ROAD; BOMBAY-1

OA No. 508/89

Arun Kumar Sidhpuri

..Applicant

V/s.

Union of India & Ors.

..Respondents

Coram: Hon.Shri Justice M.S.Deshpande, V.C.  
Hon.Shri M .R. Kolhatkar, Member (A)

Appearance;

Mr. M.S. Ramamurthi  
counsel  
for the applicant

Mr. P M Pradhan  
Counsel  
for the respondents

JUDGMENT:

DATED: 27 -1-1994  
(Per: M.R. Kolhatkar, Member(A))

This is an application under Section 19 of the Administrative Tribunals Act, 1985. The brief facts are that the applicant who was Cameraman Gr.II in Door Darshan Bombay was transferred on promotion as Cameraman Grade I in the pay scale of Rs.840-1200 by order dated 14.8.86 vide Annexure 'A'. The applicant declined the promotion. He was debarred for promotion by order dated 7.1.87 and his period of debarment expired on 21.9.87. He was initially promoted under promotion rules where ~~test~~ was "seniority subject to rejection of the unfit". But the rules were revised with effect from 5.12.87 and the test under ~~rules~~ <sup>new rules</sup> was "selection on merit". It appears that on 25.4.87, certain promotion orders to posts of Cameraman Grade I were issued in which Applicant did not figure. Subsequently the applicant was transferred in the same capacity viz., Cameraman Grade II to

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Gauhati by order dated 4.7.1989, Annexure 'C'.

The applicant who initially challenged the order of transfer subsequently challenged his non-promotion. The basic issue involved in this application is whether the applicant could be considered for promotion on the basis of his inclusion in the earlier panel or whether the department was right to deny to him the opportunity of promotion on the basis of fresh panel formed on the basis of amended rules. During the course of hearing this Tribunal passed the following order on 26.3.93 which is reproduced below:

Shri M.S. Ramamurthy, counsel for the applicant. Shri V.M. Bendre for Mr. P.M. Pradhan, counsel for the respondents.

Heard Mr. Ramamurthy for the applicant and Mr. Bendre for the respondents. We also perused the records. The position is not clear whether there was any vacancy existing on the date of the expiry of the debarment period of the applicant, namely on 21.9.87. In the written reply it is stated that new vacancies arose only in 1988 which is disputed by the applicant. The respondents should therefore file an affidavit specifically indicating whether there was any vacancy during the period he was eligible for appointment after the expiry of the debarment period i.e., from 22.6.87 till 5.12.1987, which is the date of the gazette notification by which new recruitment rules were brought into force. The affidavit should also state whether any other person senior to the applicant in the panel and who had been similarly debarred, was also waiting for promotion during this period, i.e., from 22.9.87 to 5.12.87. The applicant may also file rejoinder if necessary giving evidence regarding the existence of vacancy during this period as claimed by him as also that his seniors were all accommodated during the period on promotion posts.

List the case for final hearing on 27.4.93."

*Mr* In response to this order the respondents have filed a detailed affidavit and on the basis of the documents on record the respondents have stated that considering the sanctioned strength, filled in and vacant posts of

Cameramen Gr.I with effect from 1.3.1986 the promotional orders and orders of debarment issued by the authorities, there was no vacancy of Cameraman Gr.I as on 21st September 1987, and therefore applicant had no chance of getting promoted on the basis of old panel. But subsequently the rules were revised so that a fresh panel in accordance with the rules was required to be prepared; initially applicant did not find a place therein (Applicant has since been promoted on a later date but the claim of the applicant is for promotion from the earlier date). The respondents have relied on the judgment of the Madras Bench of CAT in O.A. No. 805/89 delivered on 11.12.1990 (L RADHAKRISHNA V. DIRECTOR OF D.D.K., MADRAS) in which the facts were identical. In that case when the applicant's case was considered for promotion on 17.4.86 the post of Cameraman Gr.I was non-selection post whereas when the applicant's case came to be considered in 1989 after the expiry of the period of debarment the post became a selection post as per the new recruitment rules notified on 5.12.1987.

The applicant on the other hand has disputed the detailed statement of promotions, debarments and posting filed by the respondent. But so far as the law point is concerned, Applicant strongly relies on the judgment of the Bombay Bench of the CAT in O.A. No. 398/86 (V.S. THOMAS V. UNION OF INDIA). That judgment was a Full Bench judgment which was rendered by Vice Chairman Justice B.C. Gadgil resolving difference of opinion between two Members of the Division Bench. That judgment proceeded on an interpretation of para 12 to 14 of Appendix XXIX of Civil Service Regulations. That

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judgment, however, related to the panel prepared on the basis of departmental competitive examination and not on the basis of DPC which proceeds on the basis of screening of the CRs. We, therefore, do not consider that the Full Bench Judgment of the CAT Bombay Bench applies to this instant case. The case is squarely covered by the judgment of the Madras Bench of CAT referred to earlier. We therefore dispose of this case by passing the following order:

ORDER

The application is dismissed. No order as to costs.

*M.R. Kolhatkar*

(M.R. Kolhatkar)  
Member(A)

*M.S. Deshpande*

(M.S. Deshpande)  
Vice Chairman