

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 382 OF 1989.

Date of Decision 15.7.96

Jayavant Hanuman Liman

... Petitioner

Shri M. A. Mahalle

... Advocate for the
Petitioner.

Versus

Union Of India & Others

... Respondents.

Shri P. M. Pradhan

... Advocate for the
Respondents.

CORAM :

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

Hon'ble Shri P. P. Srivastava, Member (A).

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to
other Benches of the Tribunal?

B. S. Hegde
(B. S. HEGDE)

MEMBER (J).

os*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 382 OF 1989.

Dated, this _____, the 15th day of July 1996.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

1. Shri Jayavant Hanuman Liman,
Electrician H.S. Grade-I,
C/o. Garrison Engineer,
(Naval Works), Colaba,
Bombay - 400 005. ... Applicant
(By Advocate Shri M.A. Mahalle)

Versus

1. The Secretary,
Ministry of Defence,
Government of India,
New Delhi - 110 011.)
2. The Engineer-in-Chief,
Army Headquarters,
DHQ, New Delhi - 110 011.)
3. The Chief Engineer,
Southern Command,
Pune - 411 001.)
4. The Chief Engineer,
Bombay Zone,
26, Assaye Building,
M & G Area, Colaba,
Bombay - 400 005.)
5. The Commander Works Engineers,
(Naval Works), Dr. Homi Bhabha Rd.,
Navy Nagar, Colaba,
Bombay - 400 005.)
6. The Garrison Engineer
(Naval Works),
Dr. Homi Bhabha Road,
Navy Nagar, Colaba,
Bombay - 400 005.)
... Respondents.

(By Advocate Shri P. M. Pradhan).

: ORDER :

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

1. Heard the argument of Shri M.A. Mahalle, Counsel for the applicant and Shri P.M. Pradhan, Counsel for the respondents.

2. The short point for consideration is, whether the applicant is entitled for promotion from 1985 or alternatively 1986 or 1987 as Senior Electrician Highly Skilled Grade-I, as the case may be.

3. The applicant initially joined as a casual wireman in the year 1971. In 1973 he was regularised and in 1978 he was promoted as Electrician. In this O.A. he seeks promotion since 1985 onwards as Senior Electrician Highly Skilled Grade-I. The respondents on the basis of request made by the applicant had given a reply vide letter dated 07.07.1988 (Annexure 'A') which reads as follows :

"Shri Liman, Electrician was not qualified when the DPC was held by CWE (NW) Bombay in January 1985. The DPC is not held to match with the passing of trade test by Shri Liman. It was not held later as the number of posts was reduced to 09 Nos. It was therefore difficult to promote the individual when there was no vacancy. The question of now promoting the individual and giving him seniority of Ch/Mech do not arise when neither a DPC was held nor promotion order was issued for any of his junior."

According to the applicant, this is an impugned order which requires consideration. The Learned Counsel for the applicant, Shri Mahalle, draws our attention to exhibit-1 at page 57 of the O.A., vide dated 22.10.1988 wherein the various details has been given and ultimately it was stated that none are promoted as Highly Skilled Grade-I for the year 1984 to 1986 and also indicated the date of D.P.C. held during 1984 on 22.06.1984, during 1985 on 18.01.1985 and during 1986 on 20/21.03.1986, whereas the contention of the applicant is that the D.P.C. took place in 1984 and he also passed the trade test but the respondents did not send the applicant's name in the year 1986, which is not justified.

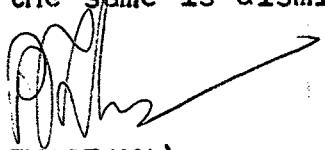
Restructuring/upgradation of the cadre took place on 09.04.1985 and after framing of the rules in the year 1987, the respondents promoted the applicant to the post of Highly Skilled Grade-I in the year 1988.

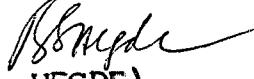
4. The respondents in their reply negatived the contentions of the applicant and contended that the D.P.C. was held for various categories in which the vacancies existed but the D.P.C. for Sr. Electrician Highly Skilled Grade-I was not held during these years, as there was no vacancy. Since the applicant has already been promoted to the post of Sr. Electrician Highly Skilled Grade-I in the year 1988, there should be no complaint by the applicant for promotion. Seeking promotion on the basis of presumption that D.P.C. had taken place in 1984 and he had passed the trade test, therefore, he should be promoted to the post of Sr. Electrician Highly Skilled Grade-I is not called for. Due to restructuring/upgradation of the cadre, the cadre, the number of posts was reduced to 9 and there was no vacancy during the year 1985, 1986 and 1987. None was promoted and no discrimination has been made sofar as the promotion was concerned. Though the D.P.C. took place in January 1985, the results were declared in March 1987. Further, the promotion is according to unit seniority and not on All India seniority. Since none has been promoted as well as his juniors, the applicant should not have any grievance against his non-promotion.

5. It is a well settled principle that whenever promotion to a higher post is to be made on the basis of merit, no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors are promoted. If promotion has been denied

arbitrarily or without any reason ordinarily, the Court can issue a direction to the management to consider the case of the officer concerned for promotion but it cannot issue a direction to promote the officer concerned to the higher post without giving an opportunity to the management to consider the question of promotion. That being the position regarding promotion, in the instant case, due to restructuring/upgradation of the units, certain vacancies were reduced and there is no such alleged arbitrariness on the part of the respondents in not promoting the applicant. Besides that, none of his juniors have been promoted over the head of the applicant. In the circumstances, it cannot be said that the decision of the respondents is arbitrary or illegal and bad in law. Since the applicant has got promotion in the year 1988 as per his turn, in our view, the grievance of the applicant is hypothetical and is not sustainable in law.

6. In the light of the above, we see no merit in the O.A. and the same is dismissed. No order as to costs.


(P. P. SRIVASTAVA)
MEMBER (A).


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

os*