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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**

**NEW BOMBAY BENCH**

O.A. No. 3/89  
T.A. No.

198

DATE OF DECISION

30-3-92

V.D.Thakker Petitioner

Mr. H.J.Acharya Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

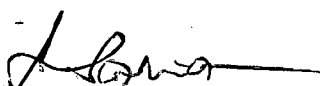
Mr. P.R.Pai Advocate for the Respondent(s)

**CORAM**

The Hon'ble Ms. Usha Savara, Member (A)

The Hon'ble Mr. S. Santhana Krishnan, M (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? NO
2. To be referred to the Reporter or not ? NO
3. Whether their Lordships wish to see the fair copy of the Judgement ? NO
4. Whether in needs to be circulated to other Benches of the Tribunal ? NO

  
( S. Santhana Krishnan )  
M (J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY  
\* \* \* \* \*

Original Application No.3/89

V.D. Thakker ... Applicant

V/s

Union of India & Ors. ... Respondents

CORAM : Hon'ble Member (A), Ms. Usha Savara  
Hon'ble Member (J), Shri S.Santhana Krishnan

Appearances:

Mr. H.J. Acharya, Advocate  
for the applicant and  
Mr. P.R.Pai, Counsel for  
the respondents.

JUDGMENT:

Dated : 30.3.92

{Per. S.Santhana Krishnan, Member (J)}{

The applicant was initially working as Assistant Manager under the first respondent and thereafter promoted as Manager in 1962 on ad-hoc basis and then regularised in January 1965. The seniority list of Class-III staff of Catering Department was published wherein the applicant's name is at serial No.18 and Shri K.B.Kulkarni is at serial No.22. The applicant was placed under suspension on 22.8.75 and he was issued a major penalty charge sheet. The suspension order was revoked on 19.1.77 and later on the charges were dropped on 2.7.80. Again another major penalty charge sheet was issued on 27.2.1978 and the same was also dropped on 24.4.1981. He was again served with a major penalty charge sheet on 18.1.82 and thereafter it was converted to a minor charge sheet and he filed a separate petition in connection with the same. Thus he was under the shadow of major penalty charge sheets for nearly ten years from 22.8.75 to 21.5.1985 except for a short period from 24.4.81 to 18.1.82. Hence his promotion to higher grade of pay Rs.425-640 was adversely affected. The persons

*[Signature]*  
..... 2/-

who were junior to him and even a scale below him are drawing more salary. He was also not considered for ad-hoc promotion to which he was entitled because of the aforesaid major penalty charge sheets. He got promotion only on 16.1.82 to the above scale on ad-hoc basis and subsequently the same was regularised on 1.1.1984. As his juniors were promoted on ad-hoc basis even long prior to him he is entitled to get this benefit. Further, the applicant was called to appear before the Selection Committee for selection to the post of Catering Inspector Grade-I on 3.3.1987 for which he appeared. The applicant was not empanelled for the promotion to the said post. The applicant presumes that the disciplinary actions borne on the service records have adversely affected his promotional prospects. Hence, he has come forward with this application requesting the Tribunal to direct the respondents to give him the following reliefs:

- i) The applicant be deemed to have been promoted on ad-hoc basis in the scale of Rs.425-640 from August 1973 i.e. from the date his juniors were promoted to the said scale;
- ii) The applicant be paid the difference of pay and allowances from August 1973 or any other such date when his junior was promoted;
- iii) The records of selection to the grade of Rs.2000-3200 held on 3.3.87 be called for to ascertain that the marks for service records are properly assigned and in the event the applicant qualifies for the selection, the applicant be deemed to have been promoted to the said scale from the date the panel became effective and be given difference of pay and allowances;
- iv) As the applicant is due to retire on 31.5.89, the applicant be paid pension and other retirement benefits reckoned on the basis of the pay so determined;



- v) The applicant be paid interest at the market rate on the amount to which the applicant was wrongly deprived;
- vi) Any other such relief and further relief in the nature and circumstances be deemed fit and proper; and
- vii) Cost of application.

2. Respondents filed their reply resisting the claim of the applicant.

3. Heard the counsel appearing for the applicant and respondents and perused the record.

4. The fact that the applicant was originally appointed as Assistant Manager and thereafter promoted as Manager is not disputed. The applicant also filed the seniority list wherein his name is at serial No.18 whereas Shri K.B.Kulkarni is junior to him and is at serial No.22. The applicant was served with major penalty charges several times and though the applicant claims that the charges were dropped in respect of all the charges on 2.8.79, the respondents filed in their reply <sup>to prove</sup> that the above charge sheet was not dropped but it was converted into a minor penalty charge-sheet wherein the disciplinary authority awarded the applicant the penalty of stoppage of increment for a period of three years without future effect. Subsequently, on appeal, the competent authority reduced the said penalty for a period of one year without future effect on 3.12.1980. The fact that the applicant is senior to Shri Kulkarni is not disputed by the respondents. They only claim in their reply that the applicant was not considered for ad-hoc promotion before 1976 as he was not suitable for promotion. In fact the applicant specifically pointed out in his application that the above said Kulkarni was

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junior to him and was promoted<sup>even</sup> in August 1973 when there was no charge sheet against the applicant. The respondents failed to produce any document to establish that the applicant was considered for ad-hoc promotion in 1973 to 1975 and he was found<sup>not</sup> suitable for the same. We are unable to agree as to how the respondents claim in their reply that the applicant was not suitable for ad-hoc promotion. On this aspect the learned counsel for the applicant placed reliance on the Railway Establishment Rules & Labour Laws by B.S. Mainee, 1988 Edition, page 292 wherein it is specifically stated that in making such ad-hoc arrangements, the claims of seniors should be given full consideration and it should be ensured that such ad-hoc promotees are comparatively senior men. The senior most person available in the seniority unit should normally be promoted in the ad-hoc arrangements unless the authority ordering the promotion considers him unsuitable. As the applicant is admittedly senior to Shri Kulkarni, the respondents should have considered him for ad-hoc appointment even in August 1973. The respondents failed to give any reply as to why he was not considered at that time for ad-hoc promotion to the scale of Rs.425-640. The reply in para 12 on this aspect is very vague.

5. Even the respondents admit in their reply that the extant rule<sup>(b)</sup> regarding pending charges and penalty state states as follows:-

"(vi) If, after finalisation of the disciplinary proceedings against the person under suspension etc., for whom a vacancy has been reserved, he is held guilty but awarded only a minor penalty, he should automatically be assigned his due position in the list and his enlistment announced and he may be promoted in his turn. If his

*A. B.* . . . 5/-

junior has already been promoted before interpolation of his name in the list, he should be promoted, reverting the juniormost person, if necessary and his pay on promotion should be fixed under the normal rules."

Even the above rule <sup>when</sup> relied by the respondents clearly shows that the applicant was awarded with a minor penalty his promotion should be considered under the normal rule. The respondents have not considered the claim of the applicant. On this aspect as Mr. Kulkarni who is junior to the applicant was given ad-hoc promotion to the scale of Rs.425-640 we find that the applicant is entitled to claim promotion on ad-hoc basis in the above said Rule.

6. The applicant also claims selection to the grade of Rs.2000-3200 held on 3.3.87. His grievance is that he was called for the selection but he was not empanelled probably due to the pendency of the disciplinary proceedings against him. The applicant proceeds on the basis that there was no penalty against him. On the otherhand, as discussed already, the applicant was awarded a minor penalty. The applicant appeared for the selection and he has not questioned the procedure. He has also not attacked the selection on the ground of malafide. The applicant has not even stated as to how he considers that his selection was improper. On the otherhand the respondents pointed out in their reply that the applicant appeared for the selection held on 4.11.88 and he was found qualified and placed on the panel of Catering Inspector, Grade-I. The Tribunal cannot sit in appeal or substitute itself to the panel and as such unless the applicant establishes that the Selection Committee failed to follow the relevant rules or that the selection was malafide he cannot challenge the


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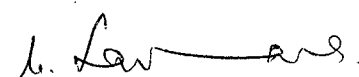
same. Hence the applicant is not entitled to claim any relief on this aspect.

7. The applicant also claims difference of pay and allowances from August 1973. The applicant has come forward with this application only in 1988. The respondents have not contested the claim either on the ground of limitation or on laches. In fact the applicant made his representation long after the denial of promotion to him on ad-hoc basis and as such he cannot claim the arrears from August 1973. The applicant at best can claim the difference of pay and allowances only for one year prior to the date of filing of this application. He is also entitled to claim the consequential retirement benefits due to him.

8. In view of the above discussion we dispose of the application with following directions:-

- i) The applicant be deemed to have been promoted on ad-hoc basis in the scale of Rs.425-640 from August 1973, ~~that is~~ the date his junior was promoted.
- ii) The applicant is entitled to difference of pay and allowances from one year prior to the filing of the application upto the date of his retirement and he is also entitled to claim consequential pensionary benefits.
- iii) Respondents are directed to give the above said benefits to the applicant within three months from the date of receipt of a copy of this order.
- iv) The applicant is not entitled to claim any other benefits in this application.
- v) No order as to costs.

  
( S. Santhana Krishnan )  
Member (J)

  
(Ms. Usha Savara)  
Member (A)