

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 493/89.
~~XXXXXX~~

198

DATE OF DECISION 28.6.1991

Shri B.S. Chikhale Petitioner

Shri D.V. Gangal Advocate for the Petitioner(s)

Versus

Union of India & Others. Respondent

Shri P.G. Godhamgaonkar. Advocate for the Respondent(s)

CORAM

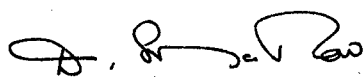
The Hon'ble Mr. D. SURYA RAO, MEMBER (J)


The Hon'ble Mr. P.S. CHAUDHURI, 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 ?

Yes
Yes

} 7/10


(D. SURYA RAO)
M(J)


(P.S. CHAUDHURI)
M(A)

(11)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

CAMP : AURANGABAD.

O.A.493/89.

Shri B.S. Chikhale,
New Airport Colony,
Chikalhana,
AURANGABAD.

.. Applicant.

V/s.

1. Union of India, through
Secretary, Ministry of
Civil Aviation & Tourism,
New Delhi.
2. Co-ordinating Director,
National Airports Authority,
Bombay Airport,
BOMBAY-400 099.
3. Senior Aerodrome Officer,
Civil Airport Aurangabad,
AURANGABAD.

.. Respondents.

Appearances :

Shri D.V. Gangal, Advocate
for the applicant and
Shri P.G. Godhamgaonkar, Advocate
for the Respondents.

Coram : Hon'ble Member(J) Shri D. Surya Rao
Hon'ble Member(A) Shri P.S. Chaudhuri.

JUDGMENT

DATED: 28.6.1991

¶ Per : Shri P.S. Chaudhuri, Member(A) ¶

This application under Section 19 of the
Administrative Tribunals Act, 1985 was filed on 21.7.1989.
In it the applicant prays that the Tribunal hold and declare
that:-

- (a) The applicant is entitled to be promoted
de jure as Junior-Clerk at Aurangabad
Aerodrome with effect from 18.3.1985.
- (b) The applicant is duly selected junior
clerk, as per Annexure 'C'.

(12)

OA.493/89.

-: 2 :-

(c) The applicant is entitled to be granted the difference of salary between junior clerk and peon from 18.3.1985 upto 1.10.89.

(d) The impugned letter dated 17.5.1989 Annexure 'A' is illegal.

He has also prayed for certain interim and consequential reliefs.

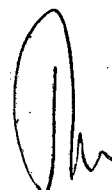
2. The applicant was born on 11.3.1956 and has passed the SSC Examination and typewriting test at a speed of 30 w.p.m. He worked in the office of the third respondent for six years as Chowkidar on daily wages and thereafter on 7.2.80 he was promoted as Peon and since then is working in the same post. Sometime in December 1984 one Shri R.K. Kathale who was working as a Junior Clerk in the office of the third respondent proceeded on leave. The third respondent addressed his superior authority, viz. Regional Director, Bombay Region, regarding filling the vacancy vice Shri Kathale. On 26.12.84 the Regional Director, Bombay Region advised him:-

"Reference your letter No.AU/E-3/1477 dated 4.12.84, on the above subject.

Due to ban on recruitment substitute vice Shri R.K. Kathale, Jr.Clerk is not permissible.

However promotion to Group 'D' employee, if possessing the requisite qualification for the post of Jr. Clerk, can be given. If any such group 'D' employee is available at Aurangabad, he may be assessed for the Jr. Clerks post by the local selection Board comprising of the following members and papers sent to this office for perusal and appointment letters.

1. Aerodrome Officer - Chairman
2. Officer-In-Charge, A.C.S. - Member
3. Any other Officer belonging to reserved community. - Member."



13

In reply, on 29.12.1984 the third respondent informed the Regional Director, Bombay Region, to the effect that:-

" Two group-D employees belonging to the CAD and working at C.A.Aurangabad, possess the requisite qualifications for the post of a Jr.Clerk. They were assessed by a Selection Board comprising of the undersigned (Chairman) Shri N.K. Sood, Office-in-Charge, A.C.S.(Member) and Shri N.C.Edbor A.O.(Member belonging to reserved community). Their assessment is enclosed herewith in duplicate alongwith the true copies of the Certificates of the candidates.

As may be seen from the assessment, Shri Chikhale, Peon is no. one and Shri Selokar, Chowkidar is no two.

....."

In reply, on 16.1.1985 the Regional Director, Bombay Region, advised the third respondent to the effect that:-

" It is requested that the original educational certificate and upto date C.R. folder in respect of Shri B.S. Chikhale, Peon of your office may please be forwarded to this office for perusal.

Shri B.S. Chikhale, is completing 5 years regular service on 6.2.85, as such he will be considered only after this date and subject to passing typewriting test of 30 W.P.M. within one year's time."

Thereafter, on 15.2.1985 the Regional Director, Bombay Region, advised the third respondent as under:-

" The Regional Director, Bombay is pleased to appoint Shri R.K. Kathale, Junior Clerk in the grade of Senior Clerk in the pay scale of Rs.330-10-380-EB-12-500-EB-15-560/- on purely adhoc basis for a period of 6 months or till the post is filled on regular basis from the date he takes over charge of the higher post, whichever is earlier. He is posted in the office of the Aerodrome Officer, Civil Aerodrome, Aurangabad Vice Shri R.S. Kamble, Senior Clerk, promoted as Head Clerk on adhoc basis and posted to Nagpur.

Oh

The adhoc promotion will not confer on him any benefit towards seniority/promotion etc. in future. He will automatically stand reverted on the six months period or even earlier as may be ordered and no representation etc. will be entertained from him.

The date of taking over of the higher post by Shri Kathale may be intimated to this office.

Regarding posting of substitute Junior Clerk vice Shri Kathale any group 'D' Matric Pass having knowledge Typing can be considered for promotion as Junior Clerk (Adhoc) provided his Confidential Reports folder, Matric certificate and test papers in English typewriting are sent to this office for prior approval of Regional Director being competent authority. The resultant Group 'D' post will remain unfilled due ban."

On 16.3.1985, the Regional Director, Bombay Region advised the third respondent that vacancies of Junior Clerk (ad hoc) were available at, inter alia, Aurangabad and Nagpur and asked him to confirm the willingness or otherwise with choice of stations of some Group D staff including the applicant. On 18.3.1985 the willingness of the applicant with choice of stations being first Aurangabad and second, Nagpur was conveyed. The National Airports Authority was formed with effect from 1.6.1986 and the applicant was on deputation to that authority from the Civil Aviation Department with effect from that date. Thereafter, with effect from 2.10.1989 the applicant became a fullfledged employee of the National Airports Authority. In the meantime, the third respondent had sent the impugned requisition dated 17.5.1989 to the Employment Exchange calling for applicants for the post of Junior Clerk.

3. Being aggrieved by the respondents' failure to promote him the applicant filed the present application on 21.7.1989. The respondents have opposed the application

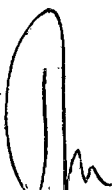


by filing their written statement, We have heard Mr.D.V. Gangal, learned counsel for the applicant and Mr.P.G. Godhangaonkar, learned counsel for the respondents.

4. It is the applicant's case that the amendment to the Recruitment Rules, 1972 for, inter alia, the post of Junior Clerk that was notified in July, 1984 provided that 10% of the vacancies of Junior Clerks will be reserved for being filled by departmental Group-D employees possessing the requisite qualifications and in the manner specified therein. It is his contention that he was so selected in terms of the third respondents' letter dated 29.12.1984. supra. It is his further contention that he was, in fact, working and discharging the duties of Junior Clerk continuously from February, 1980 and continued to do so after Shri Kathale was promoted to the post of Senior Clerk. The applicant concedes that he is not pressing his claim in respect of this post from 1980 to 1985 but is pressing for it only from 18.3.1985, which is the date the third respondent communicated that Aurangabad was the applicant's first choice for posting, to 1.10.1989, which is the date the applicant ceased to be on deputation from the Civil Aviation Department.

5. It is not disputed that the applicant came within the jurisdiction of the Tribunal during the period for which he is claiming relief.

6. The first contention of the applicant is that he had been selected for the post of Junior Clerk by a duly constituted Selection Board in December, 1984. The respondents seek to oppose this by asserting that though



16

QA.493/89.

-: 6 :-

the applicant was assessed fit, action could not materialise. They do not dispute Shri R.K. Kathale was promoted to the post of Senior Clerk on ad-hoc basis w.e.f. 15.2.1985 but they assert that the resultant vacancy was not filled. It is their contention that posts which remained unfilled as on 31.5.1986 were not transferred from the Civil Aviation Department to the National Airports Authority on its formation w.e.f. 1.6.1986. We do not see how this can help the respondents. The question which we have to decide is whether the applicant should be deemed to have been promoted as Junior Clerk w.e.f. 18.3.1985. It is not disputed that such a vacant post existed on that date and if this vacant post is filled from that date it no longer comes within the ambit of posts which remained unfilled as on 31.5.1986. By his letter dated 26.12.1984 the Regional Director, Bombay held that promotion can be given to a Group 'D' employee possessing the requisite qualification. He also directed that if any such Group 'D' employee was available at Aurangabad, he should be assessed for the post of Junior Clerk by the local Selection Board constituted by the Regional Director. This duly constituted Selection Board assessed the applicant as No.1 for such promotion. On 16.1.1985 the Regional Director, Bombay intimated that the applicant would be considered for the promotion after 6.2.1985 on which date he would be completing 5 years regular service. On 15.2.1985 the Regional Director, Bombay directed that a Group D candidate approved by him, being the competent authority, could be promoted as Junior Clerk and that the resultant Group D post would remain unfilled due to ban. On 16.3.1985 the Regional Director, Bombay asked for the willingness or otherwise and choice.

Am

DA.493/89.


of stations of, inter alia, the applicant. Against this background, there is no way in which it can be held that the applicant was not selected for the promotional post of Junior Clerk by a duly constituted Selection Board. He was so selected in December, 1984. He completed the qualifications for such promotion in February, 1985. The action for such promotion materialised in March, 1985. A vacancy existed to effect such a promotion. There was no difficulty regarding the resultant vacancy because it had been made clear that the resultant vacancy would remain unfilled. It has not been disputed that the applicant was discharging the duties of the post of Junior Clerk even though formal orders for his promotion had not been issued. It can not be disputed that there was need for such an employee; the respondents' own written statement shows that the National Airports Authority Headquarters were requested to create one post of Junior Clerk for the Aerodrome Office at Aurangabad and they did so by their order dated 29.3.1989. The respondents seek to contend that the applicant is not entitled to be promoted against the post so created. But we are unable to go along with this submission of the respondents. The applicant is not seeking promotion against the post created on 29.3.1989; he is seeking promotion against a post which existed on 18.3.1985 for which he was eligible and for which he had been selected.

7. The respondents contend that the applicant is not the seniormost employee. But that will not stand in the way of his ad hoc promotion after due process of selection. Besides, the Regional Director, Bombay's communication dated 16.3.1985 mentioned earlier shows that vacancies of Clerks

O.A.493/89.

were available at 6 places, namely, Nagpur, Bhopal, Keshod, Bhuj, Bhavnagar and Aurangabad. In this communication, the Regional Director enquired about the willingness with choice of stations of only 5 employees, namely B.A. Gohil, N.B. Sarkar, B. Suresh Babu, I.D. Sontakke and the applicant. No doubt the applicant is the junior most of these 5 employees but that will not prevent his promotion on ad hoc basis when there were at least 6 vacancies. What is more, when giving his choice of stations the applicant had indicated that he was willing to go to Nagpur. So, it is not as if he was not willing to go out of Aurangabad on promotion. Besides, it is not disputed that the applicant has, in fact, discharged the duties of one of these posts at Aurangabad from at least 18.3.1985 as claimed by him. In this view of the matter, we are unable to go along with this submission of the respondents.

8. Based on this discussion and analysis, we are of the opinion that the applicant was entitled to be promoted as Junior Clerk from at least 18.3.1985 when he gave his willingness for such promotion and choice of stations as first, Aurangabad and second, Nagpur. As far as the question of financial benefits is concerned, the applicant approached this Tribunal only on 21.7.1989. Bearing in mind the provisions regarding limitation contained in Section 21 of the Administrative Tribunals Act, 1985, we are of the opinion that payment of any arrears should be limited to one year prior to that date, i.e. arrears should only be payable from 21.7.1988 onwards.

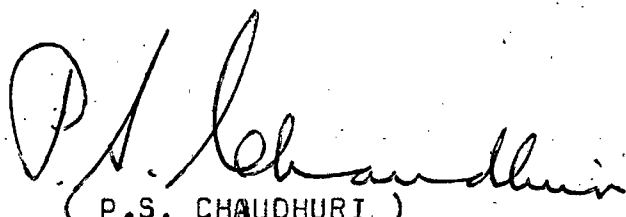



D.A.493/89.

9. Coming to the applicant's last prayer regarding the requisition to the Employment Exchange for candidates for filling a post of Junior Clerk, in our opinion this prayer no longer survives if the applicant succeeds in the earlier prayers.

10. In this view of the matter, we are of the opinion that the application deserves to succeed partly and we propose so ordering.

11. We accordingly direct the respondents to promote the applicant with effect from 18.3.1985 to the post of Junior Clerk (ad hoc) at Aurangabad against an existing vacancy. Arrears of pay and allowances shall, however, be payable only from 21.7.1988 onwards and any amounts due shall be paid within four months of the receipt of a copy of this order. In the circumstances of this case, there will be no order as to costs.


(P.S. CHAUDHURI)
MEMBER(A).


(D. SURYA RAO)
MEMBER(J).

28-6-1991