

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

CAMP AT PANAJI

O.A. NO: 356/89

199

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DATE OF DECISION 6.1.1992

Dr. Jai Jai Ram Anand

Petitioner

Mr. G.R. Sharma

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Mr H.R. Bharne

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C.Srivastava, V/C

The Hon'ble Mr. A.B. Gorthi, M (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 ?

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(U.C. Srivastava)
V/C

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
CAMP AT PANAJI
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Original Application No.356/89

v/s

Union of India, through
Secretary, Ministry of Home Affairs,
New Delhi and 11 ors. ... Respondents

CORAM : Hon'ble Vice-Chairman, Shri Justice U.C.Srivastava
Hon'ble Member (A), Shri A.B.Gorthi

Appearances:

Mr. G.R.Sharma, Advocate
for the applicant and
Mr. H.R.Bharne, Counsel
for the respondents.

ORAL JUDGMENT:

Dated : 6.1.1992

(Per. U.C.Srivastava, Vice-Chairman)

The applicant who is due to retire after few months and who was promoted on ad-hoc basis vide order dated 22.1.1991 as Assistant Director of Education for which selection was to be held but was not held but four ad-hoc promotions were made approached this Tribunal praying that the adverse remarks given to him between 1981 to 1984 and the ^{censure} ~~censor~~ entry dated 10.6.1988 be quashed and the tentative seniority list dated 7.4.1986 and 4.5.1989 along with final seniority list dated 2.6.1989 which were prepared in utter violation of recruitment rules and seniority rules be also quashed. He has further prayed that he be promoted with retrospective effect on or before the date of filling up of the post of Assistant Director Education by his juniors with all admissible benefits inclusive under F.R.22-B as granted to his juniors vide order dated 11.10.1990 or alternatively

he be promoted with retrospective effect giving him all admissible benefits. The applicant was appointed as Deputy Inspector of Schools in the Directorate of Education after due selection by the Union Public Service Commission in early 1978. He completed his two years probationary period on 3.5.1980. Although others were confirmed but the applicant was not confirmed though his junior ~~shxx~~ one Shri P.L.Balmik was made quasi-permanent. The applicant made a representation against the same followed by reminders ~~but~~ apart from giving him information that his case has been sent to Public Service Commission nothing was done although all such, according to the applicant, was not necessary as he was properly selected by the U.P.S.C. On 7.4.1984 he was communicated some adverse remarks for the periods 1.4.1982 to 7.3.83 and on 23.11.84 he was communicated some adverse remarks for the period 1.4.83 to 11.10.83 which according to the applicant are vague remarks though not very much adverse to him. These remarks were communicated to him after 13 months against which he made a representation. During the period 1982 to 1983 vide his letters dated 21.6.1983 and 18.11.1982 the Reporting Officer applauded his work ~~yet~~ and the Assistant Director of Education also conveyed his satisfaction regarding his work for the year in question yet after a lapse of 13 months he was favoured with another vague adverse entry for the year in question and some 32 months thereafter he was conveyed vague adverse remarks for the period 1.4.1981 to 1.3. 1982. The applicant made representations against all such adverse remarks but the said representations were rejected. Against such remarks which did not touch the applicant's integrity or capability and capacity to work the applicant approached

the appellate authority i.e. the Government of Goa which communicated to the applicant vide letter dated 13.3.1989 that the matter has been examined by the Government which is maintaining the said remarks. It was thereafter that the applicant was prosecuted and a case under the Public Prevention of Corruption Act in which charge against the applicant was not proved and consequently he was acquitted by the Special Judge vide his judgment dated 6.7.1987. Thus the period between 4.12.86 to 13.6.88 was treated as period spent on duty. The applicant who was placed on suspension during this period was reinstated in service only on 10.6.1988. In the mean time in the year 1987 selection to the higher post took place and his juniors were promoted to the post of Assistant Director and till recently yet another promotion was made and his juniors have not only been promoted to the said post but even to the higher post. The respondents have resisted the claim of the applicant and have pleaded inter-alia that the officers against whom the applicant has raised a grievance regarding his earlier confirmation and promotion were senior to him and two of them have already been retired and the one was promoted to the post of Deputy Director of Education and at present holding the post of Director of Education and the Balmik had already left the service and even though he was declared quasi-permanent he did not enjoy any special benefit. So far as the seniority list is concerned it has been stated that the same is based upon the placement of vacancy from promotion quota or direct recruitment quota. The applicant was a direct appointee and he was claiming seniority against one R.S. Gramopadhye who was a promotee and the contention of the applicant that the roster of 50% between promotee and direct recruits has not been maintained has been refuted

and it has been said that as the post was to go to the promotee and that is why Shri Gramopadhye was placed above the applicant in the seniority list which according to the respondents was prepared in accordance with the rules. Regarding the censor entry it has been said that although three charges were levelled against the applicant charge No.1 & 3 were not proved and charge No.2 viz. that although he purchased the scooter from its owner but he stated in the department that it was gifted to him was fully proved and a lenient view was taken and the censor entry was given. The promotion committee which met in the year 1987 as ~~they~~ per the statement of respondents did consider the case of the applicant but he was not found suitable in preference to those who have been promoted and that is why no promotion was given to him. The meeting of the promotion committee did not take place in the year 1989 and 1990 and 1991 when it was to meet. Instead of making promotion by an agency of DPC the ad-hoc promotions have been made. On behalf of the applicant it was contended that the applicant's work was quite satisfactory and he was given the letter of appreciation and the adverse entry was in contravention with that. May be so that one appreciated the work but if the reporting officer and the reviewing officer found certain flaw in the work obviously adverse entry could have been given. The adverse entry given to the applicant though may not be very explicit in origin but they are not very adverse so far as the capacity of the work of the applicant is concerned and they could not obviously stand in his way for all times to come in making promotion. But in the year 1987 when the applicant was facing criminal trial and was under suspension the DPC taking into consideration

the overall picture did not consider his case. The contention that it could have been in sealed cover in these circumstances fails to the ground. Obviously the applicant by virtue of his seniority, if otherwise fit, was entitled to be promoted in the year 1988 or in the year 1989, 1990 and 1991. As the records which have been produced before us indicate that in the year 1991 it was said that he was the seniormost amongst all those who were waiting for their turn to come. It was the duty of the department to convene a DPC in respect of the vacancies which occurred after the last meeting of DPC which met in the year 1987 and to make promotions accordingly but the same was not done. If the promotions would have been done in accordance with the rules by an agency of the DPC the applicant would have got his due place in the seniority list and other consequential benefits would have accrued to him but the department was sitting tight over the matter for two years and ~~the~~ in the third year when the promotion was to be made they dropped the matter by making ad-hoc promotions. Consequently the respondents are directed to convene a review DPC within a period of three months and consider the case of the applicant for promotion to the post which fell vacant after the last DPC of the year 1987 and in case the applicant is found fit for promotion in the year 1988 he may be given promotion. The promotion which will be given to him will be notional promotion but he will be entitled to all other consequential benefits flowing from the same. No order as to costs.

A. B. Gorthi
(A. B. Gorthi)
Member (A)

U.C. Srivastava
(U.C. Srivastava)
Vice-Chairman