

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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O.A. NO: 951/1989 199

~~I.A. NO:~~
~~xxxxxxx~~

DATE OF DECISION 10-10-1991

A S Gil

Petitioner

MR. G S WALIA

Advocate for the Petitioners

Versus

U.O.I. & ANOTHER

Respondent

MR. V S MASURKAR

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U C Srivastava, Vice Chairman

The Hon'ble Mr. M Y Priolkar, 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 ? *✓*

V.C.

mbm*

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESCOT ROAD, BOMBAY-400001

O.A. No.951/1989

A S Gil
C/o. Shri G S Walia
Advocate
High Court;
89/10 Western Railway Employees Colony
Matunga Road
Bombay 400019

..Applicant

V/s.

1. Union of India
through Admiral Supdt.,
Naval Dockyard
Bombay 400023
2. Personnel Manager
Office of the Admiral Supdt.
Bombay 400023

..Respondents

CORAM: Hon.Shri Justice U C Srivastava, V.C.
Hon.Shri M Y Priolkar, Member (A)

APPEARANCE

Shri G S Walia
Advocate
for the applicant

Shri V S Masurkar
Counsel
for the respondents

ORAL JUDGMENT

DATED: 10-10-1991

(PER: U C Srivastava, Vice Chairman)

The applicant ~~who during the pendency~~
~~of this application has retired~~ has approached the
Tribunal against the non-promotion on the ground
that he has already been assessed fit for promotion
based on the judgment of the Tribunal dated 4.8.1988
and he was entitled for further promotion on the said
basis, and he was not required to appear in the
departmental examination provided in the amended
rules.

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A grave mistake has been committed ^{not} by the respondents in/considering the applicant for promotion in the year 1969 according to the contention of the counsel for the applicant.

The applicant who was working as Chargeman (ICE) under Admiral Superintendent, Naval Dockyard, Bombay 400023 was removed from service on 4.11.1971 as a result of disciplinary proceedings. His appeal against the same was also dismissed on 12.5.1972. Thereafter he approached this Tribunal and the application was allowed vide order dated 4.8.1988. Thereafter the applicant was reinstated in service. After reinstatement the applicant made a representation regarding his promotion ^{and} was informed that the DPC which considered his name along ^{with} other qualified persons found him unfit in the year 1969 and 1970. As he was removed from service from 4.11.1972 his case has not been considered by the DPC in 1972. It appears that after the reinstatement of the applicant a review DPC met in July 1972 i.e., ~~by~~ few months prior to the amendment rules which provided a trade test. The rules were amended in the month of November 1972. In the ~~review~~ ^{review} DPC which took place some time in the month of July 1972 a panel was prepared and ^{found place} in the panel the name of the applicant ~~was placed~~ at sr.no. 2 and Shri R V Thakur and 2 others thereafter. The said R V Thakur was appointed/promoted in the year 1974 as under the new rules he also passed the trade test. The plea on behalf of the applicant is that in the review DPC the applicant having been empaneled and placed at no. 2 was in any case ~~was~~ entitled to be promoted with effect from that date and the revised rules will not be applicable to him.

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That may be so, but in case the vacancies were available prior to the amendment of the rules i.e., when the DPC met on 25-7-1972, the applicant was entitled for promotion in view of empanelment. In case two vacancies were available the applicant was entitled for promotion from that date. In case only one vacancy or no vacancy was available when the DPC met on 25-7-1972, which was reviewed after the reinstatement of the applicant then the applicant will not be entitled for promotion.

Accordingly we direct that in case two vacancies were available on 25-7-1972 the applicant be promoted notionally with effect from the date when the person at no.1 was promoted. The applicant would be entitled to the consequential benefits. No order as to costs.


(M Y PRIOLKAR)
MEMBER(A)


(U C SRIVASTAVA)
VICE CHAIRMAN