

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 133/96

DATE OF DECISION:13/4/2000

_____Shri P.G.Maapur _____.Applicant.

_____Shri N.M.Ganguli _____Advocate for
_____Applicant.

Versus

_____Union of India & Anr _____Respondents.

_____Shri V.S.Masurkar _____Advocate for
_____Respondents.

CORAM:

Hon'ble Shri B.N.Bahadur, Member(A)
Hon'ble Shri S.L.Jain Member(J)

1. To be referred to the Reporter or not? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *No*
3. Library. *No*

Hand
(B.N.BAHADUR)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:133/96
DATED THE 13TH DAY OF APRIL, 2000.

CORAM:HON'BLE SHRI B.N.BAHADUR, MEMBER(A)
HON'BLE SHRI S.L.JAIN, MEMBER(J)

Pandurang Gopalrao Mallapur,
307, Devadiga Cooperative Housing Society,
Om Nagar, Marol Pipe Line Road,
Sahar,
Bombay - 400 099.

... Applicant.

By Advocate Shri N.M.Ganguli

V/s.

1. Union of India, through:
General Manager,
Central Railway, V.T.,
Bombay.

2. The General Manager,
Central Railway,
V.T.Bombay.

... Respondents

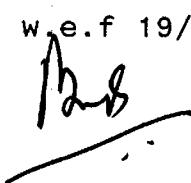
By Advocate Shri V.S.Masurkar

(ORAL) (ORDER)

Per Shri B.N.Bahadur, Member(A)

This is an application made by Shri Pandurang G Mallapur, seeking the relief from this Tribunal to the effect that it be held that the applicant be treated as promoted to the post of DIWT w.e.f. 1/1/1979 with all consequential benefits including arrears and other benefits.

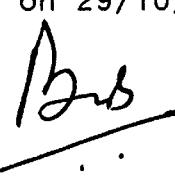
2. [The facts of the case as gleaned from the application and reply statement are simple, in that the applicant after a long career in the Service of Indian Railways retired as DIWT on 31/112/1982. He had been promoted as DIWT on an adhoc basis According to Respondents statement in Bombay Division from 14/1/80 but as a result of re-structuring in the Wire less Cadre and the transfer of one post, he was reverted for want of a post w.e.f 19/3/80.


...2.

3. The applicant was finally promoted as DIWT w.e.f. 26/10/81 and he worked on this post till his retirement on superannuation on 31/12/1982. The grievance of the applicant starts with the sanction of additional posts of DIWT in the year 1994 with retrospective effect from 1/1/1979. This fact can be gleaned from the documents annexed at Annexure-D, page-28 of the paperbook. It is true that in 1994 fresh posts were sanctioned/revived w.e.f the year 1979. The grievance of the applicant is that he should be provided with promotion and that he had made representations in 1994 which were never replied to.

4. The defence of the Respondents in their written statement and arguments are on the important issues of delay and laches and on merits and on the important point that the applicant was considered for promotion w.e.f. 1979 but such promotion cannot be granted as he had failed the written test held in 1979.

5. We have heard the Learned Counsels on both sides. Learned Counsel for Applicant took us over the facts of the case and strenuously made his arguments both in regard to the defence of limitation and delay as also on merits. Learned Counsel for Applicant contended that his cause of action arose in the year April, 1994, when the sanction of posts retrospectively came and that considering the fact that he had made a representation and come to this Tribunal on 12/9/95, there was no delay and laches involved. Further, he argued that the results of the tests were never declared and hence it was wrong to allege that he had failed. He also took the argument that if he had failed, then it was not explained as to how he could be promoted on 29/10/1981.

 ...3.

6. Learned Counsel for Respondents argued strenuously on the question of delay and laches and even on jurisdiction on the plea that the cause of action pertains to 1979. He cited various authorities including the latest case of Shri R.C.Sharma V/s.,U.S.Kamal reported in 2000 SCC (L&S) 53. On merits, the Learned Counsel for Respondents firmly depended on the copy of the result sheet as produced by them as Annexure-R-1(page-68 of the paperbook) to the Sur-rejoinder. He further contended that this was a case of a person who retired long back in 1982 and no further claims can be made at this point of time.

7. At the outset, we must note that while the relief sought pertains to the period of 1979, it is very clear that the cause [of action arose in 1994 when the document at page-28 (Annexure-'D') came to be issued. It is seen that the posts are sanctioned from 1979, some 15years later. Infact, in the written statement, the respondents state that the case of the applicant was considered, it is proof enough to show that the entire controversy started in 1994. Much as the basic principles regarding limitation is clear as argued in this case, we do not find that the case is hit by limitation.

8. On merits, the document which shows the applicant to have failed is an important document for us to decide the claim of the applicant. Now, it is specifically stated in the written statement of the Respondents that the Applicant's case cannot be considered against the available post of DIWT only because he had failed in the written test held in 1979.

...4.

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9. Details in this regard are contained in paragraph -11 of the written statement of the Respondents. The Learned Counsel for the Applicant had strenuously made a point that the copy of the result sheet cannot be depended upon. We find no reason to dis-believe this documents, which has been produced as a document maintained in normal course. Even at this length of time, the Respondents have managed to produce this document. Also, the point regarding blank columns is plausibly explained, that since the applicant had failed in the written test, he was not inducted for the further procedures of selection and hence blank columns. The same is the case of Shri Bhore who is one of the Officers, who appeared in the test as can be seen from reading of the statement of the result, at page-68. Thus, we find no reason to doubt either the document or the decision taken on this basis.

10. Now, as regards the averment made by Learned Counsel for Applicant seeking a clarification in rhetoric as to how then applicant was promoted in 1981, it is not for us at this point of time to go into the fishing enquiry of the entire process and try to go into the dates of promotions and other points on merit in this individual case.

11. In view of the discussions made above, we are not convinced that any case has been made out by applicant for interference from this Tribunal. In consequence, this application is hereby dismissed with no orders as to costs.

S.L.Jain

(S.L.JAIN)
MEMBER(J)

B.N.Bahadur

(B.N.BAHADUR)
MEMBER(A)

abp