

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 546/96

Date of Decision: 22-07-97

Hariprasad B. Mishra

.. Applicant

Applicant in person

.. Advocate for
Applicant

-versus-

U.O.I. & Ors.

.. Respondent(s)

Shri P.M. Pradhan

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri B.S. Hegde, Member(J)

The Hon'ble Shri M.R. Kolhatkar, Member(A)

- (1) To be referred to the Reporter or not ? X
- (2) Whether it needs to be circulated to X
other Benches of the Tribunal ?

M.R. Kolhatkar

(M.R. KOLHATKAR)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.546/96

Renewed this the 22nd day of July 1997

CORAM:

HON'BLE SHRI B.S.BEGDE, MEMBER(J)

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Hariprasad B.Mishra,
Postal Asstt.
Azadnagar Post Office,
Mumbai - 400 053.

Applicant in person

.. Applicant

-versus-

1. The Sr.Suptt. of Post Office,
Bombay City North Division,
Andheri West,
Mumbai - 400 053.
2. The Chief Postmaster General,
Maharashtra Circle,
Mumbai - 400 001.
3. The U.C.I.
through
The Director General,
Department of Posts,
Dak Bhavan,
Sansad Bhavan,
New Delhi - 110 001.

By Counsel Shri P.M.Fradhan

.. Respondents

-: O R D E R :-

(Per M.R.Kolhatkar, Member(A))

The applicant was recruited as a Postal Asstt. on 1-4-72. He was suspended on 19-2-1981. It appears that there were two criminal cases against him. Among the charges was that while working as BRL Counter clerk the applicant has cheated the department to a huge amount of money in the year 1978 by using used up BRL stamps in renewing and collecting of licence fees for Radio/TV/Wireless. It appears that in C.C.No. 606/P/91 decided on 7-11-1996 the applicant was acquitted but court cases 43-57/91 still appears to be pending.

2. In the earlier O.A.699/87 decided on 8-10-1992, the Tribunal granted the relief of quashing the order of suspension and reinstated the applicant holding that order of suspension shall be deemed to have lasted for a period of six months from 9-2-1980^{and} thereafter it would be deemed to be non-existent. The applicant was accordingly reinstated. In this O.A. he has claimed the relief of treating him^{as} having passed the departmental examination for the post of Inspector of Post Offices because he was deprived of the opportunity of appearing for the examination which were held annually during the period he was under suspension i.e. 1981 to 1993. The contention of the applicant is that according to the departmental rules vide Govt. of India Order No.19 under CCS(CCA) Rules officials are allowed to appear for departmental examination while under suspension or when facing departmental proceedings subject only to the condition that they are to be promoted only after the proceedings are over and they are completely exonerated(vide page 16 of the O.A.).

3. Respondents have opposed the O.A. According to them the department has fully implemented the order of the Tribunal in O.A. 699/87 and the applicant has been reinstated w.e.f. 4-11-93. It is true that^{the} departmental examinations for selection for the post of Inspector of Post Offices are held annually in the month of August. However, the notifications for departmental examinations are issued annually and the applicant having failed to appear for the examinations while under suspension,

M ~~he~~ cannot now make a grievance that he was deprived

of the opportunity of appearing for the examination. Moreover the eligibility condition for the said admission is 40 years as on 1st July of the year of ^{examination} ~~recruitment~~ with 5 years' continuous service followed by Q.F. or permanency in P.A. cadre. Moreover the OA is time barred because the applicant is seeking relief in relation to examinations conducted earlier ^{and} ~~but~~ the applicant is also barred from appearing for the future examinations because the minimum age for appearing is 40 years and there is no doubt that the applicant is above 40 years.

4. Counsel for the applicant has ^g contended that it is for the department to point out that the annual circulars regarding departmental examinations were brought to his notice and that his signature was taken in ^{to keep} ~~time~~ of having noted the notification, that the applicant has been completely exonerated in C.G.No.606/P/91 decided on 7-11-1996 of which a copy is enclosed, that department has caused great injustice to the applicant inasmuch as it kept the applicant under suspension for 12 years and some of his juniors have already appeared for the examinations ^{and} ~~having~~ ^{been} selected ~~and~~ are drawing a much higher salary than himself.

5. We have considered the matter. It is not possible for us to grant the relief to the applicant of deeming to have appeared for the examinations and deeming to have passed the examination and on that basis ~~he may~~ ^{may} be granted all consequential benefits. All the same the fact remains that the applicant was unjustly kept under suspension for 12 years and thus was denied any further promotion.

It would therefore be just and fair to give him three chances to appear for departmental examination in relaxation of rules and if he clears the examination the department may promote him. The applicant also appears to have ^a grievance that his case for One Time Bound promotion and Biennial Cadre Review Scheme was not considered vide his representations on record at page 8, 10 & 13 of the O.A. If this is so, the case of the applicant for One Time Bound promotion and Biennial Cadre Review Scheme may be considered by treating his C.R.¹⁵ to have been satisfactory assuming that no C.R. has been written during the period of suspension.

6. O.A is therefore disposed of in above terms with no order as to costs.

M.R. Kolhatkar
(M.R. KOLHATKAR)
Member(A)

B.S. Hegde
(B.S. HEGDE)
Member(J)

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Notices
App. ~~to~~ ^{to} ~~the~~ ^{the} ~~President~~ ^{President} on
8/

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

C.P. 15/98 in
Original Application No. 546/96.

Monday the 26th day of October 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S. Baweja, Member (A)

H.B. Mishra ... Applicant.

By Advocate Shri C.B. Kale.

V/s.
Union of India and others. ... Respondents.

By Advocate Shri S.S.Karkera for Shri P.M.Pradhan.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This C.P. has been filed by the applicant alleging that the respondents have not complied with the order of this Tribunal dated 22.7.97. The respondents have filed their reply. We have heard the learned counsel for both the sides.

2. The applicant's grievance is that the respondents are not willing to give him retrospective promotion and consequential benefits.

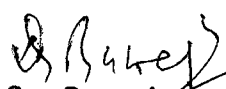
We have perused the order dated 22.7.97; it only states that he should be given three chances to appear for the departmental examination and if he clears, then he should be considered for promotion. The Tribunal neither granted retrospective promotion nor retrospective monetary benefits. Admittedly the applicant did not appear for the examination for which he has received the notice from the respondents. Since the applicant himself did not appear in the examination, the question of grant of promotion or retrospective promotion does not arise. The order does not give any retrospective promotion to the applicant and therefore there is no dis-obedience


to the order of this Tribunal.

3. The second grievance of the applicant is that he was not given One Time Bound promotion ^{and} of BCR in spite of the order of the Tribunal. The respondents have explained that the applicant's case for OTBT was considered and since criminal case against the applicant is pending, the findings of the D.P.C. is kept in sealed cover. We do not find that the respondents have committed any illegality, ^{and} nor they have dis-obeyed the order of the Tribunal. The question of BCR will not arise, unless the applicant gets his promotion of OTBT.

4. After having heard both the sides and on perusal of the record we do not find any case of contempt.

5. In the result the C.P. is rejected.
No costs.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman

NS

dd 126/10/98
Order/Judgement despatched
to Applicant/Respondent (s)
on 9/11/98
10/11/98