

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.N. 122/96

Date of Decision 19-04-96

P.Paulraj

Petitioner

Mr.M.S.Ramamurthy

Advocate for the Petitioner.

Versus

U.O.I. & Ors.

Respondent

Mr.N.K.Srinivasan

Advocate for the Respondents.

Coram:

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

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

1. To be referred to the Reporter or not? X

2. Whether it needs to be circulated to other Benches of the Tribunal? X

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

O.A.NO: 122/96

pronounced this, the 19th day of April 1996

CORAM: HON'BLE SHRI B.S.HEGDE, MEMBER(J)

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

P.Paulraj

(By advocate Shri M.S.Ramamurthy) .. Applicant

-versus-

Union of India & Ors.

(By counsel Shri N.K.Srinivasan) .. Respondents

O R D E R
(Per M.R.Kolhatkar, Member(A))

In this O.A. which is yet to be admitted the applicant has sought promotion to the post of Catering Inspector Gr.I in the scale of Rs.2000-3200 in terms of the panel published under memorandum dt. 3-10-1994, at Annexure 'A' and by way of interim relief had sought restraining of respondents from publishing the selection for the post of Catering Inspector Gr.I called by subsequent notification dt. 28-6-1995 at Annexure 'B'. Interim relief was granted on 9-2-96 that any selection made pursuant to the notification dt. 28-6-95 may be finalised but posting orders should not be issued. Respondents have filed their written statement and we have heard the parties.

2. According to the applicant who is at present working as Catering Inspector Gr.II in the scale of Rs.1600-2660, for promotion to the cadre of Catering Inspector Gr.I the feeder cadre is Catering Inspector Gr.II. Till 1992, the said promotion was on non-selection basis by means of simple viva-voce test and on the basis of seniority. But in 1992 the respondents changed the promotion from non-selection to that of selection and the concept of written test

was introduced. The said change in the method of promotion as well as the promotions made in the said selection have been challenged by the applicant in O.A. 787/93 and the same is pending. In another O.A. 1277/92 in the name of Mahabel P & Ors. vs. U.O.I. the introduction of the written test for promotion to catering inspector Gr.I was challenged which is also pending. In the first written test under the revised scheme the applicant could not appear due to sickness and this selection is under challenge in O.A. 787/93. According to applicant orders of restructuring were issued by the Railway Board dt. 29-1-1993 to take effect from 1-3-1993 and under the restructuring orders one Shri N.J.Tumbekar, Catering Inspector Gr.II was promoted against S.T.quota. The said N.J.Tumbekar is junior to the applicant. According to applicant one Shri L.N.Verma who is an SC candidate has applied for change of community from SC to ST. Therefore the promotion of N.J.Tumbekar against ST quota is in excess of quota prescribed for ST and is therefore illegal. The applicant had made representations in this regard but the same remained un replied.

Subsequently in terms of memorandum dt. 26-7-1993 a selection was held (written test on 21-8-1993 and viva voce test on 9-8-94) and the applicant's name was placed in the panel published under memorandum dt. 3-10-94 for promotion to the cadre of Catering Inspector Gr.I. Inspite of such selection of the applicant, the applicant has not been promoted so far.

On the contrary one Shri M.H.Waghela has been promoted as Catering Inspector Gr.I w.e.f. 7-12-94 against the selection held on 4-11-88. The respondents, however, instead of promoting the applicant in terms of panel dt. 3-10-94 have called for applications from Catering Inspector Gr.II for promotion to Catering Inspector

Gr.I(3 posts) under memorandum dt. 28-6-1995. The viva voce test in terms of this notification was held on 16-11-95. The applicant made a representation that the respondents should not proceed with the further selection till he is promoted in terms of earlier selection but there has been no reply. The applicant has therefore challenged the denial of promotion to him as arbitrary, illegal and discriminatory and also grant of promotion to other employee like N.J.Tumbekar and M.H.Waghela as illegal and has therefore sought the reliefs of promoting the applicant in terms of memorandum dt. 3-10-94 with retrospective effect from 1-3-93 in terms of restructuring vacancy and to grant him all consequential benefits.

3. The respondents have opposed the O.A. According to them the post of Catering Inspector Gr.I has always been a selection post in terms of Chapter II, Section (B) of Indian Railway Establishment Manual, Vol.I,1989,Rule 215(A). In the years previous to 1992, written test was not insisted upon but the competent authority has taken a decision to have a written test for the post of Catering Inspector Gr.I in future. The applicant was called to appear ~~in~~ for the written test on 14-8-92 but he did not appear. There are 12 posts of Catering Inspector and due to restructuring, the number of posts has increased by two making a total of 14. Shri N.J.Tumbekar was promoted to one of the upgraded post, the other post having been taken by P.Mahabel, a general candidate, after finalisation of DAR case pending against him. Regarding Shri L.N.Verma his promotion has been treated against SC quota, regarding change of caste the enquiry has established that there has been no fraud.

4. So far as M.H.Vaghela is concerned he was promoted as per the judgment of this Tribunal dt. 8-12-93 in O.A. 546/91^{which} had quashed the penalty of removal from service imposed on him.

5. So far as the applicant is concerned he has been awarded a major penalty of reduction to lower grade in the scale of Rs.1400-2300 for a period of two years with future effect on 7-9-93.

In terms of Railway Board's letter No.E(D&A)88/RG/6/21 dt. 21-9-88 the applicant can be promoted only after expiry of penalty. In this connection respondents relied^{on} Note(1) to para 3.9 of the circular referred.

The same reads as below:

"If a person becomes due for promotion after the finalisation the disciplinary proceedings and the penalty imposed is one of the following, he should be promoted only after the expiry of the penalty :-
(i) withholding of promotion;
(ii) withholding of increment;
(iii) reduction to lower stage in time scale;
(iv) reduction to lower time scale, grade or post"

6. Respondents have also pointed out that the applicant has challenged this penalty in O.A. 985/93 and has obtained stay of operation of the penalty but still the applicant having been found guilty in DAR proceedings, he cannot be promoted till he cleared all the charges. Since the applicant is kept on the panel dt. 3.10.94, the memorandum dt. 28-6-95 was issued keeping one post for the applicant in case he^{was} cleared of major penalty charges by the Tribunal. The selection notified on 28-6-95 is for three more posts and not for the post which was kept unfilled for the applicant.

7. The counsel for the applicant has contended that the major penalty proceedings against the applicant

are in connection with subletting of the residential accommodation. In the representation filed by the applicant on 14-12-1994, at Ex.'G', page 33, the applicant has referred to the disciplinary cases filed against him being against the rules because subletting of the residential accommodation cannot be treated to be a misconduct, in fact the applicant had not at all sublet the accommodation but he had only permitted to use his residential address for correspondence etc. for a co-operative society. The counsel for the applicant at the argument stage has relied on the case of M.A.Jaleel Khan vs. U.O.I. O.A.848/90, decided on 23-11-1994 which itself relied on the judgment in P.Moosa vs. U.O.I., 1990(1)SLJ 701. We are, however, not required to go into the validity of the disciplinary proceedings and the penalty imposed on the applicant in the present O.A. The short question before us is whether the applicant is entitled to the direction as sought for and whether the interim relief needs to be continued.

7. In our view, since the major penalty of reduction to a lower grade for a period of two years has been imposed on the applicant, the circular dt. 21-9-88 does apply to the case of the applicant and denial of promotion to the applicant cannot be said to be illegal under the circumstances. No doubt, the penalty has been stayed but that does not mean that the finding of guilt has been set aside. The matter is subjudicata. The applicant cannot, therefore be said to have ~~undergone~~ undergone the penalty and cannot therefore be considered for promotion. This is so not only in terms of the Railway Board's instruction referred to above but also in terms of judicial pronouncements. ~~Thus, in the case of Union of India vs. K.V.Jankiraman~~ AIR 1991 SC 2010 ~~hon'ble S.C. observed~~ that when an employee is held guilty and penalised and is, therefore, not

promoted, at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. Denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct.

7. We are, therefore, of the view that in the facts and circumstances of the case the applicant is not entitled to the relief sought by him and ~~he~~ is also not entitled to continuance of interim relief. O.A. is therefore admitted and is dismissed at the admission stage. I.R. stands vacated.

There will be 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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