

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH : MUMBAI

O.A. NO.767/1999

MUMBAI, THIS 06<sup>th</sup> DAY OF May 2003

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)  
HON'BLE SHRI SACHIDANANDAN, MEMBER (J)

Sh. Nandlal Shyamlal Pasi S/o  
Shyam Lal Passi,  
Sorting Assistant (RMS)  
Sion Office, Mumbai - 400 022

R/o Plot No. 45, Room No.39,  
Shivaji Nagar, (Govandi Railway Stn.)  
Mumbai

.....Applicant

(By hri S P Kulkarni, Advocate)

VERSUS

Union of India through

1. Chief Post Master General,  
Maharashtra Circle, Old GPO Building  
2nd Floor, Fort,  
Mumbai - 400 001
2. Member (HRD)  
O/o Director General (Posts)  
Deptt. of Posts, Min. of Communication.  
Government of India,  
Dak Bhawan, 20 Ashoka Road,  
New Delhi
3. The Senior Supdt. of Railway  
Mail Services (Central Sorting Division)  
Dadar HPO Building,  
1st Floor, Dr. Ambedkar Road  
Mumbai 400 004

.....Respondents

(By V.S. Masurkar, Advocate)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri N S Pasi, applicants seeks antedating of his  
appointment and grant of consequential seniority.

2. S/Shri S P Kulkarni and V S Masurkar, appeared  
for the applicant and the respondents respectively

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3. The applicant, who hails from UP and presently working as Sorting Asstt. (SA) in Sion Sorting Office (Railway Mail Service) was selected for appointment as SA against SC quota, vide letter dated 17.9.83, and had produced the necessary Caste Certificate. He underwent theory and practical training during November 82 to February 83 and was to be given appointment w.e.f. 1.3.83, along with one S B Kumbhare. He was however asked to furnish <sup>the</sup> certificate in a new format, which took some time. However, after furnishing the certificate which was also verified he was informed that there was a ban on recruitment, though he should have been adjusted against the vacancy for the second half of 1981. After repeated efforts he was finally appointed on 31.1.86 w.e.f. 1.2.86, by which time his juniors like Kumbhare had already served more than two years, having been appointed on 30.7.83. On the applicant's seeking his seniority, he was informed on 22.3.93 that he was not entitled for the same, his having completed pre-appointment formalities on a later date. This was incorrect as he was denied appointment on the ground of ban on recruitment which did not come in the way of the appointment of juniors like Kumbhare. After making strenuous and repeated entreaties he was granted notional seniority w.e.f. 5.2.84, by order dated 25.5.99. Still he had suffered vis-a-vis his junior Kumbhare, who was appointed and received pay and allowances w.e.f. 30.7.83. Hence this OA by the applicant.

2. Grounds raised by the applicant are that

- i) denial of seniority to the applicant from 1.3.83 (or 30.7.83) was improper; and arbitrary;

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- ii) invoking of next below rule (n.b.r.) was necessary in his case.

Shri S P Kulkarni, learned counsel reiterated the above forcefully.

4. In the reply filed on behalf of the respondents and reiterated through learned counsel Sh. V S Masurker, the facts are not denied. It is pointed out that while in the case of Kumbhare, pre-appointment formalities were completed early in the case of the applicant, on account of the change in the format of the Caste Certificates to be produced by the migrants, fresh directions were issued to him in October 83, for furnishing the new certificate, which he did after reminder, on 4.1.1984. Thereafter his appointment took some time, and it came on 31.1.86 as ban on recruitment had intervened in between. According to the respondents the delay arose on account of the change in the caste certificate, which was brought about in May 83 and which had to be followed. The applicant had taken considerable time in procuring it and by the time it was done in 1984, recruitments came to be banned. The applicant has finally been given the appointment in 1986, and seniority w.e.f. 5.2.84, though notionally. Nothing further can be given. The respondents also point out that the OA was hit by limitation, as the applicant was raising the issue of 1983 in 1999. The same should not be permitted.

5. We have carefully considered the matter. It is

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not dispute that the applicant who was selected for appointment as SA for the second half of 1981 and trained for the purpose during November 82 to February 83, was not given the applicant, as a change in the format of caste certificate to be produced by the migrants, like him, had occurred in May 83. Respondents directed the applicant to produce the new certificate in October 83, while Kumbhare, his junior in the merit list was given appointment in July 83 itself. After, the applicant produced the certificate, though he should have been appointed, respondents took time, on the plea of the ban on recruitment and finally appointed him only in February 1986. Obviously therefore the applicant was not at all at fault and the reason for the delay could not be brought to his door. It is not the case of the respondents that the applicant was lower in merit position in comparison to Kumbhare, but their case is that pre-appointment formalities took time, which led to the delay in the issue of appointment order. When the applicant himself has been told about the change in the format of the caste certificate required from him, only as late as October 83, by which time juniors like Kumbhare had been issued appointment orders, the respondents cannot seek shelter under the plea that the applicant was responsible for the delay. His plea that he should get the benefit of fixation of pay vis-a-vis Kumbhare is therefore justified and has to be endorsed. The notional date of seniority of 5.2.84 fixed by the Deptt for him has no basis or rationale and has to be rejected and his date of appointment would have to be advanced to the date of Kumbhare's appointment

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i.e. 25.7.83, with benefits flowing from that , though notionally. That is the only way justice can be meted out to him. the applicant also has to be granted some cost towards the litigation.

6. We also note the preliminary objection of limitation raised by the respondents, if only to reject it. The applicant has filed this OA not against any order of 83, but against the order dated 25.5.99, fixing his date of seniority as 5.2.84. The same therefore is not at all hit by limitation.

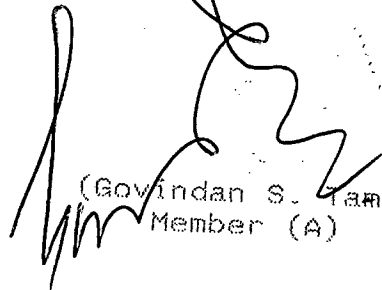
30.7.83

7. In the above view of the matter the OA succeeds and is accordingly allowed. The impugned order dated 25.5.99 is quashed and set aside and the respondents are directed to grant the applicant seniority from 11.3.83 the date of appoint of S.B. Kumbhare, his junior , with fixation of pay from that day along with increments notionally with actual monetary benefits including arrears of pay and allowances from his date of joining i.e. 1.2.86. This shall be done within two months from the date of receipt of a copy of this order. He is also awarded cost quantified at Rs.3,000/- (Rupees three thousand only) which shall be paid by the respondents, within the above time frame.



(K.V. Sachidanandan)  
Member (J)

Patwal/



(Govindan S. Rampi)  
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

R.P. NO.: 89/2003 IN O.A. No. 767/99.

Dated this Monday, the 29th day of December, 2003.

CORAM : Hon'ble Shri Anand Kumar Bhatt, Member (A).

Hon'ble Shri S. G. Deshmukh, Member (J).

Nandlal Shyamlal Pasi ... Applicant  
(By Advocate Shri S.P. Kulkarni)

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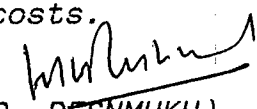
Union of India & others ... Respondents.  
(By Advocate Shri V. S. Masurkar)

TRIBUNAL'S ORDER :

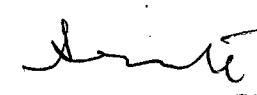
In this Review Petition it has been prayed by the Respondents that in the order dated 06.05.2003 in O.A. No. 767/99, in the operative portion in para 7 the respondents are directed to grant the applicant seniority from 11.03.1983. Shri V.S. Masurkar, Learned Counsel, states that it should be 30.07.1983, as has been prayed by the applicant also. It should be so as the applicant's junior was promoted from 30.07.1983. Therefore, the applicant should also be given seniority from that date. He further states that the applicant has already been given seniority and consequential benefits in compliance of the Tribunal's order. Learned Counsel for the original applicant is present and does not oppose the said ~~objection~~ <sup>petition</sup>.

2. Accordingly, the R.P. is allowed. In Para 7 of the order in O.A. No. 767/99 dated 06.05.2003 the date 11.03.1983 mentioned in the fourth line be read as 30.07.1983.

3. The Review Application stands disposed of. No order as to costs.

  
(S.G. DESHMUKH)  
MEMBER (J).

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(ANAND KUMAR BHATT)  
MEMBER (A).