

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:357/2000
DATED THE 18TH FEB, 2002

CORAM:HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Shri P.M.Dongre,
B-205 "CHAITANYA"
Kastur Park, Shimpoli Road,
Borivli (West),
Mumbai - 400 092.

... Applicant

By Advocate Shri P.A.Prabhakaran

V/s..

1. Union of India (M/o.Finance) through
The Chief Commissioner of Income-Tax, Mumbai
3rd Floor, Aayakar Bhavan,
M.K.Road, Mumbai - 400 020.

2. The Commissioner of Income-Tax City-I, Mumbai
3rd Floor, Aayakar Bhavan, M.K.Road,
Mumbai - 400 020.

3. The Addl. Commissioner of Income-Tax,
(HQ) Personnel, Mumbai,
3rd Floor, Ayakar Bhavan,
M.K.Road, Mumbai - 400 020.

... Respondents

By Advocate Shri V.G.Rege

(ORAL)(ORDER)

Per Smt.Shanta Shastry, Member(A)

The applicant has sought the following reliefs:-

- a) To quash and set aside the three impugned orders showing the eligibility list and two promotion orders as at Annexure "A", "AB(1)" and "AB(II)" and to direct the respondents that the name of the applicant be inserted between serial numbers 119 and 120 of the eligibility list marked as Ex "A" and hold review DPC for promotion of "Assistants" from among UDCs and Tax Assistants. Further to promote the applicant as "Assistant"

...2.

h

with effect from 6/9/1999 and pay arrears of pay and allowances attached to the post as were paid to the others.

2. The applicant initially joined as LDC and was promoted as UDC by an order dated 17/4/76. He thereafter qualified in the departmental examination for Income-Tax Inspectors in July 1980. He was also posted as Tax Assistant (TA) intermediary post of UDC and Income Tax Inspector vide order dated 14/8/80. After that he was suspended on 1/7/83 and departmental proceedings had been initiated against him. His order of suspension was revoked on 10/10/85 and he was punished with censure on 19/12/86. It is further submitted that this suspension period was treated as duty for all purposes vide order dated 20/1/86.

3. There was earlier a practice of confirming the employees at every stage. The applicant was confirmed as LDC in 1977 itself. Though he was promoted as UDC from 17/4/76 he had not been confirmed when orders of confirmation of UDCs were issued in respect of his colleagues on 2/7/85. The applicant's juniors were confirmed and he was not confirmed as he was under suspension. In 1988, orders were issued by the DOP&T dispensing with confirmation at each stage and restricting it to the entry stage.

4. Thereafter his colleagues were considered for posts of Assistants (Old Head Clerks) as there was no scope for promotion as Income Tax Inspector and Income Tax Officer. An eligibility list based on prior seniority was circulated on 9/8/99. The applicant's name was not in the list.

5. The applicant thereafter represented against the eligibility list dated 12/8/99 excluding his name. He sent a

reminder on 12/8/99 and thereafter his representation was rejected on 24/8/99.

6. Thereafter, two separate orders promoting TAs and UDCs as Assistants vide order dated 6/9/99 were issued. A number of UDCs and Tax Assistants junior to the applicant were promoted. The applicant was not promoted.

7. Consequent upon representations made by the applicant assailing the denial of seniority in view of the disposition of second and subsequent confirmations, in terms of the OM dated 20/3/88 and appeals made by him, the applicant was deemed to have been confirmed after those who were confirmed in 1985 but before those who were confirmed in 1988. In this process according to the applicant he lost his seniority and prospective promotions. Had he been confirmed in time, immediately on his becoming UDC, he would not have been deprived of his promotion.


8. In this connection, the learned counsel for the applicant has produced a copy of the judgement in the case of P. Shanmugaraj V/s. Union of India & Ors in OA No.1870/1993 decided on 19/4/1995 reported in (1995) 31 ATC 288. It was held therein that the question of applicant's seniority due to his delayed confirmation was invalid and his original seniority was directed to be restored. The applicant referred to para-9 of the judgement as well as para-10.

9. No written reply has been filed as the respondents were debarred from doing so on account of inordinate delay. However, in reply to MP-780/2000 filed by the applicant for condonation of delay, the respondents have brought out the factual position. According to the respondents the applicant cannot be confirmed in 1985 alongwith his batchmates/colleagues as he was under

suspension and a departmental enquiry was in progress. The Departmental enquiry was completed and the suspension was revoked in 1986 as the applicant was punished with censure as already pointed out. In 1988, when the applicant was to be considered for confirmation in view of the DOP&T orders doing away with the confirmation at every stage, the applicant was given a place in the seniority list immediately after 1985 batch of confirmations but prior to 1988. According to the respondents, the applicant has approached this Tribunal belatedly in that the cause of action arose much earlier in 1988 itself. Further several eligibility lists had been published by the respondents which were as per the seniority maintained in the Establishment Register. Applicant knew this position even in 1985. His seniority had already been depressed. The applicant did not assail the seniority either in 1985, 1988 or in 1992-93. He has approached this Tribunal in 2000. Thus it is hopelessly barred by limitation and deserves to be dismissed on that ground itself.

10. The learned counsel for the respondents relies on the judgement of Malcom Lawrence Cecil D'Souza V/s. Union of India & Ors. reported at 1976 SCC (L&S) 115, it has been held therein that seniority list cannot be challenged after a lapse of 14 or 15 years. Subsequent seniority lists reflecting the seniority already determined do not afford a fresh right. It is essential that everyone who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and

...5.



efficiency of service that such matters should be given a quietus after lapse of some time. In view of this the learned counsel contend that the applicant has no case.

11. We have heard the learned counsel for both sides and have given careful consideration to the arguments advanced. The only moot point is about the confirmation of applicant which was given belatedly to the applicant. According to the applicant he had no opportunity to challenge the seniority list as no seniority list was published. Even though eligibility lists were published, the applicant submits that he was not affected by the earlier eligibility lists as he was under suspension and he has challenged only the latest eligibility list wherein his name was excluded and therefore his application is within limitation and therefore he has rightly given application for condonation of delay.

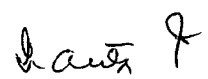
12. Apart from the eligibility list, the applicant already knew that his colleagues had been confirmed in 1985 and confirmation at each and every stage as per the DOP&T order dated 1988 was done away with. The applicant should have immediately taken up his case after the issue of OM of 1988 itself whether there was any seniority list or not. However, the learned counsel for applicant argues that the applicant never could imagine that his seniority had been affected until the list of 9/8/99 was issued because he claims that the applicant even was allowed to cross the Efficiency Bar. According to the applicant his name should have been inserted between Sr.No.119 i.e. Shri Chandrakant S Bhogle and Sr.No.120 i.e. Ms.Shirley E Vakrulkar.

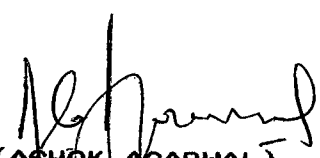
13. We have perused the eligibility list of 9/8/99. We find that in this list, all those who were appointed as UDCs from

h


23/6/75 onwards upto March 78 have been included in addition to the Schedule Caste, Schedule Tribe and Physically Handicapped Candidates who were appointed later in 1981 to 1994. The respondents have not been able to produce any material to show that the applicant's seniority had been depressed at any time. *We are therefore inclined to condone the delay.* Infact, the respondents have stated that the applicant was deemed to have been confirmed after 1985 batch and before the 1988 batch. We can therefore assume that the applicant might have been placed below last person confirmed in 1985. This being the position, in our considered view, the applicant definitely deserved to be shown in the eligibility list atleast below all those who were appointed as UDCs till the end of 1976 i.e. after 1976 but before 1977.

14. We are therefore of the view that the matter needs consideration since the applicant though suspended was treated on duty for all purposes and there was only a censure awarded to him and his Efficiency Bar was cleared even during the censure. We direct the respondents to place the applicant in the eligibility list immediately after Shri Chandrakant S Bhogle at Sr.No.119 and before Sr.No.120 Ms.Shirley E Vakrulkar and ^{to} hold a review DPC to consider the applicant for promotion as Assistant and if found fit to grant him promotion from the date his immediate junior was promoted with all consequential benefits. OA is allowed. No costs.


(SMT. SHANTA SHASTRY)
MEMBER(A)


(ASHOK AGARWAL)
CHAIRMAN

abp

Order/Judgement despatched
to Applicant/Respondent (s)
on 15/3/2002

Order/Judgement despatched
to Applicant/Respondent (s)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CP No.37/2003 in
OA No.357/2000

21/3/2003


Heard Shri P.A.Prabhakaran, Counsel for Applicant.

This CP has been filed on non compliance of the directions of this Tribunal dated 18/2/2002 in OA 357/2000. The direction given was that the applicant should be placed in the eligibility list immediately after Shri Chandrakant S Bhogle at Sr.No.119 and before Sr.No.120 Ms.Shirley E Vakrulkar and to hold a review DPC to consider the applicant for promotion as Assistant and if found fit to grant him promotion from the date his immediate junior was promoted with all consequential benefits.

Learned counsel for the applicant submits that the respondents have failed to implement the aforesaid order. The respondents have delayed the implementation of the order. The learned counsel for applicant has also enclosed an order dated 15/11/2002 whereby certain officials have been granted second financial upgradation including the applicant.


However, even in this list, the applicant has been shown far below Shri Bhogle and Ms.Vakrulkar.

In view of this position, we find that prima facie there is Contempt of the orders of the Tribunal. Issue notice to Shri Padmakar Mishra, Chief Commissioner of Income Tax, Mumbai. He may appear either in person or through an Advocate. In case of compliance, presence of the proposed contemner shall be dismissed. List the case for orders on CP on 25/4/2003.


(K.V.SACHIDANANDAN)
MEMBER(J)


(SMT.SHANTA SHASTRY)
MEMBER(A)

abp

Order/Inq. despatched
to Applicant/Respondent(s)
on 8/4/03


28) 30.6.2003.

None for the applicant.

Shri V.G. Rege, Id. Counsel
for respondents submits that though
they have filed a writ petition before
the Hon'ble High Court, ultimately
they have implemented the order of
the Tribunal. In this view of the
matter, the C.P. stands dismissed.
Notices discharged.

Sh
(Shankar Prasad)
MCA

Kuldeep Singh
(Kuldeep Singh)
MCA

01

1/2 May

Order/Dec. and despatched
to Applicant/Respondent(s)
on 2/7/03
BB

Writ Petition
NO 3581/2003
received from
Hon'ble High Court
at Bombay, ~~Appel~~
against CAT Judgment
dt 18.2.2002, Petition
is dismissed by Hon'ble
High Court order dt
13.6.2003.
circulated on 18.9.03

mk