

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 241/2000

Date of Decision :

47b March 2002

Smt.V.N.Lonandkar Applicant

Shri G.K.Masand Advocate for the
Applicant.

<div[](versus.png)

Union of India & Ors. Respondents

Shri R.R. Shetty **Advocate for the Respondents**

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri Govindan S. Tampi, Member (A)

(i) To be referred to the reporter or not ? Yes

(ii) Whether it needs to be circulated to other No Benches of the Tribunal ?

(iii) Library Yes

S. L. JAIN
(S. L. JAIN)
MEMBER (L)

mri.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.241/2000

Dated this the 4th day of March 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri Govindan S. Tampi, Member (A)

Smt.V.N.Lonandkar,
U.D.C. Incharge,
O/o Director of Supplies
(Textiles), New C.G.O.Building,
New Marine Lines,
Mumbai.

...Applicant

By Advocate Shri G.K.Masand

vs.

1. Union of India through
the Secretary,
Ministry of Commerce,
Department of Supply,
Nirman Bhawan, New Delhi.

2. Director General,
Supplies and Disposals,
N.I.Building,
Parliament Street,
New Delhi.

3. Director of Supplies
(Textiles),
New C.G.O.Building,
New Marine Lines,
Bombay.

4. Shri N.B.Dhangle,
O/o Director of Supplies
(Textiles), New C.G.O.Bldg.,
New Marine Lines,
Bombay.

...Respondents

By Advocate Shri R.R.Shetty

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O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking direction to the respondents to consider the claim of the applicant for promotion to the post of Superintendent from the same date on which Respondent No. 4 was promoted vide Office order dated 17.4.1996 and if necessary Respondent No. 4 be directed to be reverted to the post of U.D.C. Incharge to pave way for the applicant's promotion to the post of Superintendent.

2. The applicant along with one Shri H.N.Pujari filed OA.No. 200/94 before CAT, Mumbai bench seeking the relief that promotion of Respondent No.4 Shri N.B.Dhangle (who is also Respondent No. 4 in the present OA.) as Upper Division Clerk (UDC) Incharge with a Special pay of Rs.70/- p.m. as per order dated 3.2.1994 be set aside and direction to the respondents to promote and post Applicant No. 1 (H.N.Pujari) as UDC Incharge based on seniority in the Office of Respondent No. 3, i.e Director of Supplies (Textiles), New C.G.O.Building, New Marine Lines, Bombay. The said OA. was decided by the Bench vide order dated 5.8.1999 and the operative portion of the order is as under :-

"Keeping in view the observations made in para 11 above, it is directed that Applicant No. 1 shall be allowed retrospective promotion and seniority from 3.2.1994 by treating him promoted in place of Respondent No. 4 with all consequential monetary benefits."

P.C.PM 1/ ..3/-

3. In para 7 of the order the Tribunal has recorded the finding as noted below :-

"In view of these observations, we are of the considered opinion that the present application suffers from the vice of mis-joinder of the parties. However, we are not inclined to dismiss the OA. on this ground alone and are going into the merits of the reliefs prayed for."

4. On perusal of the same, we are of the considered opinion that though the case suffered the vice of mis-joinder of parties, the Tribunal proceeded to decide the case on merits. Perusal of para 8, 9, 10 of the order makes it clear that only the claim of the applicant No.1, i.e. H.N.Pujari was considered vis-a-vis Respondent No.4 Shri N.B.Dhangle (who was Respondent No.4 in the said case and also Respondent No.4 in the present case). The claim of the applicant vis-a-vis against Respondent No.4 Shri N.B.Dhangle was not at all considered by the Bench. The learned counsel for the applicant rightly argued that as there was only one post, applicant, H.N.Pujari was senior to Applicant (Smt.V.N.Lonandkar), who is now applicant in the present case, Applicant No. 1 H.N.Pujari was entitled for the relief. In such circumstances, when applicant's case was not at all considered by the Bench, it cannot be said that the claim of the applicant in the present OA. is barred either on principles of res-judicata or has been rejected by the Bench in earlier OA.No.200/94 decided on 5.8.1999.

PLM /

5. The applicant who is SC was appointed as L.D.C. w.e.f. 25.3.1970 and U.D.C. w.e.f. 1.12.1978 is senior to Respondent No. 4 who belongs to Scheduled Tribe, was appointed as L.D.C. w.e.f. 31.7.1970 and U.D.C. w.e.f. 5.5.1979. The said facts have not been denied by the official respondents.

6. The grievance of the applicant is that once promotion of Respondent No.4 to the post of UDC Incharge has been set aside by the Tribunal, the natural corollary would be that he would be relegated to his position in the seniority list of UDC wherein he is admittedly junior to the applicant. The promotion of Respondent No. 4 to the post of Superintendent was specifically made subject to the outcome of the OA.NO.200/94, Respondent No. 3 on his own ought to have reverted Respondent No. 4 to the post of UDC Incharge and promoted applicant to the said post of Superintendent since the applicant is admittedly senior to Respondent No. 4 in all respects and earlier promotion of Respondent No.4 to the post of UDC Incharge has been held to be legally unsustainable and has been set aside. The inaction on the part of the respondents after receiving the copy of the order in OA.No. 200/94 dated 5.8.1999 promoting Shri H.N.Pujari to the post of Superintendent continued to retain Respondent No. 4 in the post of Superintendent and have turned down applicant's request contained in his representation dated 30.9.1999 by rejecting the same vide letter dated 17.2.2000 (Annexure-'A'). Hence, this OA:

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7. The respondents have resisted the claim of the applicant on the ground that in OA.NO.200/94 which was decided on 5.8.1999 the applicant has already agitated her claim for seniority and promotion over the Respondent No. 4. The applicant's case having been considered and not allowed by the Tribunal means clearly rejected. The case is governed not only principles of res-judicata but also by the principles analogous to the principles of res-judicata. Therefore, the applicant cannot re-agitate the claim for promotion and alleged supercession by the private Respondent No. 4. The applicant has to approach the correct forum having been aggrieved by the judgement and order rendered in the OA.No.200/94. The Tribunal has become functusofficio with regard to the alleged cause of action. Hence, it has no jurisdiction to once again consider the case. The alleged supersession of the applicant has taken place way back in 1994 hence she is estopped from approaching the Tribunal after a period of more than six years. The applicant cannot be permitted to re-agitate the alleged cause of action by way of an appeal against the said judgement rendered by the Tribunal. Hence, prayed for dismissal of the OA. along with cost.

8. The Respondent No. 4 has filed separate written statement alleging that the application is misconceived and based on misinterpretation. The ground of res-judicata on which the claim of the applicant is barred has been also placed in service. Para 7 and 11 of the Order in OA.No.200/94 is relied on. Against

ASJN/-

..6/-

the Respondent No.4, the applicant has not claimed any relief in OA.No.200/94 either for promotion to the post of UDC or for protection of her seniority as against the Respondent No. 4, she shall be deemed to have foregone her right, if any then existed in favour of the Respondent No. 4. As such she is precluded at this stage from agitating the same issue before this Tribunal. Vide order in OA.No.200/94, the Respondent No. 4 stands protected as against the applicant. It is also alleged that the applicant has suppressed the fact that the Applicant No. 1, Shri H.N.Pujari was on deputation with the Central Ordnance Depot Kandivali during the period from 1.2.1993 to 3.8.1995. Thus, as on the date of filing the OA., he was not with the respondents. As such he was not entitled for the promotion he agitated for and monetary benefits he claimed. The Applicant No. 2 therein was also subsequently promoted as UDC Incharge with effect from 21.7.1995 and was not at all aggrieved by the promotion of the Respondent No. 4. Shri S.M.Sonawane, a SC employee, whose promotion as UDC Incharge was taken to count the reservation quota expired on 5.7.1995, i.e. prior to the date of promotion of Shri H.N.Pojari as UDC Incharge and also 4 years before the date of the judgement in OA.No.200/94. The applicant was promoted to the post of superintendent vide office order No. 76 dated 13.8.1997 but has been reverted to the post of UDC Incharge for the reasons. Virtually the applicant is challenging the order dated 3.2.1994 promoting the Respondent No. 4 to the post of UDC Incharge, as such the application is time barred. The

post of Superintendent is a selection post and the officials are to be considered for the said post from the feeder cadre of UDC/UDC Incharge. He was promoted to the post of Superintendent on regular basis w.e.f. 10.4.1996 vis-a-vis Shri P.K.Koli (ST) promoted to the post of Assistant Director Administration vide office order No. Admn.-22 dated 17.4.1996. The applicant was also considered by the DPC with the Respondent No. 4 but the DPC recommended the name of the Respondent No. 4 for the post of Superintendent and he came to be promoted on regular basis w.e.f. 10.4.1996. As the said facts are being suppressed by the applicant, the application deserves to be dismissed. Exhibit-'D'

9. Exhibit-'D', OA. page No.16 order dated 29.3.1996 passed in OA.NO.200/94 is as under :-

" Heard Shri G.K.Masand, Counsel for the applicant. Shri R.K.Shetty for Respondents No. 1 to 3. Shri V.S.Masurkar for Respondent No. 4.

Applicant has filed M.P.No.276/96 for early hearing.

Respondent No. 4 has been promoted as UDC incharge. The present applicant has also promoted as UDC incharge. By the present M.P. applicant seeks a direction that the respondents be restrained from filling up the post of Superintendent.

We hereby direct that any promotion to the post of Superintendent will be subject to the final outcome of the OA."

10. In view of our finding in para 4 of this order, the applicant's case cannot be said to be either barred by principles of res-judicata or rejected by the Bench in earlier OA. decided on 5.8.1999. The respondents have placed on record

J.L.P. 8/-

the Recruitment Rules for the post of Superintendent. Perusal of the same makes it clear that the post is a selection post as averred by the respondents. In a selection post the principle of seniority plays little role but it is the merit which plays an important role. The respondents have alleged and rightly alleged that along with the Respondent No.4, the applicant was also considered by the DPC but the DPC recommended the name of Respondent No.4 for the post and he came to be promoted on regular basis w.e.f. 10.4.1996. No ground has been made out to suggest that DPC proceedings are vitiated on one or the other count. The order passed in OA.No.200/94 (Ex-'D') dated 29.3.1996 was only to the effect that promotion to the post of Superintendent will be subject to final outcome of the OA. Had the applicant's case not been considered by the DPC which considered the case of Respondent No.4, the applicant was entitled to raise any grievance but when considered and the applicant was not selected, the applicant is not entitled to any grievance in this respect.

11. In the result, we do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

(GOVINDAN S. TAMPI)

MEMBER (A)

mrj.

(S.L.JAIN)

MEMBER (J)