

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO. : 429 of 2000.

Dated this Wednesday the 6th day of December, 2000.

Prabhakar Atmaram Damle, Applicant.

Advocate for the

In Person. applicant.

VERSUS

Union of India & Others, Respondents.

Advocate for

Shri V. S. Masurkar, Respondents.

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

Hon'ble Smt. Shanta Shastri, Member (A).

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| (i) | To be referred to the Reporter or not ? | } NO |
| (ii) | Whether it needs to be circulated to other Benches of the Tribunal ? | |
| (iii) | Library. yes | |

Shanta S
(Smt. SHANTA SHASTRY)
MEMBER (A)

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Hon'ble Smt. Shanta Shastry, Member (A).

Prabhakar Atmaram Damle,
Head Clerk,
O/o. the Executive Engineer,
Pune Central Division-I,
Central P.W.D., Mukund Nagar,
Pune - 411 037.

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Applicant.

(In Person)

VERSUS

1. Union of India through
The Additional Director
General of Works,
Central P.W.D.,
16th floor, Old C.G.O. Annexe,
101, M. K. Road,
Mumbai - 400 020.
2. The Chief Engineer (WZ)-II,
Central P.W.D.,
A-Block, 2nd Floor,
Seminary Hills,
Nagpur - 440 006.
3. The Superintending Engineer
(Co.ordination),
Co.Ordination Circle W.Z.,
Central P.W.D., 3rd floor,
New C.G.O. Building,
Mumbai - 400 020.

... Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R

PER : Smt. Shanta Shastry, Member (A):

This application has been made for giving effect to the promotion of the applicant as Head Clerk from 13.03.1997 i.e. from the date of relief of Shri E.M.C. Fernandes, Head

Clerk, on his transfer from Pune Central Division-I, C.P.W.D., Pune to Mumbai. The applicant has also prayed to treat the period for attending to the Central Administrative Tribunal, Mumbai, i.e. from the date of admission of the O.A. till the date of judgement as duty and Rs. 10,000/- as costs.

2. The applicant passed the Head Clerk's examination on 01.07.1996 and was offered the promotion as Head Clerk and posted at Gandhinagar in Gujarat vide order dated 31.07.1996. The applicant made a representation against the transfer and posting order to Gandhi Nagar on 30.08.1996 with a request to revise the posting order from Gandhi Nagar to Pune or Mumbai as and when vacancies arise. On 27.09.1996 he was informed by the Superintending Engineer, Co.Ordination Circle (WZ), Central P.W.D., Mumbai, that his request could not be considered for want of vacancy in Pune and Mumbai and he was advised to submit an unconditional acceptance of promotion on or before 07.10.1996. The applicant again made another representation on 10.09.1996 to give him time for acceptance of the promotion upto 01.05.1997 as his daughters were studying in Pune District in marathi medium school and it was difficult to take admission in the middle of the academic year and he also had to search for an accomodation to shift his family to the new station. Instead of considering his representation, his promotion order was cancelled by the respondents stating that a conditional acceptance cannot be considered. Later on a vacancy arose in the post of Head Clerk in Pune Central Division-I when another Head Clerk, Shri E.M.C. Fernandes, was transfered to Mumbai vide order dated 11.03.1997. Instead of posting a substitute in his place, a local arrangement

was made. The senior-most U.D.C., Shri D. M. Kadu, of the Division was ordered to look after the seat till a regular Head Clerk joined. This arrangement continued till 12.02.1998, when the applicant, on again passing the examination for the post of Head Clerk was granted regular promotion as Head Clerk in the Pune Central Division-I.

3. It is the contention of the applicant that had the respondents granted him time, as requested by him, upto 01.05.1997 to give his acceptance for his promotion and transfer to Gandhi Nagar, he could have been accomodated against the resultant vacancy of Shri E.M.C. Fernandes, arising on 12.03.1997 and thus would not have been deprived of the promotional benefit for nearly one year. The applicant has also assailed the discriminatory treatment of the respondents. He has cited the case of Smt. K.S. Avachat, U.D.C., who was initially transfered to Bhopal on her promotion as Head Clerk on 26.03.1999. When she represented against the transfer, her case was reconsidered and she was adjusted in the vacancy of Shri M.S. Bidye, Head Clerk, who was transfered to Mumbai on his selection as Assistant in the Office of the Chief Engineer, West Zone-I, C.P.W.D., Mumbai on 22.04.1999. The respondents could have shown favourable consideration to the applicant also in the same manner. Also the applicant had not given any conditional acceptance at all for the promotion. He had only requested for extending the time to communicate his acceptance but the respondents interpreted it otherwise and cancelled his promotion order. The applicant has, therefore, requested that he should be given promotion with retrospective effect from 13.03.1997, when a vacancy arose in the Pune Central Division-I.

4. The respondents have filed their written reply. At the outset, the respondents have taken objection of limitation. The applicant was offered promotion to the post of Head Clerk vide orders dated 31.07.1996. Thereafter, his promotion order was cancelled by the respondents on 13.11.1996. The cause of action therefore arose on 13.11.1996. The applicant, therefore, should have filed the O.A. within one year of the cause of action, i.e. before 13.11.1997. Instead, the applicant has approached the Tribunal in the year 2000 A.D. The Learned Counsel for the respondents has relied on several judgements wherein it has been held that delay and laches defeat the purpose. If one chooses to sleep over ones right for long, even the Courts cannot help such persons. The application must be made immediately after expiry of six months from the date of making an appeal or representation. Since the applicant has failed to make his application within the limitation period, it deserves to be dismissed.

5. On merits, the respondents have stated that the applicant, instead of accepting both promotion and posting, accepted only promotion and represented for posting in Pune or Mumbai vide his letter dated 30.08.1996. He was informed on 27.09.1996 that his representation could not be considered for want of vacancy at Pune or Mumbai. He was given time upto 07.10.1996 for giving his unconditional acceptance for his promotion and posting as Head Clerk at Gandhi Nagar. The applicant made another representation on 10.10.1996 to keep his promotion order open upto 01.05.1997. Since it was not possible

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for the respondents to do the same, his promotion order was cancelled on 13.11.1996. The applicant was given reasonable opportunity before cancelling the promotion order and there was a valid ground for rejecting his representation because of non-availability of vacancies in Pune and Mumbai at that relevant time. The vacancy of Shri E.M.C. Fernandes which arose later on from 12.03.1997 was an unforeseen occurrence because Shri Fernandes was transferred from Pune to Mumbai in pursuance of order dated 06.02.1997 passed by this Tribunal in O.A. No. 125/97. Therefore, really speaking, there was no vacancy available at the relevant time.

That the respondents have given very kind and favourable treatment to Smt. K.S. Avachat, is also not correct. She was promoted as Head Clerk and posted to Bhopal on 26.03.1999. The time limit for acceptance or otherwise of the promotion and posting was 30 days. She made a representation for posting in Pune. The same was received on 07.04.1999, though her letter was dated 22.03.1999. Her application could, therefore, be considered favourably due to occurrence of a vacancy at Pune on 22.04.1999 and, therefore, it was possible to accomodate her.

In any case, this has no relevance to the applicant's case. The applicant has sought promotion w.e.f. 13.03.1997. This request of the applicant was also considered and he was informed on 17.04.2000 that his demand could not be considered at this late stage. According to the respondents, therefore, the applicant has no case. The O.A. deserves to be dismissed.

6. We have heard both the Learned Counsel, for the applicant as well as respondents. We find that at the time the applicant

represented against his transfer to Gandhi Nagar, there was no vacancy available immediately in Pune. Further, it is obvious that even the respondents had no idea that a vacancy would arise some time in March, 1997, as that vacancy was an unforeseen occurrence. Therefore, the respondents could not have considered keeping open the promotion offer and posting of the applicant till 01.05.1997. Having cancelled the promotion order dated 13.11.1996, naturally when vacancy did arise on 12.03.1997 the applicant could not be posted in that vacancy until he was promoted again. In our considered view, the respondents gave adequate opportunity to the applicant to accept the promotion order and they have been quite fair, which is evident from the fact that the second time the applicant was offered promotion to the post of Head Clerk, he was given the posting in Pune itself. We cannot, therefore, find any fault with the orders of the respondents.

7. The O.A. is devoid of merits and is, therefore, dismissed. We do not order any cost.

Shanta J -

(Smt. SHANTA SHASTRY)
MEMBER (A).

S.L. Jain

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

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