

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO. : 532/2001

Dated this Friday the 23rd day of November, 2001

Shri S.K. Sawant

Applicant.

Shri K. Babu Rajan

Avocate for the
Applicant.

VERSUS

Union of India & 4 Ors.

Respondents.

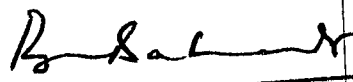
Mr.V.S. Masurkar

Advocate for the
Respondents.

CORAM :

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Shri B.N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ? *Yes*
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? *No*
- (iii) Library. *No*


(B.N. Bahadur)
Member (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No.532/2001

Dated this Friday the 23rd Day of November, 2001.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Shri B.N. Bahadur, Member (A).

Shri S.K. Sawant,
U.D.C. (I.P.),
Office of Superintending Engineer (Elect.),
MCEC, CPWD,
Mumbai - 400 020.

.. Applicant

(By Advocate Shri K. Babu Rajan)

VERSUS

1. Union of India (Through)
The Director General (Works),
C.P.W.D., Nirman Bhavan,
New Delhi - 110 011.
2. The Additional Director General,
C.P.W.D.,
New C.G.O. Building Annexe,
Churchgate, Mumbai-400020.
3. The Chief Engineer(Elect.) (W-Z),
C.P.W.D.,
New C.G.O. Building, 4th Floor,
Churchgate, Mumbai-400020.
4. The Superintending Engineer (Coord.),
Co-ordination Circle (W.R.),
C.P.W.D.,
New C.G.O. Building, 3rd Floor,
Mumbai - 400 020.
5. The Superintending Engineer,
Mumbai Central Electrical Circle,
C.P.W.D.,
New C.G.O. Building, 2nd Floor,
Churchgate, Mumbai - 400 020. .. Respondents

(By Advocate Shri V.S. Masurkar)

ORDER (ORAL)

{ Per : Shri B.N. Bahadur, Member (A) }

This is an application made by Shri S.K. Sawant,

B.N.S.

seeking relief from this Tribunal, in substance, for a direction to the Respondents to consider his case for promotion and posting under Respondent No.4 anywhere at Mumbai. It is also stated that a direction be given to Respondents not to fill any of the vacancies with any outstation candidate prior to, or without considering the applicant, for such promotion and posting.

2. Since the facts of the case are in short compass, we have heard and disposing off this matter at the admission stage, with agreement on both the sides. The facts of the case are that the applicant is working as U.D.C. in the Respondents' Organisation and had received a order of promotion dated 11.5.2000. He was posted to Goa. The applicant refused this promotion on personal grounds, vide a communication made by him on 16.5.2000 (Exh. A 2). He has also drawn our attention by his representation dated 3.7.2001 (Exh. A 4) making a plea that his case may be considered for promotion and posted as Head Clerk in Mumbai at the earliest as the debarment period of one year is completed i.e. from the date of refusal of his promotion, as per rules. Since during the course of arguments yesterday it was found that some points regarding seniority and other factual details are necessary to appreciate the case fully, we had adjourned the case, directing the respondents to bring the relevant record. This has been done today.

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3. Incidentally it may be recorded that a M.P. No.899/2001 for early hearing was dismissed yesterday as infructuous. The applicant in this regard pointed out the document at page 51 filed alongwith M.P. should be considered, as it involves Respondents action in promoting certain persons who according to him they wrongly been promoted in preference to the applicant and posted various places excluding Mumbai.

4. We have heard Learned Counsel Shri K.Babu Rajan for the Applicant, and Learned Counsel Shri V.S. Masurkar for the Respondents in considerable detail. After hearing parties and going through the records and papers in the O.A. the following questions are arise for determination. (i) Whether the applicant's claim for promotion which was due from 16.5.2000 has been wrongly withheld; (ii) Whether the applicant has a right, within the rules, for posting at Mumbai itself in view of his refusal of promotion on the earlier action.

5. Learned Counsel for the applicant had drawn our attention in detail to O.M. dated 10.4.1989 as amended by O.M. dated 27.3.1997 of the Government of India (Ex.No.R-1). As per the provisions in Para 17.13.1 of the above O.M., the validity of the said panel expired on 12.3.2001 and the members of DPC did not consider the name of the applicant in the next panel and have desired to put up his case after the expiry of period of debarment. Likewise at page 25 of the paper book,

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Learned Counsel for the Applicant pointed out to these instructions and to the instructions relating to the cases of persons who are considered after refusing promotion. It was his contention that since once the posting outside Mumbai has been refused by the Applicant, Respondents should have offered him a chance of promotion which was under the provisions and well within the rules and instructions, and further that the consideration for promotion after the expiry of one year should be for the same station only i.e. in this case for Mumbai. This point in fact was repeatedly made by the Learned Counsel Shri K. Babu Rajan with regard to the facts of the case and by drawing our attention to various documents on record. Learned Counsel also raised the point about the need that all cases being considered fresh by DPC in view of the ratio decided in Judgment of this Bench in O.A.720/90 (copy at page 18). He has also drawn our attention to the ratio decided in the matter of N.O. Chakraborty Vs. Union of India & others, [1989] 11 ATC 107 and also the directions contended in the aforesaid para 17.13.1 at page 25 of the paper book.

6. Learned Counsel for the Respondents took us over the facts of the case and drew our attention specially to paragraphs 6 to 9 and 15, 16 and 17 of his written statement. It was pointed by him that the instructions referred to debarred the applicant from the consideration of promotion for one year, and therefore the DPC had not

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considered his name on 13.3.2001. It has also been stated in the reply statement and the arguments advanced by Shri Masurkar, that the period of debarment of the applicant had ended on 15.5.2001 and that his name will be considered alongwith similarly placed persons and he will be offered promotion before persons who are junior to him are promoted. Shri Masurkar argued on behalf of the Respondents that filling up of vacancies of Head Clerk in Mumbai or at any other station cannot be guaranteed as this will be subject to transfer policy of Ministerial staff approved by the competent authorities, including the policy on reservation of posts for physically handicapped persons, options of employees for transfer from un-popular station to popular station etc.

7. It was further argued with regard to para 15 to 17 of the written statement that the decision in O.A.720/90 is not applicable to the present case. However, the representation dated 3.7.2001 of the applicant was given due weightage and the names of similarly placed persons coming out of their debarment period were put up to the DPC for consideration. Learned Counsel for the Respondents had drawn our attention to the order dated 8.10.2001 which is at page 51 of the paper book. This order were not disputed but that have been filed later to M.P. Further, Mr.Masurkar stated that these persons are in fact senior to the applicant contrary what would have been claimed in argument.

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8. In the Order dated 8.10.2001 we find that persons at sl.no.1 to 4 are indeed senior to the applicant and the person at sl.no.5 Shri R.B. Kardak was in physically handicapped category and this is clear from a copy of the seniority list of UDCs produced before us today by the Respondents, and which we have gone through in Court.

In view of the above position it cannot be denied that there is no illegality. No person junior to the applicant has been considered for promotion. One person who is perhaps junior is physically handicapped as seen from record and applicant cannot have any claim since this kind of preference to handicapped persons is well within the policy framework. The first question posed by us (para 4 above) therefore must have been answered in the negative.

9. We now come to the second question which i.e. regarding consideration for posting at Mumbai. We have gone through the instructions in this regard and find that there is no such policy/instructions whereby it is stated that consideration of persons who refuse promotion once shall have to be considered for the same station. No such rule has been produced before us by applicant, either also, the case law cited does not help the case of Applicant. In fact it is normal position in service law, that anybody after joining the Government service is liable to be posted within the cadre area. We cannot therefore see as to on what basis relief can be provided

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by a judicial determination for a posting to Mumbai. We cannot accept the argument that by refusing promotion outside Mumbai once for a year, the choice of next posting is as such. May be the applicant has genuine difficulties on personal grounds in going out of Mumbai but it is for Respondents to take an administrative view and decide. It is not a relief claimable by judicial determination.

10. It is clear that the applicant having been completed the debarment period of one year after refusal of promotion, it is for the Respondents to consider the applicant for promotion as early as possible. Learned Counsel for the Respondents across the bar assures that his seniority will be considered before the promotions are made as early as possible. We hope that this this will be done soon. While it will be open to the Respondents to promote the applicant and post him at Mumbai, it is clear from the above discussions that relief sought by the applicant for directions to the Respondents to post him at Mumbai cannot be provided by judicial determination.

11. In view of the position, this O.A. fails and dismissed. No order as to costs.

B.N. Bahadur

(B.N. Bahadur)
Member (A)

B. Dikshit

(Birendra Dikshit)
Vice Chairman.