

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.:

32/2001

Vishwanath Janardhan Masukar

(By Advocate Shri S. R. Arya)

VERSUS

Union of India & anr.

(By Advocate Shri V.S. Masukar)

CORAM : Hon'ble Shri S.G. Deshmukh - Member (J)
Hon'ble Shri S.P. Arya - Member (A)

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

24/3/12
(S.P. Arya)
Member (A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:32/2001
DATED THE 18th DAY OF SEPT, 2003

CORAM:HON'BLE SHRI S.G.DESHMUKH, MEMBER(J)
HON'BLE SHRI S.P.ARYA, MEMBER(A)

Shri Vishwanath Janardhan Murudkar,
presently residing at
Room No.1, Khatate Chawl, Kaju Pada,
Borivali(E),
Mumbai - 400 086.

... Applicant

By Advocate Shri S.R.Atre

V/s.

1. The Union of India,
through the Secretary,
Ministry of Finance,
Department of Economic Affairs (C&C Dvn),
North Block, New Delhi-110 011.
2. The General Manager,
India Government Mint,
Shahid Bhagat Singh Marg,
Ballard Pier, Fort,
Mumbai - 400 023.

... Respondents

By Advocate Shri V.S.Masurkar

(ORDER)

Per Hon'ble Shri S.P.Arya, Member(A)

This OA has been filed by the applicant for issue of a direction to the respondents for considering him for promotion to the post of Mistry w.e.f. 1/10/1985 or 1/6/1988 and promoting him further on the post of Chargeman w.e.f. 1-10-1987/1-6-1990 and grant him the benefits of pay fixation, arrears of salary, enhancement in the pensionary and retiral benefits along with interest at the rate of 18% per annum till such arrears are paid on the grounds that after completion of two years' of regular service as Assistant Mistry, he was due for promotion to the post of Mistry from 1.6.1988 and Chargeman thereafter.

2. The applicant joined as Daftry on 8.12.1961 and after six years he was appointed as Apprentice (Goldsmith) w.e.f. 1.8.1967. He was absorbed as Goldsmith Grade III w.e.f. 1.8.1968. Thereafter he was promoted to Goldsmith Grade II in 1971 and Goldsmith Grade I on 1.12.1973. He was promoted to the post of Assistant Mistry w.e.f. 1.10.1983. He was suspended on 5.1.1985. A memorandum of charge was give to him on 12.1.1985. Suspension order was revoked on 12.4.1986. He was reverted from the post of Assistant Mistry on 12.4.1986. He filed OA No.438 of 1994 which was decided on 28.6.1999. The respondents went to the Hon'ble High Court and the order of the Tribunal was upheld in Writ Petition No.912 of 2000 on 24.3.2000. A Contempt Petition was therafter filed which was disposed of vide order dated 28.4.2000. The applicant has retired on attaining the age of superannuation on 31.5.2000. He moved this OA for promotion to the post of Mistry and consequential pay and retiral benefits.

3. We have heard the learned counsel of both sides and perused the pleadings.

4. It was contended by the respondents that in compliance of the orders of this Tribunal, the applicant was restored on his original post of Assistant Mistry w.e.f. 26.5.1986. The post of Mistry in the Indian Government Mint comes under the supervisory category and is to be filled only through DPC on selection-cum-seniority basis with a minimum of 2 years' practical experience in the lower post of Assistant Mistry.

Besides having the qualities of shouldering higher responsibilities, ability to handle the department and overall control and ability to distribute work properly and get the work done from the subordinates is also required. He has further contended that trade test report discloses that the applicant was found not fit for promotion and his performance was not found satisfactory. Question of limitation period was raised.

5. It is not disputed that the disciplinary proceedings against the applicant attained finality only on 28.4.2000. This petition was filed on 9.1.2001 and therefore it cannot be said that it is beyond time limit.

6. It is also not disputed that vide order dated 20.4.2000, the applicant was restored to his original post of Assistant Mistry w.e.f. 26.5.1986. The seniority list which has been filed by the applicant has not been disputed. In this seniority list, he is shown after Shri C.S.Pandit, Shri S.R.Potdar, Shri D.K.Vaidya and before Shri S.S.Dhotre. The applicant made representation on 7.4.2000 and 2.8.2000 for promotion to the post of Mistry. There is nothing on record to show that this representation was ever considered by the Administration.

7. Retirement by itself does not extinguish the right of a Government servant for being considered for promotion if his juniors have been considered and promoted before the date of his superannuation. The test report dated 6.4.1988 which is available on file clearly shows that the applicant was suspended

applicant was suspended and later demoted and on this ground only he was not found fit. The test report of 30.9.1997 was not for the post of Mistry but it was for the post of Assistant Mistry i.e. the post on which the applicant was already working. These test reports therefore have got no relevance whatsoever, for promotion of the applicant to the post of Mistry as he was working on the post of Assistant Mistry by the order of 20.4.2000. He was found unfit on the basis of suspension and demotion which was subsequently set aside.

8. We have gone through the diary order No.58 which are the rules for promotion of industrial workers at the India Government Mint, Mumbai issued on 13.11.1965. This shows that the post of Assistant Mistry is to be filled in on the basis of seniority-cum-selection basis with minimum period of two years is necessary for being promoted to the post of Mistry. The promotion has to be made through DPC and suitable tests can be carried out. No trade test as such have been prescribed for the performance. The post of Chargeman is a selection post and it is to be filled in from amongst the Mistires. The applicant has stated that no departmental test for promotion of Mistries has ever been carried out. Shri D.K.Vaidya was promoted to the post of Mistry w.e.f. 1.6.1988. Promotion of Shri Vaidya has not been disputed.

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9. Thus from the above it would be clear that there is no specific trade test prescribed for the promotion to the post of Mistry and the applicant has got a right to be considered for promotion to the post of Mistry after he completed two years and would get the seniority over and above Shri S.S.Dhotre who was junior to him in case the applicant was found fit and was promoted and in such a case, he would be entitled to the pay and allowances admissible to Mistrices. He would be entitled to be considered for Chargeman also as and when he comes within the eligibility zone and on the basis of rules for promotion dated 13.11.1965.

10. We are of the considered opinion that the retirement of the applicant would not snatch away his right to be considered for the post of Mistry and Chargeman in accordance with the rules. He would therefore be entitled to be considered for promotion to the post of Mistry from the date his juniors have been promoted.

11. In view of the facts and circumstances as discussed above, we hold that the applicant would be entitled to be considered for promotion to the post of Mistry in accordance with the rules from the date his juniors were promoted and also to the post of Chargeman after being found in the eligibility zone and otherwise ^{if} _{for} promotion in accordance with the rules, for promotions dated 13.11.1965. In case he is promoted to the post of Mistry and Chargeman before his retirement before 31.5.2000,

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i.e. the date of his superannuation, he would be entitled to the fixation of pay and retirement benefits on that basis. No pay would be admissible to him as he did not work on the post but retirement benefits would be given to him on the basis of such fixation. This exercise may be completed within a period of three months from the date of service of certified copy of this order. The OA is accordingly disposed of.

11. No order as to costs.

22/3/2011
(S.P.Arya)

Member(A)

22/3/2011
(S.G.Deshmukh)

Member (J)

abp