

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 656 / 2001

M. G. Dethke

(By Advocate Shri G. S. Walia)

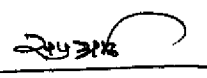
**VERSUS**

Union of India & ors.

(By Advocate Shri Suresh Kumar)

**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 ?

  
(S.P.Arya)  
Member (A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO: 656/2001  
DATED THE 18<sup>th</sup> DAY OF SEPT, 2003

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

M.G.Dethe  
Working as  
Chief Health Inspector,  
at Valsad,  
Western Railway,  
Mumbai Division

... Applicant

By Advocate Shri G.S.Walia

V/s.

1. Union of India, through  
General Manager,  
Western Railway,  
Headquarters Office,  
Churchgate,  
Mumbai - 400 020.
2. Divisional Railway Manager,  
Bombay Division,  
Mumbai Central,  
Mumbai - 400 008.
3. Shri M.B.Wasane  
Chief Health Inspector  
Jaipur
4. H.S.Hans,  
Chief Health Inspector,  
Kota
5. P.B.Sharma,  
Chief Health Inspector,  
Jaipur
6. B.P.Sharma,  
Chief Health Inspector,  
Rajkot
7. Champalal,  
Chief Health Inspector,  
Ratlam

... Respondents

By Advocate Shri Suresh Kumar

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...2.

(ORDER)

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

This OA has been filed for directing the respondents to include the name of the applicant in the panel of Assistant Health Officers dated 25.7.2001 and for direction to the respondents for posting him as Assistant Health Officer with consequential benefits on the ground that non inclusion of the applicant in the panel dated 25.7.2001 for the post of Assistant Health Officer was wrong and illegal; revision of seniority after the applicant passed in the written test and was invited for interview was illegal, arbitrary and unconstitutional and a person who was working in the Higher grade should be considered senior to the employees working in the lower grade and the applicant has not taken the benefit of accelerated promotion as Scheduled Caste.

2. We have heard learned counsel of both sides and gone through the records and file.

3. The applicant, was promoted in the scale of Rs.1600-2660 w.e.f 7.2.1996 and was further promoted as Chief Health Inspector in the pay scale of Rs.2000-3200 w.e.f. 29.2.1996 vide letter dated 04.03.1996. He qualified in the Written Test held on 4.11.2000 for selection for adhoc promotion to the Group 'B' post of Assistant Health Officer vide letter dated 21.11.2000. He was placed at No.1 amongst the six qualified. He was asked to be ready for appearing for viva voce test. A show cause notice on

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11.4.2001 was issued for amending the inter se seniority of Shri Champalal, Mohd. Sharif, and the applicant by giving fifteen days time for making representation with documents and evidence, if required. Applicant made a representation on 27.4.2001 but the representation was not accepted and on 7.6.2001, Shri Champalal was assigned seniority above the applicant on the basis of Shri Champalal being promoted in each grade prior to the applicant. The applicant moved a representation against the order of 7.6.2001 on 20.6.2001 and stated that in case he is placed after Shri Champalal in the seniority list, others placed at the seniority list from 5 to 13 who have not got the promotion in the scale of Rs.7450-11500 would become senior to him and therefore the seniority should not be revised. Respondents in the written reply have stated that the OA is bad for non joinder of the parties. It was further stated that the applicant was promoted in the roster point and being a beneficiary of the reservation, he could not get the seniority. Shri Champalal was promoted in each grade prior to the applicant and therefore he was given the seniority above the applicant.

4. By MP No.1021/2001 those who were in the panel of 25.7.2001 were made parties.

5. On hearing the counsel, the only question in the present application involved is whether seniority list can be revised during the process of selection to the higher post and whether an

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employee working in the higher scale can be denied consideration for promotion to the higher post, when others working in the junior scale are considered and empanelled. It is not disputed that the applicant was promoted to the post of Chief Health Inspector w.e.f. 29/2/1996 and was also called for written test and interview. It is also not disputed that a letter issued from General Manager's Office placed the applicant at serial no.1 amongst the candidate who qualified in the written test and asked for being ready for viva voce test. The letter of the Divisional Railway Manager dated 16.5.2001 clearly states, on rechecking that the applicant attained the position in the scale of Rs.7450-11,500/- on the basis of seniority and not by reservation. The respondents have filed another letter of 27/3/2000 that the applicant has attained the position in the scale of Rs.7450-11,500/- because of reservation. Both these letters are signed by same officer working in the same designation signing for DRM, Mumbai. The letter of 16/5/2001 being later in time and stating the position on rechecking cannot be denied. We are therefore of the view that the position attained by the applicant was not because of accelerated promotion being granted against reservation category but it was because of his seniority. Denial of consideration for promotion to the applicant who entered this scale in 1997, 1998 and 1999 cannot be sustained. It is is bad in the eye of law. The applicant cannot be discriminated on the mere ground that he belongs to scheduled caste and because one member of the

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....5..

scheduled caste has already been put on the panel against one notified vacancy and therefore he cannot be considered. He even being a member of scheduled caste has got a right to be considered if he is senior enough to come in the eligibility zone even if the post is not specifically reserved for SC/ST.

6. In the show cause notice certain references to OAs have been given. The copies of judgements in those OAs have not been filed nor specific contents of those OAs have been disclosed by the applicant or the respondents. In absence of such details we cannot opine thereon.

7. In view of the above discussions, we find that the petitioner has a right to be considered for promotion for the post of Assistant Health Officer especially when he has qualified in the written test and was called for viva voce test and revision of the seniority of only three candidates in the eligibility zone was devoid of propriety. The applicant was not promoted because he belonged to scheduled caste community who got the promotion to the post of Chief Health Inspector in his own turn by way of promotion and suitability. We have taken note of Railway Board Circular dated 30.11.1989 and 08.03.2003 while coming to such a conclusion.

8. The petition is allowed. The respondents are directed to consider the applicant for the empanelment to the post of Assistant Health Officer by refixing the eligibility of the Chief Health Inspectors arranging on the basis of their payscales, higher being placed higher in the list keeping in view the judgements in OAs referred to in the show cause notice of 11.4.2001 within a period of three months from the date of receipt of certified copy of this order and also to delete from the panel who on such consideration are found juniors by following the circular issued by Railway Board dated 8.3.2002. No order as to costs.

  
(S.P. ARYA)  
MEMBER(A)

  
(S.G. DESHMUKH)  
MEMBER(J)

abp

CP (6) No. 12/2004 30.01.2004

for order filed  
on 30/1/04

Applicant by Shri G.S. Walia.  
Respondents by Ms. Fernandes

CP 12/2004 has been filed by the applicant Shri N.G. Dethle alleging non-compliance of the Tribunal's order dated 18.9.2003 wherein a direction was issued to consider the applicant for empanelment.

MP 81/04 has been filed on behalf of respondents seeking extension of time by a further period of three months for implementation of the order.

We have heard both the counsel on MP. Learned counsel for applicant mentions that information mentioned in para 2 regarding receipt of Tribunal's order on 13.10.2003 is not correct. He mentioned that the order was served on the counsel for respondents on 22.9.2003. This has also been confirmed from the records. Learned counsel for the respondents also admitted the same. ~~Secondly in para 3 it is mentioned that~~ <sup>Thus</sup> an attempt has been to give a wrong impression about date of receipt of the order. We are also not satisfied as to how postings of persons at different places will come in the way of consideration by competent authority for empanelment of the applicant. We do not see any merit in the MP and the MP is rejected.

Notice may be issued to contemnors 1 and 2 as to why action may not be initiated against them for not complying with the order dated 18.9.2003. Personal appearance of the contemnors is dispensed with.

List the case on 05.3.2004

(MUZAFFAR HUSAIN)  
Member (J)

(A.K. AGARWAL)  
Vice Chairman.

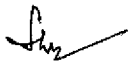



5/3/2004

Applicant by Shri R.G. Wadia.  
Respondents by Ms. D. Fernandes for  
Shri Suresh Kumar.

Ld. counsel for respondents  
informed that the order has already  
been complied with. A copy of the  
letter dated 4-3-2004 issued by the  
Headquarters, O/o the Western Railway  
has also been given to the party  
concerned. However, the Ld. Counsel  
for respondents wanted to confirm the  
same from his client and sought  
two weeks time for this purpose.

List on 25/3/2004.

  
(Muzaffar Hussain)  
n(J)

  
(A.K. Agarwal)  
v/c.

OS

8/3 R1