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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: O.A. No. 720/900

~~Transfer Application No.~~

DATE OF DECISION

9.3.93

A. V. Bendre Petitioner

Mr. Ranganathan

Advocate for the Petitioners

Versus

U.O.I. & 3 ors. Respondent

Mr. J G Sawant

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M S Deshpande, V.C.

The Hon'ble Shri M Y Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

OA NO.720/90

A V BENDRE

APPLICANT

V/s

Union of India
through the Director General
of Works, CPWD, Nirman Bhavan
New Delhi & 3 ors.

Respondents

Coram: Hon. Shri Justice M S Deshpande, Vice Chairman
Hon. Shri M Y Priolkar, Member(A)

APPEARANCE:

Mr. Ranganathan
Counsel
for the applicant

Mr. J G Sawant,
Counsel
for the respondents

ORAL JUDGMENT:
(PER: M Y PRIOLKAR, MEMBER[A])

DATE: 9.3.93

The applicant who was serving as an Assistant in the office of Chief Engineer, Western Zone, CPWD at Bombay was promoted by order dated 28.7.87 to the post of Circle Office Superintendent and also transferred by the same order on promotion to New Delhi. The applicant declined to accept the promotion due to certain domestic difficulties and requested for being accommodated on promotion only at Bombay. The applicant was also subsequently considered for promotion by successive DPCs and again transferred out of Bombay as Circle Office Superintendent respectively to

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Hyderabad, Calcutta and Abohar. The applicant however refused all these promotions on the same ground. The applicant is stated to have been finally promoted and posted at Bombay itself on 21.1.92. The grievance of the applicant which still subsists is that the only consequence for refusal of promotion should have been debarment for promotion for one year from the date of refusal of the first promotion and he was entitled to be promoted and posted to the first vacancy occurring immediately after the expiry of the one year period i.e., after 28.7.1988, but this has not been done by the department.

2. The learned counsel for the applicant contended that paragraph XIV of Appendix 29 of CSR, which is the relevant rule on this subject, only provides for an employee being debarred for a period of one year for promotion on his declining the offer of promotion. According to him, the debarment period had expired on 28.7.1988, a vacancy had occurred after that date i.e., on 2.1.1989 at Bombay itself and this fact had been brought to the notice of respondents through his representation dated 19.1.91. But the representation was not considered favourably and his request for being posted against that vacancy was rejected. The learned counsel also brought to our notice two judgments of this Tribunal, one of them of Calcutta Bench in the case of N C CHAKRAVARTHY V. UNION OF INDIA, 1989(11) ATC 107 and the other (which is not reported) of the New Bombay Bench in the case of V.S. THOMAS V. U.O.I. & ORS. (O.A.NO.398/86). By a majority judgment it was held in the latter case that since para XIV of Appendix 29 of the CSR does not provide for a fresh consideration by the DPC if an employee refuses promotion, a panel once prepared will remain valid till it is exhausted and even in case the department prepares a second panel, the people empanelled in the earlier panel will have a prior right to the promotion post, and two panels could be in force simultaneously.

3. Admittedly, a vacancy had occurred in Bombay on 2.1.1989 which was within a period of 18 months from the date of the first promotion order from the earlier panel. This vacancy was not however offered to the applicant in spite of his representation. As already

held in the two judgments of the Tribunal stated above, an employee who is debarred for one year for refusal of promotion has the right to be considered for posting against the vacancy immediately after the expiry of the debarment period. In the present case the debarment period had expired by 27.8.88. The applicant was, therefore, entitled to be promoted against the vacancy which had occurred on 2.1.1989.

4. The learned counsel for the respondents stated that arrangements for holding a fresh DPC meeting had already been made when the vacancy arose on 2.1.1989 and in fact orders for promotion of the applicant and posting him outside Bombay as a result of the DPC selection had already been issued on 30.1.89. The learned counsel, however, could not categorically state that the second DPC was held prior to the occurrence of the vacancy viz., prior to 2.1.89.

5. In view of the above, we find merit in the contention of the applicant that he should have been promoted and posted to the vacancy which had occurred in Bombay on 2.1.1989 before being considered again by a subsequent DPC. Although in the original application a number of reliefs were claimed by the applicant including quashing and setting aside the transfer orders, the learned counsel for the applicant has not pressed for these reliefs at this stage since the applicant had been already promoted and posted at Bombay. His claim for seniority does not stand in the absence of impleadment of the persons affected as additional respondents in this application. In our view, therefore, he will be only entitled to monetary benefits for notional promotion to the post of Circle Office Superintendent with effect from 2.1.1989. He would be entitled to arrears for the difference in salary for the period from 2.1.89 to the date he was actually promoted as Circle Office Superintendent, including the benefits of increments during this period. He will have, however, no claim for any ante-dating of seniority in the post of Circle Office Superintendent except the benefit of pay fixation and arrears. The arrears payment be made

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within a period of three months from the date of communication of this order. There is no order as to costs.

M. Y. Priolkar
(M Y Priolkar)
Member(A)

M. S. Deshpande
(M S Deshpande)
Vice Chairman

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