

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, (9)

BOMBAY BENCH, BOMBAY.

Original Application No.811/90.

H.V.Marulkar.

.... Applicant.

V/s.

Union of India & Ors.

.... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri V.Ramakrishnan, Member(A).

Appearances:-

Applicant by Shri S.R.Atre.

Respondents by Shri R.C.Kotiankar.

Oral Judgment:-

[Per Shri M.S.Deshpande, Vice-Chairman] Dt. 11.8.1994.

By this application the applicant is asking for a deemed date of confirmation from 1.3.1979 instead of 1.4.1984 which has been granted to him and selection grade from 11.5.1981. On 1.3.1979 certain juniors to the applicant came to be considered for confirmation in the post of Junior Telecom Officers and they were confirmed w.e.f. 1.3.1979. The applicant was not considered because of an incident on the basis of which a departmental inquiry came to be instituted against him on 31.12.1979. The applicant was found to be guilty and the punishment of withholding of increments was imposed on him. The appellate authority, however, by its order dt. 6.8.1984 quashed the departmental inquiry. On 7.11.1985 the Dy. General Manager, Bombay Telephones passed an order asking the DPC to be held for confirmation/promotion for assessing the fitness of the applicant for the purpose. The DPC gave him confirmation w.e.f. 1.4.1984 by the order dt. 11.11.87

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(Ex. A-7). The applicant made several representations, but as the respondents did not reply to his representations, he has filed this present application on 14.11.1990 for the aforesaid reliefs.

2. The applicant has also filed an application for condonation of delay contending that he came to know about the order dt. 11.11.1987 (Ex. A-7) when it was published in a Journal published by the Union in January, 1988. He made his first representation thereafter on 11.5.1988 and followed it up with later representations on 7.11.1988 and 3.4.1989 which were not replied to. The applicant therefore, contends that the delay in filing the present application should be condoned. This request was strenuously opposed by Shri Kotiankar, learned counsel for the respondents who urged that the first communication in respect of the applicant's confirmation and promotion was sent on 11.11.1982. It is however, clear that since a departmental inquiry was pending against the applicant, the applicant could not have made any effective representations until the final order was passed in that inquiry dropping the proceedings on 7.11.1985. He learnt about the confirmation w.e.f. 1.4.1984 pursuant to the order dt. 11.11.1987, according to him only in January, 1988. We find that there was delay of about a year because the representation dt. 11.5.1988 remained unanswered, as the applicant should have approached the Tribunal by 11.11.1989, but he actually approached the Tribunal on 14.11.1990. The question, whether this delay should be condoned. It is clear that the applicant had been representing against the belated confirmation. In similar circumstances the Supreme Court in Civil Appeal No.4997 - 5002 decided on 26.10.1990 held that since the appellants

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grievance there was regarding the supersession, the delay should have been condoned. We find that in the present circumstances, the delay ^{shall} have to be condoned and we condone the delay. The M.P.5/91 for condonation of delay stands disposed of.

3. Turning to the merits according to the applicant he should have been placed between Sl.No.73 and 74 in the seniority list dt. 3.1.1981 (Annexure A-2). It is apparent that the earlier Departmental Promotion Committee which should have followed the sealed cover procedure because a departmental inquiry had been initiated against the applicant, did not follow such a procedure. The Dy. General Manager vide his order dt. 7.11.1985 (Annexure A-5) asked the DPC for confirmation/promotion to be convened for ascertaining the applicant's fitness. That DPC, should have considered the case of the applicant with reference to the date on which his juniors came to be confirmed. This was not done. The applicant's grievance is that his entitlement should have been ascertained not from the day following order dt. 7.11.1985, but from the earlier date when his juniors were considered. This is a legitimate expectation and there is no reason why this entitlement should be denied to the applicant.

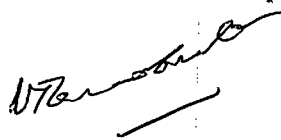
4. We therefore direct that a Review DPC should be held for ascertaining the suitability of the applicant for his confirmation on the date on which his juniors were considered and it should be ascertained whether the applicant could be interpolated between Sl. No.73 and 74 of the seniority list dt. 3.1.1981. If the DPC finds the applicant is entitled to confirmation and also finds him suitable for selection w.e.f.

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11.5.1981, all the benefits flowing from such a decision including the monetary benefits shall be granted to the applicant. The directions shall be implemented within three months from the date of communication of the order to the Respondents.



(V. RAMAKRISHNAN)
MEMBER (A)



(M. S. DESHPANDE)
VICE-CHAIRMAN

B.

7-7-97 (contd.) ②

-tion was given to the applicant
N. & J. 1-3-1979. and that the
payments have been made to
the applicant - and the order of the
Tribunal has been fully complied
with.

Under the circumstances, we see
no justification to continue
the contempt and the C.P. is
discharged. Accordingly the
C.P. no 99/95 dismissed.

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M.R. Kolhatkar
(M.R. Kolhatkar)
M(A)

B.S. Hegde
(B.S. Hegde)
M(J)

dd. 7/2/97
order/Judgement despatched
to Applicant/Respondent(s)
on 13/8/97

SS
14/8/97