

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH.

Original Application No. 258/90

~~Transfer Application No.~~

Date of decision 24.6.93

Shri R.K. Kalekar Petitioner

Shri .V.G. Rege Advocate for the Petitioner

Versus

Union of India and Others. Respondent

Shri V.S. Masurkar Advocate for the Respondent(s)

Coram :

The Hon'ble Shri A.B. Gorthi, Member (A)

The Hon'ble Shri V.D. Deshmukh, Member (J)

1. Whether the Reporters of local papers may be allowed to see the Judgement ?
  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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(A.B. Gorthi.)  
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

(R)

Original Application No. 258/90

Shri R.K. Kalekar,  
V/s

... Applicant.

Union of India through  
the Ministry of Defence  
New Delhi.

Chief of Naval Staff,  
Naval Headquarters,  
New Delhi.

The Flag Officer,  
Commanding-in-Chief  
Headquarters,  
Western Naval Command  
Shahid Bhagat Singh Road,  
Bombay.

G. Pantulu

M. Chandrashekhara

S. Koteswar Rao

S.P. Ghatkar

R.K. Yeole

... Respondents.

CORAM: Hon'ble Shri A.B.Gorthi, Member (A)

Hon'ble Shri V.D.Deshmukh, Member (J)

Appearance:

Shri V.G. Rege, counsel  
for the applicant.

Shri V.S. Masurkar, counsel  
for the respondents.

ORDAL JUDGEMENT

Dated: 24.6.93

¶ Per Shri A.B.Gorthi, Member (A) ¶

The applicant who was appointed to the post of Demonstrator/Laboratory Assistant in the Naval College of Engineering on 2.1.84 claims in this application that the respondents should have promoted the applicant to the post of Junior Scientific Assistant Grade I with effect from 1.1.87 i.e. immediately on completion of three years service as stipulated in the relevant recruitment rules.

Admittedly as per the applicable recruitment rules Demonstrator/Laboratory Assistant is eligible for promotion to the post of Junior Scientific Assistant Grade I on completion of three years service. The recruitment rules further stipulated that the post of Junior Scientific Assistant Grade I is to be filled up by promotion, failing which by direct recruitment. The grievance of the applicant is that the respondents recruited five individuals (respondent No.4 to 8) as direct recruits in the year 1987, whereas his case for promotion should have been first considered before making such appointment by direct recruitment.

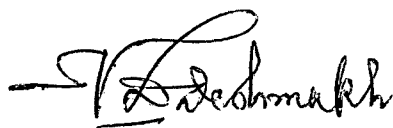
The respondents in their reply affidavit have not denied the essential facts averred in the application but have clarified that in the year 1984 there were some vacancies in the post of Junior Scientific Assistant Grade I and as at that time there were no departmental candidates eligible for promotion, the vacancies were released for being filled up by direct recruitment. The process of direct recruitment was taken up by the authority concerned and on completion of all formalities the respondents finalised the selection list and started giving appointment by direct recruitment only in 1987. The respondents, contended that the applicant had no right to claim promotion prior to 1987 because he had not completed three years service. In fact after the applicant had completed the required minimum period of service, the respondents prepared the seniority list of all concerned, after following the required preliminary formalities. The respondents after holding a D.P.C. in 1988 and based on the recommendation of the D.P.C. promoted the applicant with effect from 4.7.88.


Shri V.G. Rege, learned counsel for the applicant, very vehemently contended that, because of the unjustified delay on the part of the respondents in holding the D.P.C. which should have been held as soon as the applicant completed three years service, the applicant lost seniority vis-a-vis the direct recruit who came to be appointed in 1987. In other words, the contention on behalf of the applicant is that the respondents should have held the D.P.C. as soon as the applicant became eligible for promotion. In support of his contention, the learned counsel for the applicant has drawn our attention to the judgement in the case of Shri S.C. Wadekar Vs. U.O.I. (Tr. 88/86) decided on 8.3.89. In that case, in view of the clear stipulation in the recruitment rules that the promotion to the post of Junior Scientific Assistant Grade I should be by promotion, failing which by direct recruitment, the Tribunal held that the respondents should not have filled up the posts only by direct recruitment, as was done till 1982, ignoring the applicant and the other eligible candidates. In our considered view, the judgement will not be of assistance to the applicant's case. Because in the instant case when the vacancies were released for being filled up by direct recruitment, there were no departmental candidates eligible for promotion. The applicant, admittedly became eligible for promotion only with effect from 1.1.87 and therefore we cannot find fault with the action of the respondents releasing the vacancies that were available in 1984 for being filled up by direct recruitment.

It is said that seniority is an incidence of service and it has to be governed strictly in accordance with the extant rules. In the case of direct recruits, the seniority counts from the date of appointment,

whereas, in the case of promotees the rule ordinarily is that the seniority counts from the date of promotion. The respondents having carried out the due selection by direct recruitment against the vacancies of the year 1984, were duty bound in accordance with the Ministry of Home Affairs, Department of Personnel and Admn. O.M. dated 8.2.82, to give appointment to all the candidates who were brought on the selection panel against the allotted vacancies. There was some delay, justifiable as it appears, in the recruitment and appointment of direct recruits process for which started prior to 1987. Similarly the respondents took some time to initiate the process of constitution of a D.P.C. From the record, it is seen that the D.P.C. in this case was constituted in 1988 and the applicant was promoted with effect from 4.7.88. The resultant delay of about 1½ years in the promotion of the applicant cannot be said to be on account of malafies on the part of the respondents, nor is it a case of culpable delay for a long period. It is but natural that a D.P.C. is constituted only when there are sufficient number of candidates for selection and that the D.P.C. has to select the candidates for promotion from amongst all the eligible candidates.

In view of the aforesaid discussion we find that there is no irregularity or illegality in the respondent's action as would warrant our interference in favour of the applicant. The application is therefore dismissed, with no order as to costs.

  
(V.D. DESHMUKH)  
MEMBER (J)

  
(A.B. GORTHI)  
MEMBER (A)