

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 708/91
Transfer Application No.

Date of Decision : 22.2.1995

S.S.Shardul

Petitioner

Shri M.S.Ramamurthy.

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Shri P.M.Pradhan.

Advocate for the
respondents

C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
The Hon'ble Shri M.R.Kolhatkar, Member(A).

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? X

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A).

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Original Application No. 708/91.

S.S.Shardul. ... Applicant.

V/s.

Union of India & 2 Ors. ... Respondents.

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

Appearances:-

Applicant by Shri M.S.Ramamurthy.
Respondents by Shri P.M.Pradhan.

JUDGMENT :-

(Per Shri M.R.Kolhatkar, Member(A)) Dt. 22.2.1995.

In this Original Application, the applicant who belongs to Scheduled Caste community was appointed as a Sub-Inspector in Customs and Central Excise on or about 7.11.1960 and was confirmed as Inspector Selection Grade on or about 3.12.1984. One Shri R.J.More, who also belongs to Scheduled Caste but community, was junior to him in the cadre of Inspector Selection Grade was promoted and appointed as Superintendent from 6.12.1985 under Establishment Order of same date against a post reserved for SC employees. The applicant represented against his non-promotion, but no reply was received. The applicant was also overlooked for promotion in 1987. The applicant was promoted as Superintendent, Central Excise by Establishment Order dt. 7.3.1989. The applicant impugns letter dt. 31.7.1991 (at page 43 Ex. 'G') informing him that his representation has been rejected by the Collector, Bombay-I as the concerned Collectors did not give a clear

Mr integrity certificate both in the year 1985 and 1987

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when the DPCs were held and that the department's action in not promoting him in 1985 and 1987 was not mala fide. The applicant claims the relief of retrospective promotion from 6.12.1985 and all consequential benefits and a declaration that non-granting of integrity certificate for the years 1985 and 1987 is arbitrary, capricious and mala fide.

2. The main contention of the applicant is that from 1980 onwards till date no adverse remarks of any kind had been communicated to the applicant in regard to his work or conduct nor was there any charge sheet or disciplinary proceedings launched against him. It is not in dispute that the applicant was duly selected by the DPCs, but the promotion was refused solely on the ground of non-issue of the integrity certificate by the concerned Collectors. But the reasons for non-issue of the integrity certificate have not been disclosed and hence refusal to promote the applicant from 6.12.1985 is arbitrary. The applicant relies on the following case law :

1. R.K.Singh V/s. Union of India (1990(14) ATC 286).
2. Padam Kumar Garg V/s. Union of India (1991(16) ATC 561).
3. M.P.Singh V/s. Govt. of India & Ors. (1988(7) ATC 605).
4. D.C.Limbachia V/s. UOI & Ors. (1991(3) SLJ 296).

3. The Respondents have opposed the Original Application. They contend that both the applicant and Shri R.J.More were considered by the DPC in the extended zone of consideration as both of them belong to the Scheduled Caste Community. The DPC had put ^{applicant} ~~the~~ on the panel, but had put in a remark that the applicant's promotion would be subject ^{certificate} to clear integrity/as the column of integrity in the/

ACR

(14)

was left blank with a secret sealed cover containing a secret note. The same was duly considered by the Reviewing Officer and on the basis of his remarks Shri R.J. More next junior to the applicant was promoted and the applicant was not promoted. It appears that the subsequent non-promotion in 1987 was also on account of the same secret note. We have seen the connected record.

4. We asked the Respondents to show to us the Government of India instructions which deal with such situations and ^{counsel} produced before us the Government of India, Ministry of Home Affairs O.M. No.51/4/64-Estt(A) dt. 21.6.1965 which contains the following instructions on the subject of filling up the column relating to integrity:

"(i) If the officer's integrity is beyond doubt, it may be so stated.

(ii) If there is any doubt or suspicion, the column should be left blank and action taken as under:

(a) A separate secret note should be recorded and followed up. A copy of the note should also be sent together with the Confidential Report to the next superior officer who will ensure that the follow-up action is taken expeditiously. Where it is not possible either to certify the integrity or to record the secret note, the Reporting Officer should state either that he had not watched the officer's work for sufficient time to form a definite judgment or that he had heard nothing against the officer, as the case may be.

(b) If, as a result of the follow-up action, the doubts or suspicions are cleared, the officer's integrity should be certified and an entry made accordingly in the Confidential Report.

(c) If the doubts or suspicions are confirmed, this fact should also be recorded and duly communicated to the officer concerned.

(d) If, as a result of the follow-up action, the doubts or suspicions are neither cleared nor confirmed, the officer's conduct should be watched for a further period and therefore action taken as indicated at (b) and (c) above."

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It would be seen from the above that when the integrity column is left blank, the secret note is required to be followed up. If the doubts or suspicion are cleared, the integrity should be certified and if the doubts or suspicion are confirmed, the fact is to be recorded and duly communicated to the officer concerned. Admittedly, in this case neither of the things happened.

In other words, the doubts were neither cleared nor confirmed, but the Officer was denied promotion Counsel for the applicant submits that by the two DPCs. / (we) are therefore, required to hold that the Respondents had no validly acceptable material to hold that the integrity of the applicant was doubtful as held in Limbachia's case.

5. We now come to the ^{other} case law cited by the applicant. In R.K. Singh V/s. Union of India & Ors., the applicant was an I.A.S. Officer, in respect of whom integrity certificate was withheld during pendency of preliminary inquiry till decision, however, the Enquiry Report established the delinquent's integrity and the same was accepted by the Government. The Tribunal held that in such circumstances withholding of integrity certificate was un-sustainable. This case does not apply as there was a positive finding regarding the integrity of the Officer.

6. In the case of Padam Kumar Garg V/s. Union of India & Ors, the applicant was an I.P.S. Officer and on the basis of Lok Ayukta's report and registration of criminal case seeking orders for prosecution of the applicant and also for instituting departmental inquiry, (the) applicant was superseded. The Tribunal held that till the date of supersession, no proceedings

had been initiated against the applicant, as no charge-sheet had been served on him till that date. Hence the promotion of the applicant could not be withheld merely on the basis of the Lok Ayukta's ^{however} report. Padam Kumar Garg's case does not appear to ^{in that case} apply as formal proceedings were initiated and the issue was as to whether till the charge sheet was served the applicant could have been considered for promotion. Padam Kumar Garg's case may also no longer be a good law in view of Supreme Court's Judgments in Delhi Development Authority V/s. H.C. Khurana (1993(2) ATJ 142) and Union of India V/s. Kewal Kumar (1993(2) ATJ 149). In the latter Judgment, the Supreme Court has observed :-

"In a case like the present, where the First Information Report was registered by the Central Bureau of Investigation, and on that basis the decision has been taken by the competent authority to initiate disciplinary proceedings for imposition of major penalty on the respondent prior to the meeting of the DPC, the applicability of the sealed cover procedure cannot be doubted."

The Supreme Court held that the formulation of the charges is crystallised in the F.I.R. itself and, therefore, even if the charge sheet was issued by its despatch to the Respondent subsequent to the meeting of the D.P.C., this fact alone cannot benefit the respondent. In this case, however, that is not the issue.

7. The next case cited by the applicant is M.P.Singh V/s. Government of India & Ors.

(1988)7 ATC 605). In this case the Chandigarh Bench of the Central Administrative Tribunal in its decision dt. 12.5.1988 held on facts that where departmental inquiry does not involve question of integrity, vigilance clearance cannot be withheld

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merely because departmental inquiry was prolonged.

The applicant who belonged to Indian Forest Service was directed to be considered by the re-convened meeting of the Selection Committee as on the previous date as if the State Government had issued the necessary vigilance clearance in his case. This case no doubt has some bearing under the present case, especially to the extent of retrospective effect being given to the certificate relating to vigilance.

8. We are mindful of the weighty observations of the Hon'ble Supreme Court in the well known case of Union of India V/s. K.V.Jankiraman (1991 AIR 2010) in which at para 8 it is stated that:

"To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests."

However, the Hon'ble Supreme Court had gone on to observe that:

"An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently."

Here in this case we are faced with a situation where column relating to the integrity certificate was left blank and the follow up action did not lead to recording of any adverse remarks or to any departmental proceedings. In such a situation considering the Ministry of Home Affairs instructions referred to by us above, as in the Limbachia's case it has to be held that the integrity of the applicant was not doubtful and that this certification following the ratio of M.P.Singh's case has to relate back to the original date when the applicant

was first considered for promotion viz. in 1985.

If we do not do so, not only will there be a violation of the Ministry of Home Affairs instructions dt. 21.6.1965, but the field will be wide open for the Respondents to leave the integrity column blank on mere suspicion even in the case of Officers of impeccable integrity and to deny them promotion for a prolonged period.

8. On a consideration of instructions on the point, as well as, on the consideration of the case law, we have no doubt that the applicant is entitled to succeed. We, therefore, dispose of this O.A. by passing the following order:

O R D E R

1. The Original Application is allowed.
2. The Respondents are directed to give retrospective effect to the date of promotion of the applicant viz. 6.12.1985 the same date as the junior of the applicant was promoted and to give him all consequential benefits. The arrears of pay in this regard, would, however, be restricted one year prior to the date of filing of the application.
3. There will be no order as to costs.


(M.R. KOLHATKAR)
MEMBER (A)


(M.S. DESHPANDE)
VICE-CHAIRMAN

B.

22/12/95
Order/Judgement (despatched
to Applicant/Respondent (s))

21/3/96

Q
24/11/95

C.P. no. 149/95
brought on for
on 21/11/95

2
31/10

2-11-95

M. M. S. Ramamurthy, Counsel for
applicant.

Rule on C.P. no. 149/95 returnable
on 22-12-95. Reply on C.P.
by that date.

List on 22-12-95 for orders on C.P.

(P.P. Sinastava)
M(A)

(B.S. Hegde)
M(J)

CP 149/95
brought on
15/11/95
Jali
27/11

22/12/95-21

Heard Shri M.S. Ramamurthy,
Counsel for Applicant.

Issue notice to respondents
to file reply in 4 weeks.
S.O. till 29/1/96.

(M.R. Kelhatkar)
M(A)

(B.S. Hegde)
M(J)

alper Tribunal. Date: 29/1/96
Applicant in person by Mr. Ramamurthy
Respondent by Mr. Kelhatkar
The matter adjourned to 16/2/96
for order on CP 149/95

Notices
Applicant/Respondents on
31/1/96
Jali
9/11

Dy. Registrar

Per Tribunal

Date:

Applicant in person by
Ad. order / Respondent by

Ad. order.

The matter adjourned to
for

Dy. Registrar

28) 16.2.1996.

Heard shri M.S.

Ramamurthy, counsel for the
applicant.

shri S.S. Karkera
for shri P.M. Pradhan,
counsel for the respondents.
He submits that in view
of the ratio laid down
in the supreme court
Judgement, the respondents
have complied with the
order.

In the circumstances,
the C.P. No. 149/95 does
not survive. Accordingly,
the C.P. is disposed of.

16/2/96
order/Judgement despatched
to Applicant/Respondent(s)

23/2

[Signature]
28/2

[Signature]
(P.P. Srivastava)
MCA)

[Signature]
(B.S. Hegde)
MCA)

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