

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(189)

Original Application No. 651/91
Transfer Application No.

Date of Decision : 8.6.1995

Shri Prem Shankar

Petitioner

Shri G.R.Menghani

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Shri Suresh Kumar for Sh.M.I.Sethna

Advocate for the
respondents

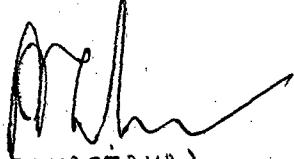
C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

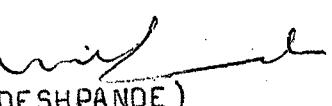
The Hon'ble Shri P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *not*


(P.P.SRIVASTAVA)

MEMBER (A)


(M.S.DESHPANDE)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

DA.NO. 651/91

Shri Prem Shankar

... Applicant

v/s.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri G.R.Menghani
Advocate
for the Applicant

Shri Suresh Kumar
for Shri M.I.Sethna
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 8.6.1995

(PER: M.S.Deshpande, Vice Chairman)

The only question which arises in the present case is whether the instructions contained in the Department of Personnel and Training Office Memorandum dated 10.4.1989 are not to be applied retrospectively but are to be applied prospectively while considering Annual Confidential Reports written after the date of the issue of these instructions i.e. after 10.4.1989.

2. The applicant was appointed as an Appraiser Group 'B' in 1964 after passing the Central Civil Services Examination in 1962. He was promoted as Asstt. Collector in 1977. He met with an accident on 8.11.1988 which necessitated continuous treatment in the hospital and he could join his duties only on 1.1.1990. A DPC was convened for considering the question of promotion to 157 posts of Dy.Collectors, out of which 100 were reserved for direct recruits and 57 for promotees, that is the category to which the applicant belonged. In 1991 the

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DPC prepared a select list of 136 officers, i.e. 100 direct recruits and 36 promotees. The applicant's representation dated 29.5.1991 was rejected by the respondents on 20.8.1991 and the applicant has therefore approached the Tribunal contending that the stricter standards mentioned in the instructions dated 10.4.1989 could not have been applied retrospectively as annual Confidential Report of 5 years which had to be considered for promotion were written prior to the issuance of the instructions in 1989.

3. The learned counsel for the applicant urged that though there were two decisions by the Tribunal on the subject, N.R.Chopra vs. Lt.Governor, Union Territory of Delhi & Anr. (1993) 23 ATC 25 and Aftab Ahmed Khan vs. State of Maharashtra, OA.762/90 decided by this Bench of the Tribunal on 12.11.1991 upholding the validity and applicability of instructions. These two cases required reconsideration. It is apparent that every all the contentions which are raised by the applicant before us were considered by Division Bench in Aftab Ahmed Khan's case and while dealing with the arguments it was pointed out as follows :-

"Once the Government had come to the conclusion that the existing standard was not adequate and stricter standards should be enforced, it will be unreasonable to suggest that the stricter standards should not be made applicable for five years only because certain officers who could have been promoted earlier under the prevailing lower standard will not now be eligible for promotion under the higher standard. There is also no conflict, in our view, between the guidelines dated 4.9.1989 of the Ministry of Home Affairs of the Govt. of India and the Maharashtra Government resolution dtd. 31.1.1990, which only supplements the general guidelines of the Government of India by prescribing a specific stricter standard for such promotions. We do not also see any substance in the contention that the CRs of respondents Nos. 8 and 9 are not comparable with those of the applicant as these respondents were employed during the periods under report on Headquarters or other posts which

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did not involve law and order problems or other duties of a sensitive nature whereas the applicant was holding charge of a very sensitive nature and was constantly exposed to public gaze."

It was then observed that :-

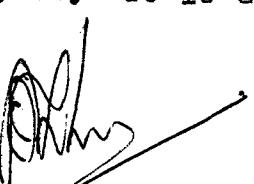
"It is, however, clear that the applicant's supersession was not because of adverse remarks in his confidential reports but because, although these reports were good, he could not earn the specific required grading viz. very good, on assessment of his entire record by the Screening Committee, which recorded the reasons for his supersession in the minutes of the meeting."

In N.R.Chopra's case (1993) 23 ATC 25, the Principal Bench pointed out that :-

"The guidelines of 10.4.1989 wherever they are in conflict with the rules, it is the rules that will prevail and not the provisions in the guidelines. The rules do not contain any of the details with regard to the procedure to be followed by the DPCs and their various functions. The procedure and various functions have been detailed in the guidelines of 10.4.1989."

"The guidelines are issued to supplement the rules and to fill up the gaps in the rules to the extent they are in conflict with the Recruitment Rules, the rules shall prevail in accordance with the well established law. The DPC which held on 27.8.1991 has necessarily to follow the guidelines of 10.4.1989 to the extent they are not in conflict with the statutory rules."

4. We see no scope for taking a view contrary to the one taken in the aforesaid cases. We see no merit in the OA. It is dismissed. No order as to costs.


(P.P. SRIVASTAVA)
MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN

mrj.