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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 680/91

Transfer Application No:

DATE OF DECISION: 4.10.1994

K.G.Patole Petitioner

Shri A.L.Kasturey Advocate for the Petitioner

Versus

Union of India & Ors. Respondent

Shri P.M.Pradhan. Advocate for the Respondent(s)

CORAM :

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 ? m
2. Whether it needs to be circulated to other Benches of the Tribunal ? m


(M.S.DESHPANDE)
VICE-CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

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Original Application No. 680/91.

K.G. Patole.

.... Applicant.

V/s.

Union of India & Ors.

.... Respondents.

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

Appearances:-

Applicant by Shri A.L. Kasturey.
Respondents by Shri P.M. Pradhan.

Oral Judgment :-

¶ Per Shri M.S. Deshpande, Vice-Chairman ¶ Dt. 4.10.1994.

The applicant challenges the letter dt. 16.5.1991 (Ex. 'B') to the application by which the Departmental Promotion Committee after re-assessing the suitability of the candidate for promotion consequent upon the expunction of the adverse remarks against the applicant held that the applicant could not be recommended for promotion to the post of Deputy Commissioner (S&R).

2. The applicant was appointed in 1955 as a Technical Assistant and after getting promotions from time to time he should have been considered on 30.10.1979 for ad hoc posting as Deputy Commissioner and on 9.4.1980 for regular promotion to that post. As a result of the DPC held in the year 1979 the applicant came to be superseded by his junior G.N. Bharadwaj on 30.10.1979. He filed a Writ Petition in the Gujarat High Court in 1979 challenging certain adverse remarks recorded against him, apprehending that those remarks may have come in the way of his being considered for promotion.

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has been stated as follows:

"In regard to promotions by selection to posts within Group A (Class I) which carry an ultimate salary of Rs.2250/- per month or less vide para 12.2(g), where there is no reservation but the Scheduled Castes/Scheduled Tribes officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn, are to be included in that list provided they are not considered unfit for promotion, cases where eligible Scheduled Castes/Scheduled Tribes candidates though available in the seniority list within the number of vacancies for which the select list is drawn are not selected, should be submitted to the Minister/Minister of State/Deputy Minister concerned as the case may be."

There is no dispute before us that the promotion of the applicant was to the post which carried the ultimate and its salary of Rs.2,250/- equivalent grade after the IVth Pay Commission ~~which~~ would be Rs.3,700-5,000. We have perused the DPC recommendations and we find that ^{out of the} two persons who were selected one was senior to the applicant and the other G.N.Bharadwaj (R-4) was junior to the applicant. They were assessed as 'very good' and the remark against the applicant was 'not yet fit'. This remark against the applicant which was made in the proceedings of the DPC on 9.4.1980 was based on the adverse confidential records for the years 1976 and 1978. After they came to be expunged, the applicant's case was re-considered on 26.4.1991. After the re-assessment the applicant was given the bench mark 'good'. It would therefore, follow that the applicant was not unfit for promotion and since his junior had been selected in the earlier panel he fell within the zone of consideration. The learned counsel for the respondents was not in a position to point out to us whether the concession which was available to the persons belonging to the SC as stated above had been extended to the applicant. The submission on behalf of the applicant was that the

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That writ petition was transferred to the Ahmedabad Bench of the Tribunal and was numbered as T.A. No.16/88 and came to be decided by an order dt. 27.7.1988. The Tribunal declared that the adverse remarks recorded against the applicant in the years 1976 and 1978 should be expunged as they were unjustified and directed the Respondents to hold a review DPC in respect of the applicant, consequent upon the expunction of the remarks and if he were to be found suitable for promotion he should be given the same benefits as were given to his junior G.N.Bharadwaj (Respondent No.4).

3. A review DPC came to be held accordingly after the SLP filed by the Respondents against the decision of the CAT, Ahmedabad Bench was dismissed. On 16.5.1991, the Respondents passed an order (Ex. 'B') holding that even after the applicant's suitability was re-assessed there was no need to recommend any change in the panel drawn in 1980 for promotion to the post of Deputy Commissioner (S & R).


4. The applicant's grievance is two fold. According to him, he belongs to SC category and he was entitled because of the 40 point roster applied in the matter of promotion also. This position was denied by the Respondents but the applicant re-asserted by his rejoinder that there was a reservation for promotion which was in Class.I category. No documents were produced on behalf of the applicant to show that there was reservation also for the posts of Dy. Commissioner (S & R). The next submission was that, in any event, the applicant's case would be governed by the safeguards which appear at para 9.7 at page 120 of the Brochure on Reservation for SC and ST in Services. At the end of that para it

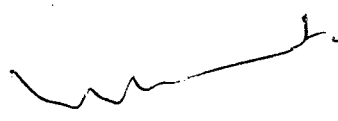
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applicant could not have been superseded by Bharadwaj since he fell within the zone of consideration and was not unfit for promotion and his name should have been included in the panel. There is no answer on behalf of the respondents to this submission.

5. In the result, we find it difficult to uphold the letter dt. 16.5.1991 (Ex. 'B'). It is quashed. We direct in terms of the decision of the Ahmedabad Bench of this Tribunal rendered on 27.7.1988 to give a notional posting to the applicant above that of G.N.Bharadwaj (R-4) as if he was included in the original panel and pay to him all the pecuniary and other benefits to which he would be entitled by virtue of being given that position. Since the applicant has retired on 30.6.1986, we direct that all his monetary and other benefits should be worked out and his pension shall be refixed and all the arrears shall be paid within six months from the date of the receipt of a copy of this order by the Respondents. We direct the respondents to pay costs quantified at Rs.500/- to the applicant.


(P.P.SRIVASTAVA)
MEMBER(A)


(M.S.DESHPANDE)
VICE-CHAIRMAN

B.