

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 492 / 91. 199

T.A. NO:

DATE OF DECISION 31/1/92.

Shri H. C. Baria,

Petitioner

Shri V. M. Bendre.

Advocate for the Petitioners

Versus

Union of India,

Respondent

Shri J. G. Sawant.

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman,

The Hon'ble Mr. M.Y. Pralokar, member (A)

1. Whether 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 ?

mbm*




(U.C. Srivastava)
V/c.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No.492/91.

Shri H.C.Baria.

... Applicant.

V/s.

Union of India & Another.

... Respondents.

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:-

Applicant by Shri V.M.Bendre.
Respondents by Shri J.G.Sawant.

JUDGMENT:-

Dated: 3-1-1992

(Per Shri Justice U.C.Srivastava, Vice-Chairman)

The applicant who has been working in the Ministry of Law and Justice from 1957 in different capacity as LDC, UDC, and Assistant and attended the Court matters and according to him from the year 1980 he was working continuously on ad hoc basis as Assistant in CSCS cadre has prayed that in view of the select list/recruitment rules he may be treated as promoted as Section Officer from the date on which ^{one} Shri P.S.Ghosh was promoted on ad hoc basis and has further prayed that the respondents be directed to consider him for promotion on regular basis for the post of Section Officer or Superintendent (Legal) in accordance with law and they may be further restrained from giving effect to the advertisement appeared in the Employment News dt. 16.3.1991 and 22nd June, 1991 till final hearing of the application and they may be further directed to keep one post of Section Officer vacant till the final hearing and disposal of the applicant's representation dated 14th December, 1990.

2. The applicant started his service career as LDC in the office of the Textile Commissioner in July, 1955. Admittedly, the applicant has passed SSC examination and has

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also passed various examinations in Hindi and has also passed ~~learned~~ English Typing test. From 1957 he was transferred to the office of the Ministry of Law & Justice and Company Affairs, Branch Secretariat, Department of Legal Affairs, Bombay and he has been attending various Court duties and according to him because of his efficiency and capability he has been promoted and his work has been appreciated and once an adverse entry was given to him on 3.6.1987 against which he filed a representation which was allowed and the adverse entry was expunged. Vide circular dated 14th January, 1974 the pay of the LDCs working in the department of Legal Affairs was revised and the pay was fixed and the applicant was appointed to officiate as UDC after fixation in the Department of Legal Affairs, Ministry of Law Justice w.e.f. 19.9.1975 and his pay was fixed accordingly. In the list dated 7th July, 1976 his name was included in the select list of UDC for the year 1976 and on 24th September, ¹⁹⁸⁰ 1990 he was promoted to the post of officiating Assistant in CSS cadre and his pay was fixed under F.R. 26 w.e.f. ¹⁹⁸⁰ 1.9.1990 ~~xxxxxxSeptemberxx1990~~ ¹⁹⁸¹ 1991 Vide order dt. 9.3. ¹⁹⁸¹ 1991 he was reverted w.e.f. ¹⁹⁸¹ 1.3.1991 to the post of UDC from post of Assistant and by the same order the applicant was made permanent in the grade of UDC CPCS cadre was promoted to officiate as Assistant CSS on ad hoc basis in the Branch Secretariat in the Department of Legal Affairs, Ministry of Law for a period of 2 months w.e.f. ¹⁹⁸¹ 3.3.1991 till a regular officer in the grade was available which-ever is earlier. Thus according to the applicant he has been working continuously, but by order dt. 9th March, ¹⁹⁸¹ 1991 ^{was} a retrospective break of one day was given to him which nothing but an artificial break and unrecognisable in law as the applicant was continuously working on ad hoc basis on the said post and there could

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not have been any retrospective break.

3. Vide order dt. 20th May, ^{12/81}1991 the applicant was allowed to continue as Assistant for a period of two months in continuation with the earlier order and vide order dt. 8th July, 1981 he was reverted to the post of UDC w.e.f. 2nd July, ¹⁹⁸¹1991 and vide para two of the said order he was appointed to officiate as Assistant on ad hoc basis for a period of two months w.e.f. 4th July, 1981. According to the applicant again it was nothing but an artificial break and that retrospective effect could not have been given as the applicant was already working on the said post. The applicant applied for the post of Assistant on regular basis in pursuance of O.M. dt. ¹⁶⁻⁶⁻¹⁹⁸¹6.6.1981 and applicant was placed in continuous appointment in the grade of Assistant w.e.f. 23.8.1982 and the applicant was confirmed in the grade of Assistant w.e.f. 30.10.1982. The applicant applied for a vacant post of Section Officer at Bombay after promotion of one Shri S.S.Manee on 24th July, 1985 and though he was attending appellate work, but he was favoured with adverse remarks, which was subsequently expunged, but the appointment was not given to him though subsequently more work was assigned to him. As per his allegation somewhere in 1986 a select list from amongst the Assistants working in the department ~~xx~~ to the post of Section Officer was prepared and without exhausting the said list one Shri P.S.Ghosh from other department was appointed to work on ad hoc basis as Section Officer, but the said P.S.Ghosh left the department after some time. The applicant who had in the mean time completed 8 years of regular service submitted his application on 14th December, 1990 which was returned to him on the ground that it was not submitted through proper channel.

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Corrected
vide RP 36/92
dtd 31/3/92
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Thereafter, he sent another application on 3rd May, 1991 through proper channel. An advertisement was issued on 16.3.1991 inviting applications on transfer basis for the post of Section Officer which was lying vacant after transfer of Shri P.S.Ghosh. There is no denial of the fact that the appointment is governed by the rules. According to the respondents applicant's request for promotion as regular Section Officer is not tenable as according to ~~the~~ rule 13(1) and (2) of CSS Rules, 1962 substantive vacancies in the Section Officer's Grade are to be filled by direct recruitment and the remaining vacancies by the substantive appointment of persons included in the select list for the Section Officer's ~~max~~ Grade, and temporary vacancies in the Section Officers' Grade are to be filled by the appointment of persons included or approved for inclusion in the Select List for the Section Officers' Grade, and the remaining vacancies are to be filled from among the Officers of the Assistants' grade who have rendered not less than 8 years' approved service in the grade and are within the range of seniority, on the basis of seniority subject to the rejection of the unfit. So far as the seniority is concerned the Department of Personnel and Training's O.M. dt. 30.11.1990 the range of seniority for making additions to the Select List of Section Officers for the year 1989 (Seniority Quota) has been extended to cover Assistants (General Category) who were appointed on or before 31.12.1975. No range of seniority for making promotions to the grade of Section Officer from among Assistants belonging to the General Category and appointed after 31.12.1975 has been issued by the Department of Personnel & Training.

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The applicant have been appointed as Assistant with effect from 23.8.1982, and is not yet covered by the range of seniority for inclusion in the Select List of Section Officer or for regular promotion as Section Officer. Even if the applicant's continuous appointment is treated to be from the year 1982 the applicant completed 8 years of service prior to the advertisement in the year 1991 and if it is treated from the year 1981 he had completed even much earlier. But the respondents contention is that there are few persons who are senior to the applicant and in case promotion is given to the applicant other seniors will be passed over and they have given the list of such persons including direct recruits and it has been stated that one Shri M.H.Sarkar^{is} senior to the applicant in the Civil List of U.D.Cs and continues to rank senior to him on their promotion to Assistant on long term basis on the basis of seniority-cum-fitness. So far as the select list of 1986 is concerned it has been stated that there was no such list, as a matter of fact the vacancy was circulated among all Ministries/Departments of Government of India and the applicant had not completed regular service then and even though now he is eligible for consideration, his seniors have to be considered first before any ad hoc promotions are given. The case of the applicant ~~xxxx~~ will arise only after 10 Assistants senior to him in the Ministry of Law and Justice have been considered and not before that. The applicant has given some seniority list (Provisional) of Assistants Grade Ministry of Law & Justice which he says has been noted from the Circular in the office on 22.10.1986. Obviously, the respondents have denied it. It may be that some provisional list was prepared, but it may not have been in accordance with the rules. Consequently, it was not

finalised or circulated. But obviously, in the year 1986 the applicant had not completed 8 years of service. It is true that the applicant has gained much experience in the department and that as far as the departmental candidates are available or those who are fully qualified and those who ~~are~~ have gained experience and have done satisfactory service may not be passed over, may also be given a chance before taking persons on transfer. But the relaxation, if any, can be granted only by the respondents. On behalf of the applicant there was some contention in this behalf but the Tribunal has no power in the matter. Obviously, if the applicant applies to the government there appears to be no reason why the government will not take into consideration ~~the~~ the totality of the circumstances for considering the case of the applicant for granting relaxation and accordingly though the applicant ~~was~~ as it is ~~who~~ has completed 8 years of service and he is entitled for promotion, but in view of the fact that his name is not yet listed for the reasons mentioned above and as certain relaxations are not granted, the applicant must approach the respondents. Accordingly, the respondents are directed to dispose of the representation referred to above within a period of two months taking into consideration his service, experience and knowledge and the pleas raised by him and in case it is considered fit to allow the representation and grant relaxation, obviously his case may also be considered for appointment to the post of Section Officer and it is expected that till then no one will be appointed by way of transfer. With these observations this application stands disposed of finally.

No order as to costs


(M.Y. PRIOLKAR)
MEMBER (A)


(U.C. SRIVASTAVA)
VICE-CHAIRMAN.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

REVIEW PETITION NO.36/92
in
ORIGINAL APPLICATION NO.492/91.

Hasmukhlal Chaganlal Baria,
Assistant (C.S.S.),
Ministry of Law & Justice,
Branch Secretariat, Aayakar Bhavan,
Annexe, Second Floor, New Marine Lines,
Fort, Bombay.

... Applicant.

V/s.

1. Union of India, through
Joint Secretary,
Ministry of Law & Justice,
Aayakar Bhavan Annexe,
New Marine Lines,
BOMBAY - 400 020.
2. Ministry of Law & Justice,
through its Secretary,
Department of Legal Affairs,
Shastri Bhavan,
NEW DELHI - 110 001.

.. Respondents.

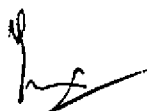
Coram : Hon'ble Shri Justice U.C. Srivastava, Vice Chairman.
Hon'ble Shri M.Y. Priolkar, Member (A).

TRIBUNAL'S ORDER ON REVIEW
PETITION BY CIRCULATION.

Date: 3.3.1992

This is a belated Review Petition^{which} has been filed
against our judgment dtd. 3.1.1992 on the ground that there
are certain typographical errors which ha^{ve} crept in our
judgment. These errors were not noticed ^{ear}lier and as such
the application is allowed and the errors are corrected.

Let the certified copy of the judgment may be
corrected.

( M.Y. PRIOLKAR)
MEMBER (A).

( U.C. SRIVASTAVA)
VICE CHAIRMAN.