

IN THE CENTRAL ASSEMBLY  
BOMBAY COURT OF APPEAL  
BENCH OF MR. JUSTICE

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(11)

O.A. NO: 497/91  
T.A. NO:

DATE OF DECISION

Shri D.G.Lale

Petitioner

Shri G.S.Walia.

Advocate for the Petitioners

VERSUS

Union of India

Respondent

Shri S.S.Karkera for Shri P.M.Padhan.

Advocate for the Respondent(s)

21-3-95

CORAM:

The Hon'ble Mr. B.S.Hegde, Member (J).

The Hon'ble Mr. M.R.Kolhatkar, Member (A).

1. Whether Reporters of legal papers may be allowed to see the judgement? X

2. To be referred to the Reporter or not? X

3. Whether the copies of the judgement is to be sent to other Benches of the Tribunal? X

4. Whether it needs to be circulated to other Benches of the X

M.R.Kolhatkar

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
BOMBAY BENCH.

Original Application No. 497/91.

Shri D.G.Lale. ... Applicant.

V/s.

Union of India. ... Respondent.

Coram: Hon'ble Shri B.S.Hegde, Member(J),  
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri G.S.Walia.  
Respondents by Shri S.S.Karkera  
proxy for Shri P.M.Pradhan.

JUDGMENT :-

(Per Shri M.R.Kolhatkar, Member(A)) Dt. 2/ .3.1995

In this O.A. the applicant has impugned the refusal of respondents to consider his past Military Service for One Time Bound Promotion (O.T.B.P.) vide letter dt. 10.5.1990 in reply to his representation submitted on 17.1.1990 which reply itself was based on a letter of Department of Telecommunications dt. 13.3.1990 addressed to the Chief General Manager, Maharashtra Telecom. Circle, Bombay (vide Annexure - 8 to the Written Statement). The facts of the case are that the applicant after 15½ years' service in the Indian Air Force and 1½ years' service in the office of the District Soldier Board, Pune was selected as a 'Time Scale with the respondents Clerk' in the scale Rs.260-480 w.e.f. 5.10.1976. By the letter dt. 17.12.1983 (At Annexure - 1) O.T.B.P. scheme was introduced in the P&T Department as a result of which P & T employees completing 16 years of regular service in the department belonging to basic cadre in Group 'C' and 'D' are placed in the next higher grade. The applicant, admittedly, had not completed 16 years' service as on 17.12.1983, his service being only of the

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duration of 7 years plus. However, the claim of the applicant for grant of O.T.B.P. scheme w.e.f. 1.7.1986 was based on the fact that he had been given the benefit of counting of the past years of service for pay fixation and he had reached the stage of Rs.324/- in the scale of Rs.260-480 which could be reached only by an official in Group 'C' after completing 16 years of service. Even otherwise, if his 15½ years Air Force service was counted, he would have completed about 25½ years of government service as on 1.7.1986. The second contention of the applicant is that in terms of P & T Department letter dt. 4.9.1989 (at Annexure - III), SC/ST candidates were directed to be given promotion even if they do not have 16 years' service subject to the condition that they have rendered minimum period of service laid down in the relevant recruitment rules. The applicant therefore, would like that this concession should be extended to him by analogy. Thirdly, the applicant contends that in terms of P & T letter dt. 16.2.1984 (At Annexure - II) extension of the scope of the OTBP scheme was allowed to Rule 38 transferees from one arm of the service to another arm carrying identical scales of pay. In his case the concession of the same circular could as well be extended taking into account his service in the Air Force. Lastly, the applicant contends that there is discrimination exercised against him in terms of Article 14 of the Constitution inasmuch as, the service in Air Force is being treated differently from the service in Telephone Department and to that extent the basic circular dt. 17.12.1983 ought to be read down to include the service in the Air Force so as to make him

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eligible for O.T.B.P. scheme from 1.7.1986.

2. The respondents have resisted the prayers of the applicant. They have stated that the O.T.B.P scheme was introduced in the department in terms of an agreement with the Union. The counting of the service in the Department other than P & T is not part of the agreement. The reliance placed by the applicant on the Circular dt. 16.2.1984 in respect of extension of the scope of the scheme to Rule 38 transferees is entirely mis-placed because he does not belong to either wing i.e. Postal or Tele-Communications department. So also the reliance on the extension of the concession of getting OTBP without completing 16 years of service to the SCs and STs in terms of the Supreme Court Judgment is misplaced. According to the Respondents the applicant is already getting a Military pension in addition to the salary and he has suppressed this fact. His past service has been counted for fixation of his pay. His service in the Air Force, however, cannot be counted towards the OTBP scheme.

3. In our view, there is considerable substance in the contentions of the respondents. We are not persuaded that the various circulars on which applicant has placed reliance are of any help to him. In terms of the basic circular formulating the O.T.B.P. scheme dt. 17.12.1983, he cannot count his Air Force service towards OTBP. The applicant has relied on the Judgment of this Tribunal in T.A. 204/86, but that related to interpretation of the pensioners & O.M. relating to refixation of pay of re-employed has no application. On the other hand, the Respondents have relied on the Judgment of the Madras Bench of the CAT in OA No.859/86 decided on

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18.12.1987. That case did not specifically relate to time bound promotion, but related to counting of service of Ex-Serviceman for fixation of seniority and consequential promotional benefits. The Tribunal rejected the claim of the applicant. The issue raised was similar although the factual situations are slightly different. We are, therefore, of the view that there ~~is~~ is no merit in the OA which is liable to be dismissed, which is accordingly dismissed. There will be no orders as to costs.

Mr. Kolhatkar  
(M.R. KOLHATKAR)

MEMBER(A)

B.S. Hegde  
(B.S. HEGDE)

MEMBER(J)

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