

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 789/91

~~Transferee Application No~~

DATE OF DECISION: 2.7.94

C.B.Sapkai Petitioner

Ms. Seema Sarnaik Advocate for the Petitioners

Versus

Union of India and others Respondent


Shri R.K. Shetty Advocate for the Respondent(s)

CORAM :

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

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 ? ✓


(B.S. Hegde)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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Original Application No.789/91

Shri C.B.Sapkal

... Applicant.

V/s.

Union of India through
the Secretary, Ministry of
Defence, Government of India
South Block, New Delhi.

The Director General
Research and Development
Director of Personnel (RD 22)
R & D Organisation
Ministry of Defence
New Delhi.

The Director
C.R.D.E.
Ahmednagar.

... Respondents.

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

Appearance:

Ms. Seema Sarnaik
counsel for the
applicant.

Shri R.K. Shetty, counsel
for the respondents.

JUDGEMENT

Dated: 2.9.94

¶ Per Shri B.S. Hegde, Member (J) ¶

This O.A. has not been filed against any
impugned order but against the inaction of the respondents
in respect of the promotion of the applicant.

2. The stand of the applicant is that there
were 3 vacancies for the post of Precision Mechanic
(Industrial Group II and III to Group I) in the year 1977.
Accordingly the D.P.C. empanelled four people. The
applicant is listed at serial No.4. The grievance of
the applicant is that Goraware who was listed at
serial No.3 was selected against the SC vacancy. However the existing three vacancies were of open
category and not for any reserved category. The

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Selection of Shri Gorawara against the SC vacancy has deprived the applicant of his promotion who was entitled to get it from the open category. He further contends that Shri Dhadge and Shri Hikre both are not to be appointed. Accordingly he prays that a direction be given to the respondents to post the applicant to the post of Precision Mechanic with effect from 1979 and pay all consequential benefits arising thereof, and also direct the respondents to comply with the directives issued by the Ministry of Home Affairs dated 3.2.83 directing the respondents to appoint the applicant to the post of Precision Mechanic before starting any appointment from fresh list.

3. The respondents in their reply raised preliminary objection regarding the jurisdiction of the Tribunal to maintain the petition as the cause of action arose either in the year 1977 or in the year 1979, the application was filed only on 1.11.91 and therefore the respondents submit that the application suffers from lack of jurisdiction, laches and limitation under section 21 of the Administrative Tribunals Act. He further submits, that during the relevant period according to the standing order that was in force on 3.4.73 the validity of select list was operative for a period of three months. However the said period of three months has been extended to six months in view of their letter dated 17.4.90, Exhibit R-2. The respondents submit that O.M. of Ministry of Home Affairs dated 8.2.83 had no retrospective effect. Therefore on both these accounts the application is liable to be dismissed. Further it is contended that there were only three vacancies for the post

of Precision Mechanic and these three vacancies were filled by S/Shri V.D. Dhadge, H.R. Hikre and S.C.Gorawara, as all these three employees were senior to the applicant. The third vacancy in the post of Precision Mechanic on 8th June, 1977 fell in the roster for a Scheduled Caste candidate and consequently, there being no Scheduled Caste candidate available to fill the post of Precision Mechanic, the post was de-reserved and filled by Shri S.C. Gorawara vide order dated 28.11.77 being senior to the applicant. Admittedly, both Shri S.C.Gorawara and the applicant belong to the general category and Shri Gorawara being senior in service to that of the applicant and he has been appointed to the post. The seniority position of the four persons selected on 8.6.77 is as follows:

Sr.No.	Name of the employee	Date of continuous officiation in the feeder post.
1.	Shri V.K. Dhadge	17.4.1965
2.	" H.R. Hikre	17.4.1965
3.	" S.C. Gorawara	01.5.1968
4.	" C.B.Sapkai	16.10.1970

In the circumstances, the respondents submit that the application is not only barred by time but also on merits he does not have any case to challenge the action of the respondents.

4. We have heard both the counsel and perused the pleadings. Admittedly, the cause of action arose in the year 1977 and the contention of the applicant that he had made repeated representations by itself does not keep alive the period of limitation.

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It was within his knowledge that ~~three~~ employees have been appointed as far back as 1977, It is requisite to the applicant, after making representation and non receipt of reply from the respondents to take proper action at that particular point of time. However, he did not resort to such a step. The learned counsel for the applicant draws our attention to O.M. dated 4.4.83 issued by Ministry of Home Affairs which reads as follows:

" There would be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies, either by the method of direct recruitment or through a Departmental Competitive Examination. "

Therefore, his contention is that before resorting to any other new recruitment, the respondents should exhaust the names of the panel listed in the year 1977. Admittedly, the applicant has not filed application for condonation of delay. However he draws our attention to the respondent's letter dated 6.2.90 wherein they have stated that since those who have passed in the year 1977 have already been promoted in the year 1977, that by itself does not save the period of limitation. Therefore, this does not help the applicant in any way. Besides that the O.M. referred to by the applicant's counsel does not in any way lead to re-opening of the case already decided according to the existing instructions or circulars and this does not take any restrospective effect. In the instant case the applicant was required to be appointed in 1977 and the O.M. was received in the year 1983. In this connection learned counsel for the respondent had drawn our attention to the decision of the Principal Bench in the case of V.M. Mehra V/s. the Secretary, Ministry of Information and Broadcasting

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New Delhi ATR 1986 CAT 203 wherein it has been held that:

" The Act does not vest any power of authority in the Tribunal to take cognizance of a grievance arising out of an order made prior to 1.11.1982. In such a case there is no question of condoning the delay in filing the petition but it is a question of the Tribunal having jurisdiction to entertain a petition in respect of grievance arising prior to 1.11.1982. The limited power that is vested to condone the delay in filing the application within the period prescribed is under section 20 provided the grievance is in respect of an order made within 3 years of the constitution of the Tribunal. The Tribunal has jurisdiction under sub-section 2 of section 21 to entertain an application in respect of any order made between 1.11.1982 and 1.11.1985."

5. In the light of the above, the present application relates to a grievance arising out of an order dated 1977, a date more than three years prior to the constitution of the Tribunal and this Tribunal has no jurisdiction/power to entertain the same.

6. Regarding the validity of the panel, the learned counsel for the respondents had drawn our attention to the decision of the Supreme Court in the case of State of Bihar and Ors. V/s. Secretariat Assistant Successful Examinees Union 1986 and Ors. wherein the Supreme Court has held that it is well settled that a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment. Empanelment is at best a condition of eligibility for purpose of

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appointment and by itself does not amount to selection or create a vested right to be appointed unless relevant service rule says to the contrary. A similar view has been taken in Shankarasan Dash V/s. Union of India. (1992-II LLJ-18)

7. In the light of the above, we are satisfied that on both counts, point of limitation as well as on merits, the applicant does not have any case to establish and hence we see no merit in the O.A. O.A is dismissed, but without costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

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