

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. : 904 OF 1992.
~~XXXXXXXXXXXXXXXXXXXX~~

Date of Decision : 7.7.95

Shri M.M. Shahane & 4 Others

Petitioners

Shri S.P. Saxena,

Advocate for the
Petitioners

Versus

Union Of India & Others

Respondents

Shri R. K. Shetty,

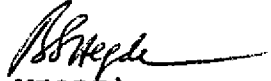
Advocate for the
respondents

C O R A M :

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

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?


(B. S. HEGDE)
MEMBER (J).

os*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 904 OF 1992.

Shri M. M. Shahane & 4 Others ... Applicants.

Versus

Union Of India & Others ... Respondents.

CORAM :

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

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

APPEARANCE :

1. Shri S. P. Saxena,
Counsel for the applicant.
2. Shri R. K. Shetty,
Counsel for the respondents.

JUDGEMENT

DATED :

7.7.98

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

1. The applicants are aggrieved by the orders of the Respondents dated 24.01.1992 exhibit A-1, exhibit A-2 vide dated 05.02.1992 and exhibit A-3 vide dated 17.02.1992 regarding combined seniority list of Chargeman Grade-II and accordingly prayed for the following reliefs :-

"(a) to direct the Respondents to consider the case of applicants for their promotion from their existing grade of Chargeman Gd.I (Mech) to Asstt. Foreman (Mech) by arranging a review D.P.C. immediately.

(b) to direct the Respondents to give all consequential benefits, including monetary benefits to the applicants from the date they are entitled for promotion to the post of Asstt. Foreman (Mech) or atleast from the date their juniors are promoted. "

2. Heard the Learned Counsel for the parties Shri S. P. Saxena for the applicant and Shri R. K. Shetty for the Respondents. The main contention on the part of the applicants is non-promotion and supersession by the juniors and their promotion from Chargeman Grade-I to Assistant Foreman (Mech.)

3. The Learned Counsel for the applicant, Shri Saxena, gone through the pleadings and submitted that Applicant No. 1 retired from service on 22.03.1993 whereas ^{1 retired in the year 1994, and applicants no 2, 3 & 5 are in service} applicant no. 2 to 5 retired in the year 1994. The admitted facts are, the applicant no. 1 though he retired on 22.03.1993, his juniors are given promotion in the year 1992 and the applicant was not considered. The respondents in their reply conceded that the applicant no. 1, applicant no. 2 and the applicant no. 5 could not be promoted vide Order dated 24.01.1992 as their records were not traceable whereas the applicant no. 3 Shri S. B. Hosur could not be considered despite being duly considered for promotions to the post of Chargeman Grade-I (Mech.) during the earlier DPC's because he was not found fit according to the classification on merits. However, he was promoted to the post of Chargeman Grade-I (Mech.) on 01.08.1981 whereas the applicant no. 4 Shri M.N. Ranavade although he was ordered promotion in the year 1980 to the post of Chargeman Grade-I, his promotion was cancelled and he was promoted only in 1982. The respondents in their reply have

categorically stated, vide their letter dated 07.05.1993 except the applicant no. 1 all others have been given proforma promotion to the post of Assistant Foreman ^{24.01.1992} w.e.f. (Mech.) after the disposal of the S.L.P. which was finally decided by the Supreme Court on 31.03.1993. In so far as the applicant no. 1 is concerned, it is not in dispute that the applicant has not been considered when his juniors were considered for promotion to the post of Assistant Foreman. The only plea taken by the Respondents, that when they considered the applications of other people, the applicant no. 1 retired in 1993, when the Board issued a letter clarifying the position.

Bye {
Admittedly, the persons who are promoted were juniors to the applicants and the applicants were superseded by the juniors for no fault of theirs. They made representation against the non-promotion to the post of Assistant Foreman but not received any reply. Admittedly, the applicants were senior enough in view of the annexure-3. In case the applicant no. 1's promotion order is not amended, he would be subjected to permanent monetary loss in terms of pension, gratuity, etc. As there is no disciplinary enquiry pending against the applicants nor any adverse remarks, it is just and proper that their case may be considered. It is clear from the Respondents telex message vide dated 27.02.1992 from the Headquarters stating that the applicants should be considered for further promotion as Assistant Foreman with effect from 24.01.1992. The stand taken by the

Prm

Respondents is contradictory in terms. At one stage they state that except applicant no. 1, other applicants were considered by the Review D.P.C. for the post of Assistant Foreman and to the same breath they state that the records of some of the persons could not be traced, as such, they could not be promoted, which stand cannot be sustained in the eye of law. However, during the course of hearing, the Learned Counsel for the respondents was good enough to state that insofar as the applicant no. 1 is concerned, he was not considered and the juniors were superseded without his candidature being considered. Regarding the arrears of monetary benefits, he is relying upon the judgement of the Supreme Court in PALURU RAMKRISHNAIAH & OTHERS V/S. UNION OF INDIA ((1989) 1 SCC (L & S) 375). The Apex Court held that it is the settled Service Rule, there has to be no pay for no work i.e. a person will not be entitled to any pay and allowances during the period for which he did not perform the duties of a higher post, although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. In the present case, since the applicants did not discharge the duties of the higher post, they cannot get the arrears of pay. There is considerable force in this contention. Since the applicant no. 2 to 5 were already given notional promotion which has been accepted by them without any objection, the question of arrears of pay does not arise.

4. Insofar as the applicant no. 1 is concerned, in the facts and circumstances of the case, we hereby

direct the respondents to re-consider the case of the applicant for his promotion from his existing grade of Chargeman Grade-I (Mech.) to Assistant Foreman from the date ~~his junior~~ has been promoted i.e. 24.01.1992 by convening a Review D.P.C. and if found fit, grant promotion in accordance with the law. This process be completed within a period of two months from the date of receipt of this order.

4. The O.A. is disposed of with the above directions. No order as to costs.



(P.P. SRIVASTAVA)
MEMBER (A).



(B. S. HEGDE)
MEMBER (J).

OS*