

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 966/92.

Date of Decision: 26-9-97

Shri M. Venugopalan, Applicant.

Shri S. P. Saxena, Advocate for
Applicant.

Versus

Union Of India & Others, Respondent(s)

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

CORAM:

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

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?

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 966/92.

Dated this FRIDAY, the 21st day of SEPT, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

M. Venugopalan,
R/at. 'Vini-Villa',
House No. 826, S.No. 52,
Dhanori,
Pune - 411 015.

... Applicant

(By Advocate Shri S.P. Saxena)

VERSUS

1. The Administrative Commandant
Station Headquarters,
Khadaki/Aundh,
Pune - 411 003.
2. The Commander
Head Quarters - Pune Sub-Area,
Pune - 411 001.
3. Adjutant General,
Army Head Quarters,
Staff Duty Directorate,
6-B, New Delhi - 110 064.
4. The Controllerate Of Defence
Accounts,
Southern Command,
Pune - 411 001.
5. Union Of India through
its Secretary,
Ministry Of Defence,
New Delhi.

... Respondents.

(By Advocate Shri R.K. Shetty)

: ORDER :

PER.: SHRI- M. R. KOLHATKAR, MEMBER (A)]

The applicant was appointed on 01.05.1971 in the Conservancy Establishment of Respondent No. 1 and was absorbed as a Sanitary Inspector in an existing vacancy w.e.f. 25.05.1978.

2. The Conservancy Establishment consists of various positions. The details of the positions are given in C.P.R.O. (Civil Personnel Rules and Orders) No. 669/52 on the subject of "Classification of Staff paid from contingencies (allotment under incidental and miscellaneous expenses, conservancy, grants, etc.) into 'regular' and 'casual' employees." According to Annexure 'B' to the C.P.R.O. No. 669/52, the regular employees are listed as below from which it is clear that 'Sanitary Supervisor' is a regular position.

1. Conservancy Sweepers.

2. Conservancy Mates and Kotwals.

3. Sanitary Staff (including Sanitary Overseers, Supervisors, Inspectors and Anti-Malaria Mates and Coolies).

4. Conservancy Store-Keepers and Store-holders.

3. Subsequently, S.R.O. 128 was notified on 03.04.1980. The title of the S.R.O. is 'Formation

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Headquarters and Station Staff Offices (Conservancy Staff) Recruitment Rules, 1980'. In this S.R.O. there is a post of General Supervisor but there is no post of Sanitary Supervisor. The General Supervisors are appointed by promotion from among the Store-Keepers and Accounts Clerks with regular service of 8 years in the grade. Thus, irrespective of C.P.R.O., there are no recruitment rules for 'Sanitary Supervisors'.

4. It appears that on 06.03.1981 the Board of Officers were convened at Station Headquarters, Kirkee for revision of Station Conservancy Establishment for the year 1981-82. It is stated that there was one post of Sanitary Supervisor in the year 1980-81 and the same post was required for 1981-82. There was a recommendation from the Board to the ~~X~~ that "the post of Sanitary Supervisor be filled by promoting one Sanitary Inspector from the present holding by way of selection post by a board of officers since no framed rules on the subject is in existence." The proceedings of this Board have not been placed in the O.A. but the same were produced before us by the counsel for the applicant at the time of arguments. It appears that subsequently a Board was assembled on 04.05.1981 inter-alia for selecting the candidates for the promotion to the post of Sanitary Supervisor from the post of Sanitary Inspector vide page 29 of the O.A. and the promotion was notified by the Order dated 10.06.1981 placed at Annexure 'D' page 27. Thereafter, a proposal was processed initially for arrears of difference of pay and allowance because the

post of Sanitary Supervisor was in the pay scale of Rs. 425-640 and the post of Sanitary Inspector was in pay scale of Rs. 330-560. There was however objection to the bill from the C.D.A., who took the stand that the post of Sanitary Supervisor has not been covered by the Authority of Army Headquarters. Therefore, the case was processed for the inclusion of designation of Sanitary Assistant and Sanitary Superintendent and its scale of pay in the revised pay scale. By the letter dated 04.02.1982 at page 44 of the O.A. it was stated that the statement of case has not been accorded to (sic). (approved - ?) by the Government. Thereafter, the case was processed for promoting the applicant (M. Venugopalan) for the post of Sanitary Assistant (Superintendent) and to draw the pay scale of Rs. 425-640 on promotion (page 49). By the Army Headquarters letter dated 06.12.1983, the case was turned down in the following terms :-

"Sub : Pay Scale Publication of Sanitary Assistant in Gazette.

1. Further to this HQ letter No. B/60333/9068 dated 28.10.1983.
2. The matter relating to framing of recruitment rules for the post of Sanitary Assistant and Sanitary Supervisor has been examined at this HQ in detail. Since only one post each of the aforesaid categories exist on the conservancy lists of Station HQ Pune and Station HQ Kirkee/Aundh and no other Stn HQs has such post, it is considered that framing of the recruitment rules of these categories is not necessary. Moreover duties of those categories can be performed by Sanitary Inspector/General Supervisor.
3. However, in the case of Station HQ Pune, if an individual is already holding the appointment of Sanitary Assistant/Sanitary Supervisor (Pay Scale Rs. 425-640) he may be allowed to continue till his retirement. Thereafter, the post may be allowed to lapse."

The applicant has essentially challenged this letter and the relief sought by him is to direct the respondents to implement the scale of pay of Rs. 425-640 in favour of the applicant

w.e.f. 01.05.1981 and to regularise the promotion of the applicant to the post of Sanitary Supervisor and to pay him the arrears of pay and allowance.

5. The applicant concedes that the cause of action arose to him on 06.12.1983 and he ought to have approached the Court shortly thereafter but he states that he was making repeated representations in the matter and the matter was also being taken up by the department and therefore, the delay may be condoned.

6. I am constrained to observe that the O.A. is hopelessly time barred and no cogent reasons are forthcoming as to why the applicant chose to file the O.A. so belatedly. The O.A. is, therefore, liable to be dismissed on the ground of limitation alone.

7. The respondents have opposed the O.A. It is contended by the respondents that, firstly the O.A. is hopelessly barred by time. Secondly, ^{on merits} since there was no approved post of sanitary supervisor with an attached scale with the Respondent No. 1, the question of promotion of the applicant to the post and to grant him the revised pay scale does not arise. So far as the proceedings relating to promotion of the applicant are

concerned, the contention of the respondents is that the applicant knew typing and, therefore, he was allowed to assist in the secretarial work in the office of Conservancy Establishment in addition to his own duties since October, 1979 and that the applicant has taken advantage of this position and has induced the concerned officers to hold an unauthorised meeting of the Board of Recruitment and issue necessary orders and thereafter, the applicant in his own handwriting made an entry in his own Service Book to the effect that he was promoted to the post of Sanitary Supervisor in the existing vacancy w.e.f. 01.05.1981, as recommended by the D.P.C. assembled on 04.05.1981 and approved by the Station Commander. It is contended that the originals of the alleged annexure 'C' to 'G' at page 25 to 34 of the O.A. are missing from the Office of the Respondent No. 1. Though the respondents also filed a M.P. No. 320/97 to direct the applicant to produce the originals of the documents referred to above, the applicant, in his reply to the M.P. denied these allegations and stated that all the documents that are annexed to the application would be available in the Office of the respondents. The respondents have further enclosed a copy of the Memorandum issued to the applicant for failure to handover the charge of his office vide Memorandum dated 16.11.1992 and 19/23.11.1992 placed at Annexures R-3 and R-4 to the written statement. The respondents have further contended that the Army Headquarters

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letter dated 23.03.1984 vide Annexure R-2 lays down the designation of the post and the yardstick for sanctioning the post in the Conservancy Staff. There is a list of various posts in the Conservancy Establishment such as Sanitary Mate, Land Supervisor, Accounts Clerk, Conservancy Store Keeper, General Supervisor and Sanitary Inspector but there is no post called Sanitary Supervisor in this order. Similarly, the sanction of the post vide dated 06.06.1981 also does not include any post called Sanitary Supervisor

8. According to the respondents, therefore, the applicant induced his superiors to process the case in his favour but the case was never approved by the C.D.A. and the Army Headquarters, and therefore, the question of appointment of the applicant to the post of Sanitary Supervisor does not arise. The respondents further contend that even assuming that a Board for ~~the~~ ^{was bonafide constituted} recruitment for the post of Sanitary Supervisor, the proceedings have to be treated as irregular because so far as the post of Sanitary Supervisor is concerned, there is no indication as to who were the other Sanitary Inspectors who were considered for the post alongwith the applicant. According to the respondents, there were two other Sanitary Inspectors senior to the applicant, namely;  Shri A.R. Bhosle and Shri P.S. Galgali appointed from

27.03.1978 and 25.05.1978 respectively, as against the applicant who was appointed on 16.06.1978, who ought to have been considered and since no such consideration has been given, the proceedings of the Board of Recruitment have to be termed as illegal.

9. The Tribunal in its order dated 11.10.1995 directed the Members of the D.P.C. namely; Lt. Col. P.P. Dureha, Major Boparai and Captain R.N. Aggarwal, to file an affidavit regarding the Constitution of D.P.C. as to whether it was constituted in accordance with the then existing rules/instructions.

10. Accordingly, the affidavits have been filed. Lt. Col. P.P. Dureha, has stated that he was detailed as a Presiding Officer of Board consisting of two other officers and that in pursuance of the above convening order, the D.P.C. was held on 04.05.1981 and that he was not aware as to whether a sanctioned post of Sanitary Supervisor was existing or not. Lt. Col. M.S. Boparai has stated that the Board of Officers under the orders of Station Commander, Kirkee, was ordered on 04.05.1981 to recommend the promotion of certain category in Station Headquarters, Kirkee, including the applicant. Major R.N. Aggarwal, has stated that the D.P.C. of 04.05.1981 was held due to the retirement of the person holding

the post of Sanitary Supervisor and that the letter intimating the abolition of Sanitary Supervisor post by higher authorities was received much later, after the D.P.C. Board meeting and that once the post itself was abolished by the higher authorities, therefore, the D.P.C. of 04.05.1981 itself becomes infructuous.

11. From the affidavits it is clear that the D.P.C. was duly convened but there is a doubt regarding existence of a sanctioned post of Sanitary Supervisor. The C.D.A.'s letter dated 22.02.1983 at page 53 clearly states that according to Army Headquarters letter, the post has been converted into permanent one for the limited purpose of giving pensionary benefit to the previous incumbent after his retirement. The previous incumbent was one Shri Jagannath Bhosale (different from Shri A.R. Bhosale referred to above) who retired on 28.02.1981. The question therefore is, whether in the absence of a sanctioned post, which position became clear to the Respondent No. 1 in December 1983, this Tribunal may direct promotion of the applicant to the non-existent post and payment of salary of the same to be made.

12. I am not at all inclined to accept the contention of the respondents that the applicant has somehow persuaded his superior officers to do his bidding. The

correspondence enclosed by the applicant shows that the case was being perused by the higher authorities and the respondents have not denied that other than pages from 25 to 40 of the O.A., the other correspondence is non-existent. Therefore, without going alongwith the say of the respondents that the whole case of the applicant is a made-up one, I am required to take a view on the question of the right of the applicant to promotion to a post which was not sanctioned. I am not required to go into the vires of S.R.O. 128 of 1980 because we have not been addressed on this aspect and therefore, taking S.R.O. 128 as it reads and the correspondence on record, I am required to hold that there was no sanction for the post and that, although the department had proposed the creation of the post with an approved pay scale, the same did not materialise and, therefore, the question of granting any relief in favour of the applicant does not arise. The O.A. is, therefore, liable to be dismissed on merits also.

13. There are, however, certain factual discrepancies in the contention of the respondents relating to the so-called seniors to the applicant. According to the documents filed by the respondents, namely; exhibit R-10 to the reply, it is seen that the applicant was appointed w.e.f. 01.10.1971 and was made permanent w.e.f.

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25.05.1980. Shri A. R. Bhosale, however, was appointed w.e.f. 27.03.1978 and Shri P.S. Galgali was appointed with effect from 25.05.1978. Shri A.R. Bhosale, was not made permanent but was made quasi-permanent on 27.03.81 i.e. later than the applicant. Shri Galgali was also made quasi-permanent w.e.f. 25.05.1981. It is, therefore, difficult to accept the contention of the respondents that there were two Sanitary Inspectors senior to the applicant and therefore, the applicant could not have been promoted if the Recruitment Board had followed the criteria of seniority-cum-fitness. However, the essential point is that, there is no evidence that the Board considered candidates other than applicant and that there was in any case any sanctioned post.

14. The O.A. is, therefore, dismissed with no orders as to costs.

M.R. Kolhatkar

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

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

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