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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 1213/92

Transfar Application No:

DATE OF DECISION: 12.4.94

Shri A. K. Verma Petitioner

Applicant in Person. Advocate for the Petitioners

Versus

Union of India & Others Respondent

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

CORAM :

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

The Hon'ble ~~Smt.~~ Smt. Lakshmi Swaminathan, Member (J)

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)

12/4/

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. No. 1213/92

Shri A. K. Verma  
E 1/3 C.G.S. Colony,  
L. B. S. Marg,  
Ghatkopar (West),  
Bombay - 77.

... Applicant

Vs.

Union of India, through Secretary,  
Ministry of Textiles,  
Government of India,  
Udyog Bhavan, New Delhi & Oth.

... Respondents

CORAM : Hon'ble Shri M. R. Kolhatkar, Member (A)  
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Appearance :

Applicant in person.

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

JUDGMENT

Date : 12-4-94

( Per : Hon'ble Shri M. R. Kolhatkar, Member (A) )

The facts of the case are as below. The Applicant was originally appointed through UPSC to the post of Dy. Director (Non-Technical) w.e.f. 1.7.1974 in the office of Textile Commissioner, Govt. of India with head quarters in Bombay. On 28.6.78 he was promoted to officiate as Director (Non-Technical). He continued as such and thereafter worked in the same grade on foreign service terms from 16.7.80 to 26.7.83. He was regularized in the grade from 10.10.1984 in consultation with UPSC. The next promotion is to the post of Director (Non-Technical)/Sr. Enforcement Officer. Dy. Director (Non-Technical) with 5 year's regular service in that grade is eligible for promotion to the post of Director (Non-Technical) of which there are 2 posts. There is a third post called Sr. Enforcement Officer (now called Director Enforcement) which is filled by transfer of Director (Non-Technical) initially

promoted as mentioned above and such transfer does not require DPC <sup>is</sup> or UPSC's concurrence. The next promotion posts are Joint Textile Commissioner (cotton) (earlier called Adviser (cotton)), Joint Textile Commissioner earlier called Jt. Textile Commissioner (Personnel) and Joint Textile commissioner (Economics). Joint Textile Commissioner (cotton) is the promotion channel of Director (cotton), Director (N T)/Senior Enforcement Officer. The post of Joint Textile Commissioner is to be filled up by transfer on deputation or by promotion failing which by Direct recruitment. In case of promotion, departmental Directors (Non - Technical), Director (cotton), Director (Production and Development), Director (chemical proceesing) and Director (Enforcement) with 3 years' regular service are eligible to be considered. The next promoted post of Joint Textile Commissioner is that of Additional Textile Commissioner which is to be filled in by transfer on deputation or promotion and in the case of promotion, Departmental Joint Textile Commissioners with 5 years' service in the grade are eligible to be considered.

2. The purpose of enumerating this hierarchy of promotional posts has a bearing on the "consequential benefits" which is the main relief claimed by the Applicant in this O.A. The case has a long background going back to the decision of this Tribunal in OA 101/86 decided on 10.6.1988. The dispute was about proper

fixation of seniority of the Applicant for purpose of considering him for promotion as Joint Textile post Commissioner which was to fall vacant in Oct. 1989.

The relief was declined. Against this decision, the Applicant went in the SLP No. 4237/88 to the Supreme Court which disposed of the same on 16.8.1989 by the following order :-

"In the result, we allow the appeal, reverse the judgment of the C.A.T. and issue a direction to Respondent No. 1 to consider the case of Appellant for regularization (in the cadre of Director (NT) with effect from December 24, 1982 ("On which date the other substantive post of Director (NT) became available for which the Appellant may make a legitimate claim") If he is found suitable, he should be regularized accordingly with all the consequential benefits".

3. In terms of the order of Hon'ble Supreme Court, it is not disputed that Respondents have taken following action:

- i) Vide Department's letter dated 12.3.1990, competent authority has approved. Applicant's appointment to the post of Director (NT) w.e.f. 24.12.82 instead of 10.10.1984.
- ii) On the recommendation of review DPC, competent authority approved the appointment of Applicant to the post of Joint Textile Commissioner (cotton) w.e.f. 21.5.1986 on notional basis instead of 1.1.1990 vide order dated 14.8.1991.
- iii) It was directed that Applicant's pay shall be notionally fixed w.e.f. 21.5.1986 accordingly

but the benefit of fixation of pay shall be given to him w.e.f. 1.1.1990, the date from which he actually started discharging the duties of the pos of Joint Textile Commissioner.

4. The applicant felt that this was not adequate compliance with Supreme Court's order. Since he had officiated in the post of Director NT from 28.6.78 till 16.7.1980 and thereafter worked in the same grade on foreign service terms from 16.7.1980 to 26.9.1983, ~~in~~ terms of FR 113(1) and instructions contained in DOP's O.M. Dated 30.12.1976, his tenure on foreign service terms is be counted for purposes of eligibility and promotion to the higher grade. Hence he should be regularised as Director (NT) from a <sup>secondly</sup> much earlier date. ~~the~~ the post of Joint Textile Commissioner (cotton) fell vacant on 1.4.1984 and he was the only condidate eligible on that date. Hence he should be considered for promotion to that post from that date i.e. from 1.4.1984, instead of 21.5.1986 as is done. Moreover, the post of Additional Textile Commissioner fell ~~vacant~~ on 10.8.1988 and he may be considered for it w.e.f. 1.4.89. He would also like arrears of pay and allowances to be given ~~as~~ this basis rather than notional pay fixation.

5. The Applicant sent a representation on 16.1.1992 along these lines. The same was turned down by ~~Department of Textile's~~ letter dated 6.3.1992.

6. Against this, the Applicant approached the Supreme Court which by its order dated 22.10.1992, observed that the appropriate remedy for the petitioner at this stage is to file a fresh application before the

Tribunal. Hence this O.A.

7. The ~~prayers~~ of the applicant are as below:

(a) This Hon'ble Tribunal will be pleased to call for the records and proceedings which led to the issuance of the impugned order dated 6th March 1992 (Exhibit 'J') and after considering validity, propriety and constitutionality, quash and set aside the same.

(b) This Hon'ble Tribunal will be pleased to hold and declare that the Applicant is promoted as Joint Textile Commissioner (cotton) from 1.4.1984 and Additional Textile Commissioner from 1.4.1989 with payment of arrears of pay with interest of 18% per annum or Joint Textile Commissioner (P) w.e.f. 16.7.1983 and "Additional Textile Commissioner" from 16.7.1988 with pay arrears and interest @ 18% per annum.

It would be seen from above that the matters for decision before us are within a narrow compass. We have to keep ~~in~~ view the order of Hon'ble Supreme Court dated 16.8.1989 and consider whether ~~the~~ Department has given consequential benefits to the applicant in terms thereof.

8. The first contention of the Applicant is that although ~~the~~ Supreme Court directed consideration of regularization of the Applicant as Director (NT) with effect from 24.12.1982 on the basis of the data presented to it, his regularization could be considered from ~~an~~ even earlier date viz. 26.9.79 under following circumstances : Shri R. K. Kulkarni, his senior,

(b)

officiated in the post Sr. Enforcement Officer in the grade <sup>from</sup> 28.6.1978 and worked in that post on regular basis from 8.2.1979. The post of Sr. Enforcement Officer was released by him on 18.8.1980, when Shri C. Shridharan, his immediate senior was regularised as Adviser (cotton). The post of Adviser (cotton) was vacant since 26.9.1979. Had the DPC taken place as per rules the post of Sr. Enforcement Officer would have been released by Kulkarni earlier, Sr. Enforcement Officer's post does not require any consultation with UPSC as per recruitment rules. In spite of this, UPSC was consulted entailing avoidable delays, and great disadvantage to the petitioner.

9. The Respondents have conceded that the post of Adviser (cotton) became available a 26.9.1979. However, the vacancy arose consequent on promotion of the incumbent which could not be foreseen. Moreover, the vacancy was open to outsiders as well as to eligible Departmental candidates. Holding DPC necessarily involved forwarding DPC proposal by the office of Textile Commissioner to Ministry and UPSC. After the completion of these formalities DPC was held on 18.8.1990. Hence there was no delay. So far as consultation with UPSC was concerned, it necessitated because commission specifically by their letter dated 20.1.1982 asked for a separate proposal for regular transfer of Shri R. K. Kulkarni to the post of Sr. Enforcement Officer. The Commission recommended Shri Kulkarni's name for appointment to the post of Sr. Enforcement Officer

(B)

w.e.f. 24.12.1982. Respondents have pointed out that the Hon'ble <sup>Supreme</sup> Court has already considered all aspects and clearly indicated that it was from ~~this~~ date that Applicant could claim regular appointment as director (NT). At the stage of argument, counsel for Respondent contended that the date of regularisation of Applicant ~~after~~ having been finally decided by Hon'ble Supreme Court, the matter cannot be re-opened in view of the principle of res judicata. The contention of the Applicant in the rejoinder <sup>is</sup> that this fact was missed by the Hon'ble Supreme Court due to paucity of time at the time of hearing and in the interest of justice this needs to be <sup>remedied</sup> ~~repaired~~. At the argument stage, the Applicant has contended that Hon'ble Supreme Court has not expressed any ~~opinion~~ on merits on this aspect of the matter and the principle of res judicata does not apply.

10. Since in terms of recruitment rules ~~then~~ prevailing, the post of Adviser (cotton) was open to deputationists as well as departmental officers and Departmental Officers ~~comprised~~ Technical Officers as well as non-technical officers ~~as~~ the Applicant is, ~~thus~~ making the field of choice wider ~~end~~ since the Applicant's claim to seniority ~~rests~~ essentially on his eligibility in terms of his being a departmental officer, the second leg of the Applicant's argument for a deemed date of regularisation prior to 24.12.1982 rests on the fact that in the DPC held on 27.2.1991 consequent on the Supreme Court ..8..

(PA)

Judgment the DPC decided as below :

"Accordingly the committee examined the character rolls of Shri A.K. Verma and assessed him as "very good". On the basis of this assessment the committee recommended that the name of Shri A.K. Verma may be included in the panel prepared by the DPC which met on 21.5.1986 above Shri V. B. Verma."

Earlier, Shri V.B. Verma was senior to the Applicant vide Annexure 'D' to the Application. Now as per the data given by the Respondents at Page 10 of their written statement, the regular vacancy in the post of Director (NT) arose on 1.9.1979 and although he was regularised in that post on 11.6.1982, he could have been as well regularised from the date of vacancy viz., 1.9.1979. Now, the Applicant relying on the fact that subsequently, i.e. on 27.2.1991 the Applicant was on merit, treated as senior to Shri V. B. Sharma ought to have been regularised in the post of Director (NT) from 1.9.1979. According to him, his case for such regularization is stronger because unlike the post of Adviser (cotton), the post of Director (NT) was open only to Departmental Deputy Directors and as on 1.9.1979 he had completed more than 5 years' regular service as Dy. Director, having been appointed on 1.7.1974.

11. Continuing the parallel with Shri V.B. Verma, the Applicant states that he could have been given national promotion to the post of Joint Textile Commissioner not from 21.5.1986 but from 1.4.1984 because it was on that date that the vacancy arose and Shri V.B. Sharma who has been declared by DPC

(B)

in 1991 to be junior to him was appointed to the post on ad-hoc basis from 22.10.1984. The difficulty with this line of reasoning is that the Applicant's appointment as Director (NT) on 28.6.1978 was ~~on~~ ad-hoc basis. His services were regularized as per Supreme Court directions only from 24.12.1982 and on 1.4.1984, he cannot be said to have completed 3 year's service which is the minimum length of service required. ~~Here~~ applicant relies on his foreign service from the period 16.7.1980 to 20.7.1983 and quotes FR 113- which reads as below :-

" A Government servant transferred to foreign service shall remain in the cadre or ~~cadres~~ in which he was included in a substantive or officiating capacity immediately before his transfer and may be given, subject to the conditions prescribed under the second proviso to Rule 30 (i), such substantive or Officiating Promotion in these cadres as the authority competent to order promotion may decide. In giving promotion, such authority shall also take into account the nature of the work performed in foreign service".

12. The definition of ~~"officiate"~~ as given at FR 9(10) is: ~~to~~ \_\_\_\_\_

" A Government servant officiates ~~in~~ a post when he performs the duties of a post on which another person holds a lien. The Central Government may if ~~it~~ thinks fit, appoint a Government servant to officiate in a vacant post on which no other Govt. servant holds a lien! The Applicant ~~contends~~ that he was officiating as Director NT w.e.f. 28.6.1978. He was on foreign service from 16.7.80 to 26.9.1983. By applying FR 113 & O.M. dated 30.12.1976, the Applicant should have been appointed as Joint Textile

Commissioner(cotton) when the said ~~vacancy~~ arose on  
1.4.1984. The O. M. dated 30.12.1976 reads as  
follows :

"Very often a certain number of years of service in the lower grade is prescribed as a condition for becoming eligible for consideration for promotion to a higher post/grade. In such cases, the period of service rendered by an officer on deputation/foreign service, should be treated as comparable service in his parent Department for purpose of promotion as well as confirmation. This is subject to the condition that the deputation/foreign service, is with the approval of the competent authority and it is certified by the competent authority that but for deputation/foreign service, the officer would have continued to hold the relevant post in his parent department."

According to the Applicant, by applying the FR 113 and OM. of 1976 the petitioner was qualified for the said post on 16.7.1983. The next promotional post is that of Additional Textile Commissioner (General).

The said vacancy was available on 9.8.1988. The Applicant was qualified to be considered for the said post either on 16th July 1988 or on 1.4.1989.

13. Respondents take as their point of departure the date of regularization as directed by Supreme Court viz. 24.12.1982. On that basis, according to them, as on 22.10.1984, Applicant was not eligible to be considered for promotion to the post of Adviser (cotton) as he had

not completed 3 year's service. Moreover, as per the situation then obtaining, Shri V. B. Verma was senior to Shri A. K. Verma and promotion on ad-hoc basis is generally allowed ~~on~~ the basis of seniority cum - fitness, not on merit.

14. Regarding FR 113 and ~~Office~~ Memorandum dated 30.12.1976. Respondents state that they are irrelevant because they do not deal with the issue of date of regular promotion in the parent cadre. The appointment of Shri Verma ~~as~~ Director (NT) w.e.f. 22.7.1978 was purely ~~on~~ ad-hoc basis and his subsequent foreign service was in continuation. His service in the grade can be counted only from 24.12.1982. He has been given notial promotion as Joint Textile commissioner only ~~from~~ 21.5.1986. The post of Additional Textile Commissioner fell vacant only on 19.8.1988 on which date. Applicant had not completed prescribed period of 5 years. Hence, Application it is said, should be rejected.

15. We have considered the rival contentions. The case of the Applicant rests on going behind the date of regularization determined by the Supreme Court. Apart from the principles of res judicata, even on merits, we are unable to accept the contentions of the Applicant for dating back regularization to 21.9.1979 or 1.9.1979 and on that basis to work out revised dates of subsequent promotions for ~~following~~ reasons :-

1. The Applicant has treated the process of

promotion as a sort of an automatic mechanical process in which officers are deemed to have been promoted on the expiry of a stated number of years. His contentions are, therefore, purely hypothetical and unrealistic. Respondents have rightly pointed out that ~~outcome~~ of selection process is not foreseen and it involves certain procedural formalities which cannot be short - ~~circulated~~ ~~telescoped~~ or wished away.

2. The contentions based on decision of a subsequent DPC to treat Shri V. B. Verma as junior to Applicant cannot but be called fanciful. It was only the review DPC dated 27.2.1991 which made the revised assessment. This revised assessment is relevant only for the limited purpose of giving a ~~notional~~ date of promotion to Applicant in the context of Supreme Court Judgment. The assessment cannot relate back to the situations in 1979 or 1982 or 1984.

3. The case of Applicant ultimately rests on treating him to have been regularly appointed on 28.6.78. However, the distinction between ad hoc service and regular service cannot be wished away. The fact is that the Applicant was appointed Director N T on 28.6.78 ~~on~~ ad hoc basis vide the telex ~~intimation~~ from Government of India to Textile Commissioner No. 2653 dated 27.6.1978. This appointment could not have been as per rules because Applicant ~~had~~ not completed minimum 5 year's service nor was a regular vacancy available. In ~~his~~ rejoinder, Applicant has made a statement that he had worked in the grade of Dy. Director (NT) Since 1.1.1972. Annexure 4

filed by Applicant shows that he was appointed ~~as~~ 9  
Dy. Director by order dated 18.4.1974 and he appears to  
have joined on 1.7.1974. In view of the judgment of  
Hon'ble Supreme Court in the case of Union of India  
Vs. S. K. Sharma (1992 (3) SLJp 7) an ad-hoc service  
not made as per rules cannot be counted for seniority  
is  
even if it ~~is~~ followed by regularisation.

4. The reliance of Applicant ~~on~~ FR 113 & O.M.  
dated 30.12.1976 is misplaced because it proceeds on the  
assumption that the Applicant's appointment on 28.6.1978  
was a regular one which was not a fact.

14. We, therefore, see no merit in the application  
and dispose of the same by passing the following order.

O R D E R

Application is dismissed as being devoid of  
merit. No order as to costs.

Lakshmi Swaminathan  
(Lakshmi Swaminathan)  
Member (J)

M. R. Kolhatkar  
(M. R. Kolhatkar)  
Member (A)