

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1325/92

Date of Decision: 03/10/97

A.S.Gill

Applicant.

Shri G.K.Masand

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar


Advocate for
Respondent(s)


CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

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

- (1) To be referred to the Reporter or not? *Yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*


(P.P.SRIVASTAVA)
MEMBER (A)


(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO. 1325/92

this the 3rd day of October 1997

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

Avtar Singh Gill,
R/o Flat No.5349/145,
4th floor, Sector VII,
SM Plot, Antop Hill,
Wadala, Bombay 400 037.

By Advocate Shri G.K.Masand ... Applicant

V/S.

1. Union of India through
the Secretary in the
Ministry of Defence,
New Delhi.

2. Admiral Superintendent,
Naval Dockyard,
Bombay 400 023.

By Advocate Shri V.S.Masurkar ... Respondents
C.G.S.C.

ORDER


(Per: Shri P.P.Srivastava, Member(A))

The applicant was removed from service after enquiry in a disciplinary case on 4.11.1971. After exhausting the statutory appeal, the applicant filed a Suit in the City Civil Court No.1830 of 1976. The same got transferred to the Tribunal and was numbered as TA.No. 419/87. This TA was finally decided by judgement dated 4.8.1988. The Tribunal set aside the removal order and directed reinstatement of the applicant in service within two months from the date of receipt of a copy of the order with all conse-



quential benefits including arrears of pay and allowances from the date of removal till the date of reinstatement in service.

2. The applicant was reinstated in service on 17.10.1988 on the post which he was holding at the time of his removal from service in 1971. According to the applicant, since the judgement was not implemented fully, the applicant filed contempt petition on 6.7.1989. The contempt petition was disposed of by the Tribunal on 22.6.1989 with the order that the respondents were directed to take all the necessary steps for considering the case of the applicant for promotion to higher post/posts and pass appropriate orders within three months from the date of receipt of a copy of the order. After this order, the respondents issued letter dated 8.8.1989 to the applicant informing him that a Special departmental qualifying examination for promotion to the post of Foreman (ICE) was to be held on 9.8.1989 and the applicant was requested to appear in the said examination. The applicant did not appear in the examination and sent a letter dated 9.8.1989 which is placed as Exhibit-'D', wherein the applicant had mentioned that there is no question of his appearing in the examination as he should be considered for promotion for the post of Foreman (ICE) in 1969 on the basis of rules as existing then which did not envisage any written qualifying examination. The representation of the applicant was considered by the respondent administration and the administration mentioned that the applicant will have



to pass the departmental examination before promotion. The respondent administration also brought out in the reply that since the new recruitment rules envisaging written qualifying examination has come into force from November, 1975 all others including Shri R.V. Thakur had ^{also} appeared in the examination before being promoted.

3. After some more correspondence when the applicant did not get the relief, he filed OA.NO. 951/89 for being considered for promotion.

This OA. was finally decided on 10.10.1991 wherein the Tribunal has ordered as under :-

" Accordingly, we direct that in case two vacancies were available on 25.7.1972 the applicant be promoted notionally with effect from the date when the person at No.1 was promoted. The applicant would be entitled to the consequential benefits."

Since the applicant was not satisfied with the response from the respondent administration, he filed contempt petition for implementing the judgement in OA.NO.951/89. That contempt petition was numbered as C.P.No.55/92. This contempt petition was dismissed by the Tribunal

holding that there is no contempt on the part of the respondents to circumvent the orders of the Tribunal. It was mentioned in the order in contempt petition that :-

"We, however, make it clear that it will be open to the applicant to seek such remedy as may be available to him under the law."



The applicant has, therefore, approached the Tribunal through this OA. and has prayed for following relief :-

"That this Hon'ble Tribunal will be pleased to direct the respondents to faithfully implement the judgement dated 4.8.1988 given in T.A.No.419/87 by promoting the applicant to the post of Foreman in the vacancy which was existing in the year 1971 or in the year 1972 and to further promote the applicant to higher posts of Sr.Foreman and Civilian Technical Assistant as and when he became eligible along with his juniors in the respective grades."

4. The respondent administration has produced the original record of the DPC proceedings by which the applicant was considered in a review DPC. The applicant was interpolated after the name of D.D.Paradkar and before the name of R.V.Thakur. The selected seniority list therefore read as D.D.Paradkar, A.S.Gill, R.V.Thakur, B.S.Pandit and T.B.Nair. The record shows that for the post of Inspector(ICE), there is only one existing vacancy, two chain vacancies and one unforeseen vacancy. This factor had also been noticed by the Tribunal while deciding the C.P.No.55/92 in OA.NO.951/89. In para 3 the Tribunal had mentioned that :-


"On perusal of the proceedings of 25.7.1972, it is apparent that really there was only one vacancy. However, the Departmental Promotion Committee on that day also took into account the three expected vacancies."



Thus, it is clear from the record that there was only one vacancy when the selection was held on 25.7.1972. Since the judgement in OA.NO.951/89 specifically mentioned that "we direct that in case two vacancies were available on 25.7.1972, the applicant be promoted notionally with effect from the date when the person at No. 1 was promoted", since and we have already mentioned that there was only one existing vacancy on 25.7.1972 as brought out in the record of selection proceedings, the applicant is not entitled to the promotion in terms of the judgement of this Tribunal in OA.NO.951/89.

5. Learned counsel for the applicant has further argued that the applicant could not have been placed below Paradkar as Paradkar was junior to the applicant and in terms of the rules, once a person is found unsuitable ^{he required to be} ~~is~~ placed ^{in the panel} according to the seniority. Ld. counsel for the applicant has submitted that the rules then existing were different and if a person is rated more meritorious then he will gain seniority. From the record, it is seen that Paradkar was junior to all the persons, i.e. the applicant, Pandit and T.B. Nair but is at the top by virtue of ^{being rated as} ~~is~~ "Very Good". ^{to the placing of Paradkar at No.1} The challenge ~~is~~ not available to the applicant now ^{in this OA.} as the issue involved ~~is~~ not the correctness of the selection held in 1972 but the right of the applicant which flows out of the judgement of this Tribunal in



the OA.NO.951/89. It has also been argued by the
ld. counsel for the applicant that the applicant
could not have been ordered ^{for} appearing in the written
examination as he was entitled to promotion on the
basis of rules ^{then} existing. 

The learned counsel for the respondents
has brought out that all the persons in selection
list were only promoted on adhoc list and later on
Paradkar, Pandit and Nair have qualified in the
written test before being regularly promoted. It
is also brought out that Paradkar was also reverted
and later on promoted on 22.4.1977 after passing the
qualifying examination.

6. After considering the arguments of both
the parties on this issue and perusing the record,
we are of the opinion that the right of the applicant
could not have been more than those who were on the
panel at that time. Since all other employees, i.e.
Paradkar, Pandit and Naik had to pass examination
before promotion, the applicant cannot say that he had
to be promoted without passing the examination.

The applicant has
failed to appear in the examination and the applicant
had declined to appear in the examination as already
mentioned above and, therefore, he has no claim for
being promoted vis-a-vis his juniors since he has not
passed the examination, and ^{since} all his juniors have been

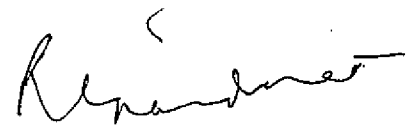


promoted only after passing the qualifying examination. The question of vacancy existing on the date of D.P.C. i.e. 25.7.1972 is also decided by us in Para⁴ above that according to the record only one vacancy was there, therefore, in terms of the decision in OA.NO.951/89 also, the applicant cannot be promoted.

7. In the result, we see no merit in the case of the applicant. The OA. is dismissed with no order as to costs.


(P.P.SRIWASTAVA)

MEMBER (A)


(R.G.VAIDYANATHA)

VICE CHAIRMAN

mrj.