

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 1341/92

Transfer Application No.

Date of Decision 17.8.95

T.N. Dubey Petitioner/s

Shri G.R. Menghani Advocate for  
the Petitioners

Versus

Union of India and others. Respondent/s


Shri V.S. Masurkar Advocate for  
the Respondents

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 ?

  
(B.S. Hegde)  
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 1341/92

T.N. Dubey

... Applicant.

V/s.

Union of India through  
The Secretary to the  
Government of India,  
Ministry of Finance  
Department of Economic  
Affairs, North Block,  
New Delhi.

General Manager,  
India Security Press  
Nasik, Road,  
Nasik.

Shri M.S. Pandey

Shri G.V. Karankal

Shri G.T. Chaure

Shri K.K. Pathak

Shri V.B. Malve

Shri R.M. Bagade

Shri A.D. Salunke

Shri D.R. Tolani

Shri B.B. Sarkar.

... Respondents.

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

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

Appearance:

Shri G.R. Menghani, counsel  
for the applicant.

Shri V.S. Masurkar, counsel  
for the respondents.

JUDGEMENT

Dated: 17.8.95

{ Per Shri B.S. Hegde, Member (J) }

Applicant has filed this O.A. challenging the seniority list for the post of Inspector Control, wherein the applicant has been shown junior to respondent Nos 3 to 11 and he seeks promotion to the post of Deputy Control Officer with effect from the date his immediate junior was promoted to the post of Dy. Control Officer.

2. The applicant has joined as Apprentice Control Assistant on 2.10.66. Thereafter he was appointed as Assistant Inspector Control with effect from 17.8.67 and confirmed in that post with effect from 10.4.70. Thereafter he has been promoted as Inspector Control with effect from 27.1.75 and confirmed in that post with effect from 2.4.79. In 1978 the Departmental Promotion Committee was convened for considering the candidates for confirmation. In that D.P.C. respondent No.5, Mata Shankar Pandey alongwith other respondents were confirmed in the post of Inspector Control with effect from 1.9.78 whereas applicant was confirmed with effect from 2.4.79. In fact, the applicant was considered by the D.P.C. for confirmation in the post of Inspector Control in the year 1978, but was not found suitable for confirmation. Accordingly, he was confirmed only on 2.4.1979, thereby he became junior to his other colleges.

3. The next promotion is that of Deputy Control Officer. Respondent No.5 was promoted to that post with effect from 20.4.82. This promotion has been challenged by the applicant by filing O.A. 426/86 which was ultimately disposed of by the Tribunal on 10.12.87 stating that the post of Deputy Control Officer is a selection post and that only one vacancy exists and 5 persons were considered for the post by the D.P.C. and respondent No.5 was selected. It was stated that on account of his junior placement in the seniority list he was not amongst those 5 persons and it is for this reason his case could not be consider by the D.CP. However a direction was given to the respondents that if the

next vacancy arises applicant's case should be considered if he falls within the zone of consideration. It may be re-called that the applicant, as far back as 1981 itself had known that because of his late confirmation he has been pushed out from the select list. The applicant has not made any grievance of date of confirmation.

4. Heard the learned counsel for both the parties and perused the records.

5. The applicant is relying upon the seniority list of feeder cadre i.e. (Exhibit A-1) wherein the applicant was shown above Shri Pane and others but admittedly he was confirmed in the post of Inspector Control later than Mr. Pandey and others who are shown as juniors, but confirmed earlier than the applicant. It is shown that the Deputy Control post is a selection post, promoting a junior in a selection post that by itself does not amount to supersession, none has a legal right to be promoted though <sup>he</sup> has a right to be considered for promotion. It is on record that adverse remarks have been passed against the applicant for the year 1975-1976 ; therefore, he has not been considered for promotion in 1978 along with others besides confirmation of others shown earlier than the applicant. In the matter of promotion by selection, Senior/Junior does not arise, it depends upon the ACRs and merits of candidate. Therefore, it is not open to the applicant to claim promotion on the basis of his seniority in the feeder cadre as against his juniors in the cadre who are eligible to be considered. Admittedly respondent Nos 3 to 11 were confirmed in the post of Inspector Control earlier than the

applicant and therefore, they have become senior to the applicant. This fact is known to the applicant in the year 1978 when others were confirmed. Therefore, it is not open to the applicant to challenge the seniority list for the post of 'Inspector Control' at this belated stage i.e. after a lapse of 14 years. Since the subject matter is adjudicated by the order dated 10.12.87, it is not open to the applicant to re-agitate the matter once again on the same ground. The application is not only time barred under Section 21 of the Act but also liable to be dismissed on the ground of resjudicata as the applicant's grievance has already been dismissed earlier in O.A. 426/88 on merits.

6. After giving our anxious consideration to the facts and circumstances of the case and contentions made by the respective counsel for the parties we see no merit in the O.A. and the same is liable to be dismissed. Accordingly, we dismiss the O.A. but no order as to costs.

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

B.S. Hegde  
(B.S. Hegde)  
Member (J)

NS