

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
(CAMP: NAGPUR)

Original Application No: 234/92.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

DATE OF DECISION: 09.12.1994.

Shri Balwant Digambar Bhaley, Petitioner

Shri B. J. Kawade, Advocate for the Petitioner

Versus

Union Of India & Others, Respondent

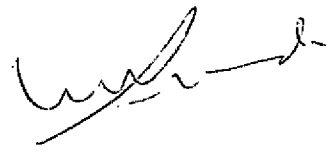
Smt. Indira Bodade, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

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

1. To be referred to the Reporter or not ? *no*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *no*


(M. S. DESHPANDE)
VICE-CHAIRMAN.

O.A. NO.: 234/92.

Shri Balwant Digambar Bhaley ... Applicant

Versus

Union Of India & Others ... Respondents.

CORAM :

Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

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

APPEARANCE :

1. Shri B. J. Kawade,
Counsel for the applicant.
2. Shrimati Indira Bodade,
Counsel for the Respondents.

ORAL JUDGEMENT :

DATED : 09.12.1994.

Per. Shri M. S. Deshpande, Vice-Chairman I.

1. The only controversy at this stage is, whether the applicant ^{who} belongs to Scheduled Caste and was at Sl. No.7 in the merit list which was prepared in August 1990, should have been promoted when others came to be promoted by the order dated 04.09.1990. The applicant came to be promoted after having been empanelled on 12.11.1991 by an order subsequently passed.
2. The applicant's contention is that, since there were ten vacancies for Scheduled Castes and he had already been empanelled in the panel prepared in August 1990 at Sl. No. 7, he should have been granted promotion with effect from 04.09.1990.

(X)

3. The contention of the Respondents is that, sufficient number of vacancies were not available for the reserved category of Scheduled Caste and Scheduled Tribe candidates. The applicant was at Sl. No. 7 in the merit list, while one Shri Naidu, who belonged to Scheduled Tribe, was at Sl. No. 12 in that merit list. Shri V. K. Naidu had filed an O.A. No. 148/91, which was decided by this Tribunal on 12.11.1991. The contention raised by the respondents in resisting Shri B. K. Naidu's claim was that, only 36 posts were available in the Senior Scale Engineers and the other 32 posts which the applicant wanted to be added to the said 36 posts, pertained to project and were kept outside the purview of the Policy of Reservation in favour of SC/ST candidates. The Tribunal observed in its judgement that these 32 posts have been in existence for considerable length of time and they could not have been excluded while considering the question of reservation because there was nothing on record to show that the posts of Senior Scale Engineers in the Construction Organisation are meant only for emergencies like flood relief work, accident restoration and relief, etc. Naidu's entitlement was ^{based} ~~passed~~ on the addition of the said 32 posts to the 36 posts, which the Respondents had already considered and it was on that basis that Naidu was directed to be granted promotion as a S.T. candidate, he having been placed at Sl. No. 12 in the merit list.

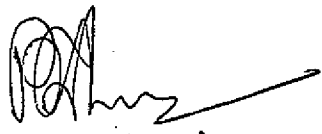
4. An identical position would arise in the present case because the applicant claims his entitlement in the cadre being of 66 posts. The Learned Counsel for the Respondents, was not in a position to dispute this fact. All that was urged was that, 10 persons who belonged to the Scheduled Caste category had already been promoted and therefore, the applicant could not be promoted until 12.11.1991.


(8)

We requested the Learned Counsel for the Respondents to place before us the factual data and we were told that five posts were filled by Scheduled Castes and that, five posts remained to be filled on 04.09.1990. There can, therefore, be no excuse for not giving the applicant one of the vacant posts which were reserved for Scheduled Caste candidates. In fact, after the judgement was delivered in Naidu's case, by the ^{retrospective} ~~transfer~~ order passed by the Respondents, the applicant was granted promotion with effect from 12.11.1991 i.e., during the pendency of this case, on the basis of the judgement in Naidu's case. All that needs to be done is to grant to the applicant the deemed date of promotion as 04.09.1990 instead of 12.11.1991, with all consequential benefits.

5. In the result, we direct the Respondents to grant the deemed date as 04.09.1990 instead of 12.11.1991 to the applicant, as his date of promotion and pay all consequential benefits to him on that basis within two months from the date of communication of this order.

6. The O.A. is ^{allowed} ~~disposed of~~ with cost quantified at Rs. 200/-


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


(M. S. DESHPANDE)
VICE-CHAIRMAN.