

(70)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 332/92.

Transfer Application No.

Date of Decision 29.9.1995

S.B.Nadkarni & Anr.

Petitioner/s

Shri G.D.Samant.

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri S.C.Dhawan.

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

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Original Application No. 332/92.

S.B.Nadkarni, & Anr. ... Applicants.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicants by Shri G.D.Samant.
Respondents by Shri S.C.Dhawan.

JUDGMENT :-

Per Shri B.S.Hegde, Member(J) Dt. 29.9.95

Heard Shri G.D.Samant, counsel for the
applicant and Shri S.C.Dhawan, counsel for the
respondents.

2. The applicants in this OA have not challenged any particular order, except stating that his juniors have been promoted to the grade of Rs. 700-900 and the applicants have been overlooked for promotion. Applicant No.1 S.B.Nadkarni retired on superannuation on 30.4.1990 and K.B.Palshikar retired on 30.11.1991. Their main contention is that the seniority list published by the Respondents as on 1.1.1987 applicant No.1 is shown as senior to M.K.Apte and applicant No.2 is shown as senior to Kamaruddin Raijuddin. Therefore, they made a representation to the competent authority that they should also be treated on par with their juniors for the promotion to the grade of Rs.700-900 which is treated as a Class 'A' Selection Post. The learned counsel for the applicants Shri G.D.Samant drew our attention, during the course of hearing to Annexure 'B' dt. 27.2.1987 wherein both the applicants were given the grade of Rs.700-900 in the revised scale as per the Labour Court's Order. The Respondents

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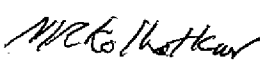
in their reply denied the contention of the applicants stating that it was by virtue of restructuring of cadres. It is true that the restructuring took place in the year 1.1.1984 and accordingly 22 posts have been upgraded as a result of the re-structuring of the cadre. However, the applicants could not be promoted to the restructured cadre as on 1.1.1984. The applicants were shown as juniors to M.K.Apte and Kamaruddin Raijuddin. During the course of the hearing, the learned counsel for the Respondents furnished a copy of the seniority list dt. 24.4.1987. In the said seniority list M.K.Apte is shown at Sl.No.49 and Kamaruddin Raijuddin is shown at Sl.No.52, whereas, applicant No.1 S.B.Nadkarni is shown at Sl.No.61 and K.B.Palshikar is shown at Sl.No.67. Therefore, the respondents submitted that since they were shown as juniors at the relevant time they could not be considered for the upgraded post. It is made clear in the 1984 Circular that the staff concerned should be advised that if they notice any irregularities in the seniority list in respect of either their position or incorrect mention of the name, dates of promotion etc., they should be notified the same to the office for necessary action. Accordingly, on receipt of various complaints/representations from the officials seniority list had been modified/rectified in the year 1987 wherein the applicants were shown as senior than M.K.Apte and Kamaruddin Raijuddin. Further, the respondents took a preliminary objection that both M.K.Apte and Kamaruddin Raijuddin


were not made a party before the Tribunal and the Tribunal should not entertain the matter in the absence of pleadings making them as parties to this case. Secondly, their reference ~~to~~ to Labour Court decision is of no corroborative value so far as to deciding the seniority list, ~~as~~ ^{SINCE} the applicants have filed application under section 33(c) of the Industrial Disputes Act for calculations of the admitted amounts and not the seniority. Besides that, they have not mentioned the name of M.K.Apte and Kamaruddin Raijuddin who are alleged to be juniors to the applicant in the application before the Labour Court. The calculations made by the Industrial Court has been accepted by the Respondents and the same has been paid. The applicants were ~~alleged~~ ^{affected} that the 1985 restructuring of the cadres was one time exception which cannot be opened from time to time. However, on account of various representations, the seniority list has been modified in the year 1987, but that does not mean that by virtue of their modified seniority they can claim the back dated benefit i.e. from 1984. Due to the revision of their seniority the applicants gained higher position, whereas M.K.Apte and Kamaruddin and Raijuddin were already promoted to the higher grade of Rs.700-900 w.e.f. 1.1.1984, Therefore, the applicants who gained higher seniority position could be considered only in the next selection and if they get through in the selection they can be assigned proforma promotion with reference to their juniors who were promoted earlier from 1.1.1984. Admittedly, the post of Foreman 'B' is being classified as a selection post. The next selection for the post is in the month of

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September, 1987. The applicants were brought under the consideration and were advised to appear for the written test to be held on 6.9.1987. However, they did not appear for the written test. If they had appeared for the written test and passed, the Respondents would have considered their seniority from 1.1.1984, but this is not the case here. The contention of the applicants that their juniors were given promotion without written test, therefore they should also be treated in the same pattern does not have any basis. If the applicants were not shown as juniors in the year 1984 seniority list then what they have contended has some sort of relevance. Here they are claiming the seniority merely on the basis of the Labour Court's decision which has nothing to do with the seniority that has been referred to earlier. Since the applicants were given ad-hoc position right from 1987 immediately after the modified seniority list in the grade of Rs 700-900 the question of giving them retrospective seniority from 1984 onwards hardly arises.

3. In the facts and circumstances of the case, we find that there is no merit in the OA and the same is dismissed with no orders as to costs.


(M.R. KOLHATKAR)
MEMBER (A)


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

B.

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CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, PRESCOT RD, 4th FLOOR.
Bombay - 400 001.

REVIEW APPLICATION NO.4/96 in
ORIGINAL APPLICATION NO.332/92.

Tuesday the 23rd day of January 1996.

CORAM : Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri M.R.Kolhatkar, Member (A)

1. Shri Surendra Bhalachandra Nadkarni
2. Keshav Balkrishna Palsikar ... Applicants.

V/s.

1. Union of India & anr. ... Respondents.

ORDER (BY CIRCULATION)

[Per Shri B.S.Hegde, Member (J)]

This application has been filed seeking
review of order dated 29/9/95 by which OA 332/92
was dismissed.

2. Seeing the review application, we are
satisfied that this application can be disposed
of by circulation. In the review petition, the
the applicants draws our attention that they have
been shown senior to Shri Apte and Shri Kamaruddin
Raijuddin in pursuance of seniority list
published in 1987 though Shri Apte and Kamaruddin
were promoted to the grade of 700-900 with
effect from 1/1/84, the applicants were not given
that grade, they were given only adhoc promotion
from 1987 whereas they are seeking promotion
from 1/1/84 on par with their juniors Shri Apte
and Shri Kamaruddin against the upgraded post

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in the restructuring cadre without appearing in written test.

3. It may be recalled that similar case has been made by applicant in OA which was dismissed after hearing both the parties. Though they were advised to appear for the written test, they did not appear for the written test as it is a pre-condition that they should appear for the exam and pass the exam for seeking further promotion. If he had passed the written test, he could have been considered in the seniority from 1/1/84. It is an admitted fact that the applicants were not shown as juniors, in the year 1984 and the said seniority list has been changed in the year 1987. Infact, they had already been given a promotion from 1987 till their retirement. The question of giving them retrospective seniority does not arise. Applicants who gained higher seniority position could only be considered in the next selection, he could be said to be promoted alongwith juniors with effect from 1/1/84.

4. In the light of the above, it is well settled principle that applicant cannot file a review application raising the very same plea which has been rejected by the Tribunal and it is not open to the applicant to re-argue the case once again by raising the same grounds. A review of a judgement is a serious step and reluctant resort to it is proper only where a glaring omission

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or patent mistake or like grave error has crept in earlier by judicial fallibility.

5. In the result, in our view, neither any error apparent on the face of the record has been brought out nor any new facts have been brought to our notice calling for review of the original judgement. The grounds stated in the RP are more germane for an appeal against judgement and not for review of the judgement. The RP is therefore dismissed.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.S. Hegde

(B.S. HEGDE)
MEMBER (J)

abp.