

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO. 20 OF 97.

IN

ORIGINAL APPLICATION NO. 879 OF 92.

Thursday, this the 1st day of January, 1998.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri P.P.Srivastava, Member(A).

C.V.Kvalekar. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

ORDER ON REVIEW PETITION BY CIRCULATION.

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

The applicant has filed this application seeking review of the Judgment dt. 10.1.1997. He has sought review of the Judgment on the following grounds. The relief which was granted in the case of Shri U.H.Jadhav by this Tribunal is required to be granted to the present applicant who is similarly situated and belongs to the same department. Pursuant to the direction of the Tribunal both U.H.Jadhav and K.K.Petlur are given the consequential benefits. In ~~our~~ Judgment the Respondents were directed to consider the applicant for promotion to the grade of Superintendent, Central Excise after re-fixation of seniority on the basis of continuous officiation, but not mentioned about the fixation of pay and arrears of payments. It is the intention of the Tribunal to grant similar benefits to the applicant as was granted to U.H.Jadhav and K.K.Petlur. Despite he was due for promotion in the year 1990 he was given promotion only on 30.9.1996 as Superintendent. Both in the case of Jadhav and Petlur seniority was ordered

to be given on the basis of continuous officiation irrespective of the date of confirmation, thereafter the applicant made representation on 11.7.1991 for which no reply was received till 1992, and he sent a reminder on which he pointed out the case of Jadhav and ten others in O.A. No.823/87 wherein, the principle of determining seniority on the basis of continuous officiation in the grade received reiteration. The respondents have accepted such Judgment and assigned proper seniority as per the Tribunal's direction. Unfortunately, the respondents rejected his representation on the ground that no specific order either from the CAT or from the Ministry regarding fixation of seniority of the applicant. Accordingly, he was perforced to file the present O.A. which was decided on 10.1.1997.

2. The main plea made in the O.A. was that he should be considered for promotion from the date his juniors were promoted in the year 1990. As per the direction of the Tribunal, the Department on its own accord should have applied the same principle to similarly situated employees like applicant instead of forcing him to approach the Tribunal, when in the same Department the Tribunal had granted relief to Jadhav and Petlur and others. Because of wrong seniority granted, he is denied promotion of Superintendent along with Shri Jadhav which he is otherwise entitled to in the year 1990. The applicant was directly appointed as Inspector on 5.7.1973 and confirmed in the service on 7.12.1989 in the post of Inspector. The applicant's immediate junior Mr.Thakkar was promoted

as Superintendent and he was directed to pay consequential benefits and arrears in the grade on 15.10.1990. In the reply, the respondents have contended by saying that the applicant has been given promotion w.e.f. 30.9.1996 in the normal course. Further, so far as the applicant's prayer ~~was~~ in the Review Petition regarding consequential benefits and the question of arrears of pay is concerned, no such relief has been granted by the Tribunal, but nowhere it is stated that the applicant is situated similar to the one which is decided by the Tribunal in Jadhav and Petlur's case. They highlighted one observation of the Tribunal that in the facts and circumstances of the case the applicant is not entitled to get any consequential benefit except the seniority and no direction was given to payment of arrears to the applicant in the present case. The question for consideration here is whether the seniority is to be given from the date of continuous officiation or from the date of confirmation. It has been held time and again by the Apex Court and there is no ambiguity in the matter that the seniority is to be given from the date of officiation and not from the date of confirmation. Therefore, the contention of the respondents that the matter was pending in the Tribunal does not have any force and the same is not based on any material facts.

3. It is true that the Review Petition is only meant to correction of any error apparent on the face of any record and not to be treated as an appeal etc. However, on a perusal of the Judgment it is made clear in para 4, para 9 and para 10. After analysing the entire Judgment, it is to be construed what is intended

for. There is no dispute regarding the status of the applicant vis-a-vis that of Jadhav and Petlur.

Accordingly, this Tribunal has directed the relief which was granted by the Tribunal in the case of Jadhav is required to be granted to the applicant who is similarly situated and his seniority should be determined on the basis of continuous officiation notwithstanding the date of confirmation. That being the factual position, the observation of the Tribunal stating that he is not entitled to any consequential benefits except seniority does not stand the legal scrutiny. If we are to construe harmoniously, the applicant cannot be denied the benefit vis-a-vis that of Jadhav and Petlur. It is not the case of the respondents that they have not paid consequential benefits to Jadhav and Petlur who were similarly situated like the applicant. In the circumstances, the above observation of the Tribunal is to be treated as an error apparent on the face of record.

Accordingly, we hereby direct the respondents to grant the applicant notional seniority from the date his immediate junior was promoted as Superintendent i.e. w.e.f. 15.10.1990 and monitory benefits from the date he is actually promoted. To this extent the Review Petition is allowed. The respondents are directed to comply with the direction within a period of two months from the date of receipt of this order. No costs.



(P.P. SRIVASTAVA)
MEMBER(A)



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

B.