

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 519/92

Transfer Application No:

DATE OF DECISION: 19.3.1996

V.P.Nande.

Petitioner

Shri Y.B.Phadnis.

Advocates for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri M.G.Bhangde for R-1 to 3 and

Shri S.M.Malode for R-4. Advocate for the Respondent(s)

CORAM :

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

The 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).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY,

CAMP AT NAGPUR.

ORIGINAL APPLICATION NO.519/92.

19/2, the day of March 1996.

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

V.P.Nande. ... Applicant.
(By Advocate Shri Y.B.Phadnis)

V/s.

Union of India & Ors. ... Respondents.
(Respondents No.1 to 3 by
Advocate Shri M.G.Bhangde and
Respondent No.4 by Advocate
Shri S.M.Malode).

O R D E R

(Per Shri B.S.HEGDE, MEMBER(J))

Heard Shri Y.B.Phadnis, counsel for the
applicant, Shri M.G.Bhangde, counsel for the official
Respondents No.1 to 3 and Shri S.M.Malode, counsel
for Private Respondent No.4.

2. In this O.A. the applicant is challenging the
order of promotion of Respondent No.4 dt. 20.10.1983
which fact he states that was known to him vide
News item dt. 8.5.1991 in 'Hitavada Daily' and the delay
in promotion of the applicant vide letter dt. 12.7.1991.
Therefore, he seeks deemed promotion w.e.f. 20.10.1983
in view of superior claim to the post of Senior
Translator (Hindi). The admitted facts are that there
were three vacancies for the post of Senior Translator
(Hindi) and all the posts are from open general
category by selection. The Respondents circulated a
letter stating that those who are eligible may send
their application to the competent authority for
scrutiny of applications. The respondents accepted
applications both from the departmental candidates,

as well as, from the Local Employment Exchange. The applicant was one of the aspirant for the post of Senior Translator (Hindi). The learned counsel for the applicant drew our attention to the Recruitment Rules which specifies the age, qualifications etc. and Respondent No.4 also applied for the said post.

not

The applicant's main contention has been substantiated either orally or based on records. The authority prepared a list of candidates to be called for the interview for the post, out of which two departmental candidates and 11 sponsored by the Employment Exchange.

Out of the above 13 candidates, 5 Employment Exchange
sponsored candidates and two departmental candidates had appeared for the interview.

The applicant was one of them. The contention of the applicant is that though he fared well in the interview/has not been selected, the Respondent No.4 is favoured with the appointment. The varicus points raised in the O.A. is not relevant to the issue to be decided in this O.A., as the post is filled up through selection.

Since both the applicant, as well as, the Respondent No.4 are eligible to be considered, in the selection R-4 was selected. He further contended that selection of these posts being from open general category the question of considering the SC/ST candidates does not arise. The applicant also raised an objection that the appointment letter is issued by Senior Personnel Staff Officer who is not competent to issue such letters. However, on verification, it is made out that he issued the appointment letter for and on behalf of Respondent No.3 who is the competent

authority to appoint.

3. The learned counsel for the respondents Shri Bhangde draws our attention to various ~~replies~~ filed by the Respondents because the applicant has mis-led the Tribunal in bringing out irrelevant issues and thereby they are ~~forced to file a~~ Rejoinder to the affidavit filed by the applicant. In their reply, the respondents have stated that the Respondent No.4 was interviewed and appointed to the post of Senior Translator (Hindi) w.e.f. 20.10.1983. The applicant did not submit any application or representation within the specified time of his appointment or the date on which the R-4 was appointed. In fact, the applicant was appointed as Education Instructor (Hindi) from September, 1982 and his appointment was purely temporary up to 3.9.1984. It is true that three vacancies were in general category were vacant under the control of Respondent No.2, however, there was one vacancy of Senior Translator (Hindi) to be filled for deployment at Headquarters Maintenance Command I.A.F. against general category. Accordingly, both the petitioner, as well as, the Respondent No.4 applied for the same post and were interviewed. The Board of Officers selected Respondent No.4. The contention of the applicant that R-4 was appointed on the basis of SC/ST is mis-leading and the same is not based on records. As there was no necessity of showing the post for SC/ST since vacancy was in general category whether the candidate selected is general or otherwise does not make any difference. After interview, the Board of Officers selected R-4 and one Kum. Kaushik and placed in the order of merit for appointment to

the post of Senior Translator (Hindi). Further, since the vacancy of Senior Translator (Hindi) was in the general category there is no necessity for conducting separate test for SC/ST candidates. All the eligible candidates including the applicant were subject to common selection process by a duly constituted Board of Officers. The inquiry regarding the appointment of R-4 who allegedly got the appointment on the ground of ST point has no relation to appointment/promotion of Respondent No.4 as he was considered in the general category as per the vacancy released by the Headquarters. Since the appointment was done in 1983, his representation in the year 1991 is not only time barred but is a mischievous one because Respondent No.4 was appointed to the post of Senior Translator (Hindi) on his own merits as per the laid down procedure. Since the applicant was appointed temporarily as Education Instructor he cannot claim any seniority of service. Further, since the applicant was considered along with others he does not have any locus standi to challenge the appointment of R-4 as he was not appointed on the basis of wrong certificate in the category of SC/ST. As a matter of fact, the applicant has put forth the story of news item in 'Hitavada Daily' just to bring the hopelessly time barred application within limitation. The learned counsel for R-4 has also reiterated the same stand as that of the official respondents and further stated that the news item appeared in 'Hitavada Daily', applicant was responsible for the same so as to enable the applicant to file this application. In the light of the pleadings and oral arguments of the counsel, we have to see whether the application filed by the applicant is

sustainable under law, especially when he is challenging the appointment of Respondent No.4 way back from 1983 onwards. Admittedly, he ~~has not~~ filed any M.P. for condonation of delay and it is on record to show that R-4 has been appointed not in the category of SC/ST but it is in the general category. There is no bar for the SC/ST candidate appearing with the General Category Candidates on merits. Since he has not attributed any mala fide or arbitrariness in the selection of R-4 and during the course of hearing the learned counsel for the applicant submitted that he does not want the appointment of R-4 to be quashed, but at the same time he wants that his deemed date of promotion should be given w.e.f. 1983 onwards which are contradictory in terms. On ~~a~~ perusal of the pleadings, we find that the applicant has filed a Civil Application No.176/95 wherein it is stated prior to filing of this O.A. he had filed a O.A. No.76/91 on 14.11.1991 before the Tribunal challenging the order of appointment of R-4 as Senior Translator (Hindi) w.e.f. 20.10.1983 and the same has been withdrawn by the applicant. Despite the same the copy of the order of the Tribunal has not been annexed. It is on record to show, that it is not a promotional post, though the applicant is eligible to be considered and in fact he has been considered along with R-4 and persons who were nominated by the Employment Exchange and on merits the R-4 has been selected. During the course of hearing, he drew our attention to the O.M. dt. 30.1.1973. On a perusal of the same we are of the view, that the said O.M. is not applicable to the facts of the present case stating that the holding of the separate interview of the SC/ST candidates if the vacancy is reserved for them

but that is not the scenario in this case. Further in this case no relaxation of age for the category for which the post was required to be filled up. As stated earlier, the R-4 has been appointed in general category and hence relaxation of age was not called for. Regarding limitation, admittedly, it is a belated petition and it is obvious that in order to bring the application within limitation the applicant has published a news item in 'Hitavada Daily' and thereafter made a representation to the competent authority to consider his case and after he filed this O.A. he did not care to file any condonation petition knowing fully well that it is a belated petition. The party aggrieved by an order has to approach the Court for relief after declaration. If he has not chosen to approach the Court within the specified time the belated petition cannot be entertained by the Tribunal without any proper explanation on the part of the applicant. The cause of action has to be reckoned from the actual ^{event} i.e. in this case 1983. Further, whenever a promotion to the higher post is to be made on the basis of merit, no officer can claim promotion or by selection to the higher post as a matter of right by virtue of seniority alone. On a perusal of the D.P.C. records we find that the Respondent No. 4 has put in $2\frac{1}{2}$ years has put in translation work, whereas, the applicant only one year and odd. The board of officers found the R-4 suitable for the post and the applicant was shown in second position in the order of merit. Since the vacancy was only one, the Respondents were perforced to appoint R-4, thereby the applicant cannot seek as a matter of right that it should have been given to him.

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4. In the result, we are of the view, that the application is not maintainable both on account of limitation, as well as, on merits. Since he has already been appointed to the said post in the year 1991, the question of giving him deemed date of promotion w.e.f. 1983 does not arise. In the result, we do not see any merit in the O.A. and the same is dismissed.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

B.S.Hegde

(B.S. HEGDE)
MEMBER(J)

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, GULESTAN BUILDING NO. 6
PREScot ROAD, FORT, MUMBAI 400001.

R.P. No. ^N 3/96 in O.A. No. 519/92.

Dated this 29 day of August 1996.

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri M.R. Kolhatkar, Member (A)

Shri Vijay Prabhakar Nande)
Translator)
R/o Head Quarters')
Maintenance Command)
(Unit) Air Force)
Vayusena Nagar)
Nagpur) ... Applicant

v/s

1. Union of India)
through the Secretary)
Ministry of Defence)
South Block)
Central Secretariate)
New Delhi - 1.)
2. Officer Commanding)
in Chief, Head Quarter)
Maintenance, I.A.F.)
Vayusena Nagar, Nagpur.)
3. Commanding Officers,)
Head Quarter)
Maintenance Command (Unit))
Air Force, Vayusena Nagar)
Nagpur - 440 007.)
4. Shri H.D. Hattewar)
Sr. Translator (Hindi))
Office of H.Q. Maintenance)
Command Indian Air Force)
Vayusena Nagar)
Nagpur - 440 007.) ... Respondents

Tribunal's orders (By circulation)

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

The applicant is seeking review of the judgement dated 19-3-1996. The O.A. was disposed of on merit. Since the applicant was appointed to the post of

Senior Translator (Hindi) in the year 1991 and his prayer for deemed date i.e. 1983 could not be acceded to in the facts and circumstances of the case.

2. In this Review Application, he has not brought out any new facts nor any error apparent on the face of the record is made out. As a matter of fact, he is re-arguing the case on the very same ground which is not permissible. There is no merit in this Review Petition and the same is therefore dismissed.

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

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

ssp.