

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1134 OF 1993.

Date of Decision: 10-10-97.

Shri K. P. Krishnan, Applicant.

Shri S. P. Inamdar, Advocate for
Applicant.

Versus

Union Of India & Anr. Respondent(s)

Shri M. I. Sethna alongwith
Shri Wadhavkar, Advocate for
Respondent(s)

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).

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1134 OF 1993.

Dated this 10th, the 10th day of October, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Shri K. P. Krishnan,
Asstt./H.C.,
Maharashtra Regional Office
of the Employees State Insurance
Corporation, Bombay.
R.O. Colaba, Bombay - 400 005.
(By Advocate Shri S. P. Inamdar)

... Applicant

Versus

1. The Regional Director,
Regional Office,
Maharashtra Employees' State
Insurance Corporation,
Panchdeep (ESIC) Bhavan,
N.M. Joshi Marg,
Lower Parel,
Bombay - 400 013.

... Respondents.

2. Union Of India through
the Director General,
Employees' State Insurance
Corporation,
New Delhi.

(By Advocate Shri M.I. Sethna
alongwith Shri Wadhavkar).

: ORDER :

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

In this O.A., the applicant is challenging the orders passed by the Respondents vide dated 29.07.1993 and 15.05.1989. The first order relates to reply to his representation dated 17.09.1991 stating that his request for restoration of Seniority in the Cadre of Head Clerk/ Assistant cannot be acceded to. Further, it is stated that

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the decision rendered in O.A. Nos. 540/90, 496/91, 513/93, 503/91 and 541/91 are applicable to those who were party and not in rem. The second impugned order relates to transfer on promotion. The applicant has been transferred from Bombay to Pune on promotion.

2. During the course of hearing, the Learned Counsel for the applicant, however, submits that the applicant is not challenging the power of the administration to transfer him but his only prayer is to extend the benefit of the judgement of the Tribunal in O.A. No. 541/91 decided on 15.11.1991. Admittedly, the applicant is in service right from the year 1965 and had not gone out of Bombay. Pursuant to the transfer-cum-promotion order dated 15.05.1989 issued by the respondents, the applicant declined to accept the promotion on transfer. Failure to adhere to the promotion-cum-transfer, the respondents vide their letter dated 16.06.1989 cancelled the promotion of the applicant on the basis of the existing guidelines which specifically states that "the officials who do not move to their place of posting, their order of promotion on regular basis will be deemed to be cancelled and they will not be considered for regular promotion for a period of one year and they will also be passed over resulting in loss of seniority as per rules and the officials promoted prior to the date of their next promotion in this cadre will stand senior to them". Since the applicant has declined to go on transfer-cum-promotion to Pune, he lost his seniority.

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employees in order to avoid any discontent."

In our view, the ratio laid down in the said decision would not apply to the facts of the present case.

4. In the instant case, it cannot be said that the applicant is similarly situated as that of other employees. As a matter of fact, he declined to go on transfer on promotion, thereby, he does not have any right for seeking seniority to be restored. Further, it is an admitted fact that judgement and orders of the Tribunal or any other Courts do not give cause of action. The cause of action have to be reckoned from the actual date.

5. In the subsequent D.P.C. held on 31.05.1990, the applicant was again reposted to Bombay, therefore, the contention of the applicant that his seniority should be restored is not based on facts nor merit consideration. As stated earlier, the judgement by itself does not give a cause of action and that the applicant is not similarly situated as that of other employees. If the applicant was aggrieved by the orders of the Respondents, he ought to have challenged the order at the appropriate time, which he failed to do so.

6. In the result, we do not see any merit in the O.A. and the same is dismissed. No costs.

MR. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A).

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