

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1157/93

Date of Decision: 28.11.1997

S.S.Pillai

Applicant.

Shri A.H.Thorat

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.K.Shetty.

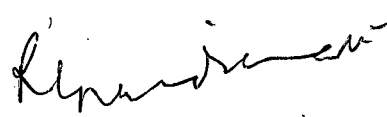
Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice-Chairman,

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

- (1) To be referred to the Reporter or not? ~~~
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ~~~


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI,

ORIGINAL APPLICATION NO. 1157/93.

Friday, this the **28th** day of **November**, 1997.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri P.P.Srivastava, Member(A).

S.S.Pillai,
Flat No.10,
Laxmi Apartments,
Balamal Chawl,
Pimpri Vaghare,
Pune - 411 017.

... Applicant.

(By Advocate Shri A.H.Thorat)

V/s.

1. The Union of India
through the Secretary
to the Government of India,
Ministry of Defence, South
Block, New Delhi.
2. The Commandant, College of
Military Engineering,
Pune - 411 031.
3. Smt.M.U.Kamble,
Office Supdt. Gr.II,
4. Shri Varghese Mani,
Office Supdt. Gr.II,
5. Shri P.Divakaran,
Office Supdt. Gr.II,
(R-3 to 5 working in
College of Military Engineering,
Pune - 411 031).

(By Advocate Shri R.K.Shetty)

O R D E R

¶ Per Shri Justice R.G.Vaidyanatha, Vice-Chairman

This is an application filed under section 19
of the Administrative Tribunals Act, 1985. The
respondents have filed reply opposing the application.
Heard both sides.

...2.



2. In this application the applicant is challenging the promotion of Respondents No.3, 4 and 5 to the post of Office Superintendent Gr.II.

The applicant joined the College of Military Engineering as a Lascar on 1.2.1965. Thereafter, he passed the Typing Examination and was promoted as LDC in 1966. Subsequently, after passing the departmental examination he was promoted as U.D.C. on 30.11.1970. The applicant's name is correctly shown in the seniority list of 1974. The names of Respondents No.3, 4 and 5 do not figure in the seniority list of 1974. Since there ^{was} ~~is~~ some dispute about regularisation of the applicant's service, he filed an O.A. viz. O.A. No.322/87 in this Tribunal and it came to be allowed. His services have been regularised from the date of his initial appointment i.e. w.e.f. 3.5.1966. The Respondents No.3 to 5 have since been promoted to the post of O.S. Gr.II though they are very much juniors to the applicant. Hence it is alleged that the promotion of Respondents 3 to 5 should be quashed. Then it is also prayed that the applicant should be promoted to the said post of O.S. Gr.II.

3. The respondents have filed reply opposing the application. It is stated that respondents 3 to 5 are seniors to the applicant if the seniority is counted from the date of their initial appointment. It is stated that the seniority list of 1974 has been superceded by the seniority list of 1978 and another seniority list published in 1989. The applicant cannot get any benefit of the superceded seniority list of 1974 in view of

...3.



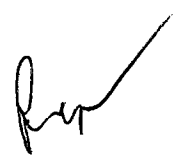
the seniority list of 1978 and 1989. Respondent Nos. 4 and 5 are seniors to the applicant and therefore, they have^{been} / rightly promoted. As far as Respondent No. 3

Smt. M. U. Kamble is concerned, though she is junior to the applicant she has been promoted since she belongs to the reserved category of SC. It is therefore, stated that the applicant has no right to challenge the promotion of Respondents No. 3 to 5.

4. At the time of arguments, the learned counsel for the applicant contended that the applicant is entitled to promotion by virtue of the 1974 seniority list and further on the ground that he has passed the Typing Examination, whereas, the Respondents No. 3 to 5 had failed in the examination. While reiterating that 1974 seniority list has been superceded by the seniority list of 1978 and 1989, it was further argued by the respondents that the application is barred by limitation and further it is bad due to laches and delay on the part of the applicant.

5. As far as the claim of the applicant on the basis of 1974 seniority list is concerned, our view is that the applicant cannot get any relief on that basis when that seniority list has been superceded by a fresh seniority list of 1978 and followed by another seniority list published in 1989. Significantly, the applicant has not challenged the correctness of the two seniority lists of 1978 and 1989 and no prayer is made in the application praying that these two seniority lists be quashed. The materials on record show that the applicant had made a representation

...4.



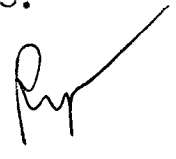
in 1989 itself objecting to the 1989 seniority list. His representation was rejected. The applicant did not take any action challenging the 1978 or 1989 seniority list, but has come to Court four years later in 1993. Even here, in this application, there is no prayer to quash the seniority lists of 1978 or 1989. As long as the two latest seniority lists of 1978 and 1989 hold the field, the applicant cannot get any promotion on the basis of seniority. It is not and cannot be disputed that the 1978 seniority list and 1989 seniority list Respondents No.4 and 5 are shown as seniors to the applicant.

6. The extract of the seniority list is given in para 2 of the written statement. Respondent No.3 is shown at Sl.No.2, Respondent No.4 at Sl.No.4 and Respondent No.5 at Sl.No.6. The applicant is shown at Sl.No.21. Therefore, the applicant who is junior to Respondents No.3 to 5 cannot claim any right of promotion.

7. Another contention alleged was that the applicant has passed the Typing Examination, whereas, R-3 to 5 have failed in the examination and therefore they cannot be seniors to the applicant. The Typing Examination was held for the purposes of promotion on the basis of Recruitment Rules. At that time, the provision was 75% by promotion on the basis of seniority and 25% on the basis of examination. It is brought to our notice that the Rule has been amended and the entire 100% is now by promotion by seniority.

8. Now we shall see the relevant dates of recruitment of the applicant and the private respondents.

...5.



In the 1978 seniority list R-4 is shown at Sl.No.10 and is shown to have been appointed on 4.9.1961 as LDC. R-5 is shown at Sl.No.3 and is shown to have been appointed on 7.11.1962 as LDC. Then we find that the applicant is shown at Sl.No.27 and the date of appointment as LDC was on 20.9.1966. The applicant, therefore, cannot claim any seniority over R-4 and 5 who came to be promoted as LDC four to five years prior to his promotion. As far as R-3 Smt.M.U.Kamble is concerned, she is shown at Sl.No.8 and she is promoted as LDC in 1960 itself. Then the applicant and R-3 to 5 were promoted as UDCs on 30.11.1970. Since all of them were promoted on the same day, naturally their seniority has been kept as per the original promotion as LDCs and there is no merit in the contention of the applicant that he was senior to Respondents No.3 to 5, and that he has been wrongly denied promotion. In our view, Respondents 3 to 5 are seniors to the applicant and they have been rightly promoted.

9. In view of the fact that on merits we have reached the conclusion that the applicant has no right to challenge the promotion of seniors, We need not address ourselves ^{to} the alternate submissions made on behalf of the respondents about limitation, delay and laches. It is also seen that R-3 to 5 came to be promoted in 1989. The applicant slept over his rights and has filed this present O.A. in 1993 challenging their promotion. In service jurisprudence there must be some finality to seniority and promotions. They cannot be kept hanging for all times to come. Therefore, there is ~~no~~ merit in the submission of the respondents

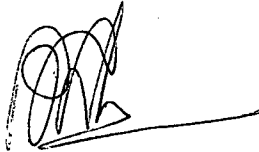
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...6.

[Signature]

about the plea of limitation, delay and laches. However, we do not want to consider this point in detail since on merits the applicant has no case.

10. In the result, the application fails and is accordingly dismissed. In the circumstances of the case there will be no order as to costs.



(P.P.SRIVASTAVA)
MEMBER(A)



(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.