

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 1165 OF 1993.

Date of Decision: 10-10-92

Shri B. N. Shetty,

Applicant.

Shri S. P. Inamdar,

Advocate for  
Applicant.

Versus

Union Of India & Another,

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).

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1165 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 B. N. Shetty,  
Asstt./H.C.,  
Maharashtra Regional Office,  
Employees State Insurance  
Corporation,  
Colaba,  
Mumbai - 400 005.

... Applicant

Residing at -  
18/328, ESIC Nagar,  
Andheri (West),  
Bombay - 400 058.

(By Advocate Shri S.P. Inamdar)

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 16.09.1993  
and 15.05.1989. The first order relates to reply to  
his representation dated 03.09.1993 stating that his  
request for restoration of seniority in the cadre of

*Re*

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Head Clerk/Assistant cannot be acceded to. Further, it is also stated that the orders of C.A.T., Bombay Bench in O.A. Nos. 540/90, 496/91, 513/91, 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 1964 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. However, some of his colleagues who were aggrieved by the department's promotion-cum-transfer order, approached the Tribunal by filing O.A. No. 541/91, in which the Tribunal, after considering the rival contentions of the parties, directed the respondents that in case the applicants go to Pune or anywhere else, their seniority may be restored over those who earlier were juniors to them, etc. The applicant was not a party to the O.A. No. 541/91 and hence, the said decision was not applicable to him. It is an admitted fact that the applicants, on promotion are liable to be transferred outside Bombay. Unless the applicants are able to establish any malafide or arbitrariness on the part of the respondents, such a transfer on promotion cannot be assailed. It is contended by the respondents that the transfer from Bombay to Pune is absolutely bonafide and is in accordance with the existing practice.

3. In this connection, the Learned Counsel for the applicant draws our attention to the decision of the Tribunal in Ordnance, Clothing Factory Worker's Union V/s. Secretary, Ministry Of Defence & Others (ATR 1990(1)CAT 22) wherein the Madras Bench of the Tribunal observed that "when a decision is given by a Tribunal or a Court in favour of some of the employees, all those placed on the same situation should also be given the same benefit. This is a rule which any normal employer would follow; his sense of equity would impel him to extend the same favour to all

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 Tribunals 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).