

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CAMP : N.GPUR.

Original Application No. 1234/93.

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Date of Decision FEBRUARY 11, 1998.

Shri S. R. Bhumkar,

Petitioner/s

Shri M. W. Harsulkar,

Advocate for
the Petitioner

Versus

Union Of India & Others,

Respondent/s

Mrs. Indira Bodade,

Advocate for
the Respondent

Coram :

HON'BLE SHRI. JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

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

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

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

CAMP : NAGPUR

ORIGINAL APPLICATION NO. : 1204/93.

Dated this Wednesday the 11th day of February, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

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

Shri S. R. Bhumkar,
Sr. Establishment Instructor
under Principal Zonal
Training Centre,
Bhusawal.

... Applicant

R/o. Rly. Wtr. No. RB IV
786 ZTC.

(By Advocate Mr. M.W. Harsulkar)

VERSUS

1. Union Of India through
The General Manager,
Central Railway,
Bombay V.T.
2. The Chief Personnel Officer,
Central Railway,
G.M. Office,
Bombay V.T.
3. Divisional Railway Manager,
Central Railway,
Nagpur - 440 001.
4. Principal Zonal Training Centre,
Central Railway,
Bhusawal - 425 203.
5. Shri D. K. Singh,
Sr. Welfare Inspector Gr.I
C/o. Chief Works Manager,
Matunga, Central Railway.
6. Shri R. S. Barkhede,
Sr. Welfare Inspector Gr.I,
C/o. Chief Works Manager,
Parel, Central Railway.
7. Shri H.G. Gosavi,
Sr. Estt. Instructor,
Z.T.C., Bhusawal.

... Respondents.

(By Advocate Mrs. Indira Bodade)

(PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The official respondents have filed reply. There is no reply from the private respondents except one, who has simply stated that he has no say in the matter. We have heard the Learned Counsel appearing for the applicant and for the official respondents from 1 to 4.

2. The applicant was promoted as Welfare Inspector Grade-III on adhoc basis w.e.f. 16.06.1983. The applicant's No. in the merit list was 22 as compared to the position of D.K. Singh, who was at Sl. No. 24 in the same panel. The private respondent No. 6 and 7 are still below D. K. Singh in the panel. The junior, Mr. D. K. Singh, came to be promoted on adhoc basis as Welfare Inspector Grade-II with effect from 23.12.1987, ignoring the claim of the applicant who was senior to him. The applicant made an oral grievance to the higher officers about this. Subsequently, the applicant was also promoted as Welfare Inspector Grade-II as per order dated 17.08.1988 and his position in the seniority list was maintained. But however, the applicant was not relieved from his post to take up the promotional post of Welfare Inspector Grade-II. The local administration did not relieve him since his services were required at Nagpur, inspite of his representation dated 26.09.1988. Hence, the applicant could not join the adhoc promotional post of Welfare Inspector Grade-II at Bombay, since he was not relieved. Subsequently, the applicant was promoted on regular basis as per the order dated 08.08.1989 to the post occupied by Shri W. K. Hindalkar, who had been transferred on promotion to Jhansi. But later, Mr. Hindalkar refused to go on promotion, hence, the applicant could not

join that post. However, again the applicant was promoted to a regular vacancy as per order dated 01.09.1989 and he took charge of the new promotional post on 12.09.1989. Then, there is reference to further promotional prospects and about some correspondence between the applicant and the department. The applicant has not been given due position in the seniority list of Welfare Inspector Grade-II on the ground that he did not carry out the order of promotion by joining the post at Bombay. Then, it is alleged that a provisional panel of Assistant Personnel Officer has been prepared in which Shri D. K. Singh, is placed above the applicant. The applicant has filed this application praying that his correct position in the seniority list in the cadre of Welfare Inspector Grade-II and again in Grade-I should be kept above his immediate junior, Shri D. K. Singh, from the date the junior was promoted to Grade-II on 23.12.1987 and to grade-I on 03.10.1991, for provisional fixation of pay of the application from those two dates and the applicant should be placed above Shri D. K. Singh in the two grades mentioned above and also in the grade of Assistant Personnel Officer and to quash and set aside the empanelment of Shri D. K. Singh in the panel of Assistant Personnel Officers dated 21.03.1997.

3. The official respondents have filed reply stating that the application is barred by limitation. The applicant cannot claim any retrospective benefit from 23.12.1987, which is barred by limitation. It is admitted that Shri D. K. Singh was junior to the applicant in the cadre of Welfare Inspector Grade-III but he was wrongly promoted. Then, it is admitted that the mistake has been

rectified subsequently in giving promotion to the applicant retrospectively from 23.12.1987 when Shri D. K. Singh had been promoted. It is also stated that the applicant came to be promoted to the cadre of Welfare Inspector Grade-II but he did not join this promotional post, and therefore, cannot claim any seniority in the grade of Welfare Inspector Grade-II. It is stated that the applicant made no representation on 26.09.1988 praying for his relief to join the promotional post. The applicant was accommodated subsequently in the promotional vacancy in September, 1989. That the applicant has lost his seniority in the cadre of Welfare Inspector Grade-II in view of his not carrying out the order of promotion for a period of one year. The applicant had requested for retention at Nagpur and this clearly shows that he was not willing to go out of Nagpur on promotion. Hence, the applicant is not entitled to claim any seniority much less retrospectively against Respondent Nos. 5, 6 and 7. It is, therefore, prayed that the application be dismissed.

4. The learned counsel for the applicant contended that applicant's seniority has been altered without giving him an opportunity and without a show cause notice and therefore the order is bad. He further contended that applicant had never refused to carry out the order of promotion and hence his seniority cannot be affected only on the ground that he did not join on promotional post. Then it was further argued that adhoc promotion of junior will not affect the seniority of the applicant after his regular promotion. While refuting these contentions on merits, the learned counsel for the respondents also contended that the application is barred by limitation.

over the application to Office Superintendent on 27.9.1988 and he himself has put his signature on that copy. No acknowledgement is there of having received by the office. Therefore, the version that he himself has given representation to join the promotional post cannot be accepted.

6. On the other hand, the learned counsel for the respondents brought to our notice that applicant himself has given written representation dated 21.9.1988 by thanking the order of promotion and requesting to be retained at Nagpur. This letter is addressed to Dy.CPO's office at Bombay. Therefore, it is clear case of the applicant having not joined on promotion and thereby did not carry out the order of promotion for nearly about 10 months. The applicant then came to be regularly promoted and then he joined the promotional post on 12.9.1989. Now according to the respondents since the applicant did not join for nearly 10 months, he has lost seniority over the junior who was promoted earlier. The respondents stated that D.K.Singh was promoted w.e.f. 23.12.1987 for adhoc promotion came to be regularised retrospectively. It was further submitted on behalf of the respondents that if the applicant would have joined the promotional post, he would have also given seniority over D.K.Singh and others. By his own volition, the applicant declined to join promotional post and therefore he cannot now claim having slept for one year. In the facts and circumstances of the case, we are inclined to accept the respondents' version that the applicant has not carried out the order and lost his seniority over his junior due to his own volition and fault.

5. As far as merits are concerned, admittedly the applicant is senior to Respondent No. 5 D.K.Singh. It appears D.K.Singh was promoted on adhoc basis u.s.f. 23.12.1987 when the applicant brought this to the notice of administration, the mistake was corrected and even the applicant was also given adhoc promotion by issuing the order dated 17.8.1988. Therefore the applicant cannot have any grievance since his claim has been considered and he was promoted. But it appears that the applicant did not join the promotional post. It is common ground that applicant did not carry out the order of promotion and did not join the promotion post at Bombay. But the applicant's version is that he was not relieved to join the present post, therefore, it is not a case of refusal of joining the promotion post. On the other hand, the respondents' stand is that the applicant did not want to go out of Nagpur and therefore the applicant did not carry out the order.

But the applicant's case is that he himself gave an application dated 26.9.1988 praying for his being relieved so that he can join the promotion post. A copy of the representation dated 26.9.1988 is at page 23 of the Paper-book on which reliance is placed by the applicant. But in the reply, the respondents have denied having received any such representation of the applicant dated 26.9.1988. The letter at page 23 is the xerox copy of the office copy of the applicant. At the time of arguments the learned counsel for the applicant shown us office copy of the applicant retained by the applicant. We find that applicant himself has made application that he has handed

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7. The only other point on behalf of the applicant is that even if the applicant did not join on promotional post which was only on adhoc basis, D.K.Singh who was promoted on adhoc basis seniority. cannot get / He brought to our notice number of decisions on the point that adhoc promotion does not affect / seniority. He may be right but here is a case where both the applicant and D.K.Singh were transferred on adhoc basis and the adhoc promotees came to be regularised from 23.12.1987 but the applicant did not join the adhoc post for the reasons best known to him and lost his adhoc promotion being regularised retrospectively w.e.f. 23.12.1987 when the services of D.K.Singh and others were regularised. Therefore, in these circumstances, the applicant cannot challenge the seniority of D.K.Singh when he did not carry out the order of promotion for the reasons best known to him. The question about seniority on adhoc promotion does not strictly arise in the facts and circumstances of this case for the reasons stated above. Therefore, we hold that the applicant lost his seniority on his own and not at the instance of administration. Hence, the applicant is not entitled to get seniority over D.K.Singh.

8. The learned counsel for the respondents also argued the question of limitation. It was argued that applicant made representation challenging the seniority list and this was rejected by an order dated 14.8.1991. Inspite of this letter of 14.8.1991, the applicant filed this application in the month of November, 1993. The applicant should have filed the application within one year from the cause of action as provided under Section 21 of the A.T.Act. On the other hand, the learned counsel for the applicant relied on some decisions in support of

his argument that in a matter like this, the question of limitation does not hold good and there will be no question of limitation and referred to some authorities.

In our view, we need not go into this question since on merits we consider that there is no case for the applicant.

9. Another argument is that seniority was affected without notice to the applicant and this was in violation of principles of natural justice. It is not a question of respondents making any changes in the seniority list, it is a case where the applicant lost seniority having not carried out his promotion and therefore it is not a question of changing seniority without notice to applicant. This is a simple case where after having received the order, knowing fully and he did not carry out the promotion for one year and thereby lost his seniority. This is not a case where there is a violation of principles of natural justice. Hence, there is no merit in the application and the same is liable to be dismissed.

10. In the result, the OA. is dismissed with no orders as to cost.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

R.G.Vaidyanatha

(R.G.VAIDYANATHA)
VICE CHAIRMAN

mr.j.

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