

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 1254/93

Date of Decision: 30.9.97

Krishnakant S. Shah

Applicant.

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Advocate for  
Applicant.

Versus

U.O.I. & Anor.

Respondent(s)

(Adv. Mr. A.L. Kasture

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? *no*

(2) Whether it needs to be circulated to  
other Benches of the Tribunal? *no*

*R. Vaidyanatha*

V.C.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING No.6  
PRESCOT ROAD, MUMBAI 400001

O.A. No. 1254/93

Dated : 30th September, 1994

Coram : Hon.Shri Justice R.G.Vaidyanatha, V.C.  
Hon.Shri P.P. Srivastava, Member(A)

Krishnakant S. Shah  
C/o. D.B. Dave  
Advocate  
6/1 Malad Cooperative  
Housing Society,  
Podar Park  
Malad (E)  
Mumbai 400097

(By Adv. Mr. D.B. Dave)

..Applicant

V/s.

Union of India  
through General Manager  
Western Railway  
HQ Office  
Churchgate  
Mumbai 400020

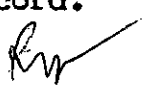
Divisional Railway Manager  
Western Railway  
Bombay Central  
Bombay 400008

(By Adv. Mr. A.L.Kasture, Counsel) ..Respondents

ORAL ORDER

(Per: R.G. Vaidyanatha, Vice Chairman)

This is an application under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply to the application. To-day when the matter came up for final hearing the applicant and his counsel were absent. No representation was made on behalf of the Applicant. We have heard the learned counsel for the respondents and perused the pleadings and available material on record.




Accordingly we are proceeding to dispose of this case by this order on the basis of available records.

2. The case of the applicant is that he was at Serial No.2 in the seniority list of Health Inspectors dated 2.11.1988 and one Mr. Meshram was at Sr.No.1. The grievance of the applicant is that Mr. Meshram retired on 31.1.1989 and therefore the applicant should have been promoted in his place, but instead a junior officer viz., Mr. Mahajan was promoted in place of Meshram. That is how the applicant has approached this Tribunal seeking promotion in the place of Meshram and consequential benefits.

3. The respondents have pleaded in their reply that the application is barred by limitation, that the application is bad for non-joinder of necessary parties since Mahajan is not made a party. Then on merits it is stated that the applicant was considered for promotion but since he was found not suitable for promotion the records not being good, he was not promoted and the next junior Mahajan who was found suitable came to be appointed.

4. The short point for consideration is whether the applicant has made out a case that he was entitled for promotion with effect from 31.1.1989 when Meshram retired. We also have to consider the other contentions of the respondents regarding limitation and non-joinder of necessary parties.



5. It is an admitted case <sup>that</sup> Mahajan retired on 31.1.89. Therefore the cause of action arose to the applicant to get promotion either on that date or when V.K.Mahajan was promoted on 19.10.1989. Even if we take the latter date the applicant should have approached this Tribunal within one year from 19.10.89 when his junior came to be promoted. The Application was actually filed in this Tribunal in 1993 four years after the cause of action arose. No application is filed for condonation of delay. No grounds made out as to why the applicant came to the Tribunal four years after the cause of action arose. <sup>rightly</sup> Respondents contend <sup>is</sup> that the application is barred by limitation and <sup>A</sup> liable to be rejected on this ground alone.

6. Then there is also sufficient force in the respondent's contention that the application is bad for non-joinder of necessary parties. The main grievance of the applicant is that his junior Mahajan is promoted and instead of that he should have been promoted. There is only one post for promotion to which Mahajan is already promoted. If the applicant succeeds in the application then Mahajan will have to be reverted and the applicant will have to be promoted. But curiously Mahajan is not made a party respondent in this application. Therefore, even if the applicant succeeds, we cannot pass any order of reversion on Mahajan to enable the applicant to be promoted. Hence we are constrained to hold that the application is bad for non-joinder of necessary parties since the person who would be vitally affected by our order viz., Mahajan is not made a party to this Application. *for*

7. Coming to the merits of the case, the only allegation is that the applicant has good record and he has not been considered for promotion. The respondents have clearly stated in the written statement that the applicant was considered but since his record was not suitable he was not promoted and the next person was duly promoted. In fact this position has been explained to the applicant by the respondents vide letter dated 12.6.1991 which has been produced by the applicant himself as Annexure F to the O.A. In this letter the respondents have clearly informed the Applicant that since he was found not suitable he was not promoted.

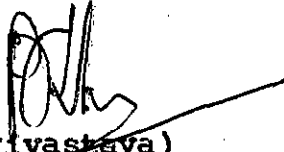
8. One of the contentions of the Applicant is that he was not heard before passing such an order and it amounts to violation of principles of Natural Justice. In our view there is no merit in this contention taken in the pleadings. There is no necessity <sup>for</sup> to the competent authority of hearing the candidates before passing order of promotion. There is no question of issuing a notice before promotion <sup>there is no</sup> and ~~is not~~ in violation of principles of natural justice. Even on merits the applicant has no case when he has been considered and found not suitable for promotion.

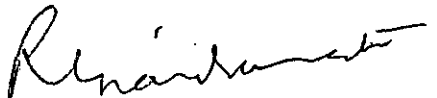
8. We may also notice that the applicant retired on 31.5.91 and has approached this Tribunal only after his retirement. There are delays and latches as the applicant approached this Tribunal two years after his retirement. Thus there is delay on the part of the applicant and this itself is a ground to deny any relief to the applicant even

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if he was entitled to relief on merits. In view of this the applicant is not entitled to any relief <sup>at</sup> in the hands of this Tribunal.

9. In the result the O.A. is hereby dismissed. However, in the circumstances of the case there would be no order as to costs.

  
(P.P. Srivastava)  
Member (A)

  
(R.G. Vaidyanatha)  
Vice Chairman

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