

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

OA No.1301/1993

Mumbai this the 17th day of July, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Smt. Shanta Shastri, Member (A)

Ramrao S/O Chintamanarao Rewatkar
resident of Rambag Colony, Quarter
No.6/20 (Vidhharbha Housing Board)
Near Medical College, Nagpur.
Employed as Daftry in the office
of Deputy Commissioner of Income Tax,
Range-II, Saraf Chambers, Sadar,
2nd Floor, Mount Road, Nagpur.

..Applicant

(By Advocate Shri P.A. Prabhakaran)

VERSUS

1. Chairman, Central Board of Direct Taxes, New Delhi.
2. Chief Commissioner of Income Tax, Sadhu Vasawani Road, Pune.
3. Commissioner of Income-Tax, Nagpur, Aayakar Bhawan, Telang Khedi Road, Civil Lines, Nagpur.
4. Shri N.R. Dhakate, Lower Division Clerk, working in the office of Deputy Director of Investigation, Saraf Chambers, 2nd Floor, Mount Road, Sadar, Nagpur.
5. Shri W.D. Bhaisare, Lower Division Clerk, working in the Office of Commissioner of Income- Tax, Telang Khedi, Civil Lines, Nagpur.

..Respondents

(By Advocate Shri K.D. Kelkar)

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O R D E R (ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

In this application, the applicant is aggrieved by the action and orders passed by the respondents, details of which have been given in Paragraph 1 of the OA, by which according to him, his juniors have been appointed in 1990 and 1991 as Lower Division Clerks(LDCs) whereas, admittedly the applicant was promoted on ad hoc basis to that post in 1994 and thereafter confirmed in 1996. Therefore, in this OA, the applicant has prayed that the order of promotion of Shri W.D.Bhaisare and N.R.Dhakate with effect from 19.7.1990 and 21.12.1991, respectively, should be quashed and set aside. He has also prayed for further directions to promote him as LDC from the date of promotion of the said S/Shri W.D.Bhaisare and Shri Dhakate i.e. with effect from 19.7.1990 and 26.12.1991, respectively. with consequential benefits.

2. We have heard learned counsel for the parties and perused the documents on record.

3. One of the main claims of Shri P.A.Prabhakaran, learned counsel, is that the reservation of promotion posts from class III employees, like the Record Keeper, is not in order. On the other hand, Shri K.D.Kelkar, learned counsel for the respondents has submitted that under Column 12 of the Schedule to the relevant Recruitment Rules(RRs) for group 'C' posts as amended on 1.3.1990, 10% vacancies have

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been reserved for being filled from amongst the regular group 'C' (Notice server, Record Keeper and Staff Car Driver) and group 'D' employees , subject to the further conditions, inter-alia, that 5% 'quota' is reserved for those who qualify in the Departmental examination; 5% 'quota' reserved for senior Group 'C and D' employees who are matric and grade 'D' employee with at least 5 years of regular service. In the light of the amended RRs , we do not find any force in the submissions made by the learned counsel for the applicants in this regard.

4. The applicant has submitted that after the respondents had issued promotion orders with respect to S/Shri W.D.Bhaisare and N.R.Dhakate in 1990 and 1991 promoting them as LDCs, he had made detailed representation dated 24.11.1992. Learned counsel has submitted that no reply had been given by the respondents. Hence this O.A.

5. We also note that the applicant had filed an earlier OA (OA 265/1987) in the Tribunal (Bombay Bench). In this application, according to him, he had made certain averments as given in Paragraph 2 of the aforesaid representation which according to him had been accepted as correct by the respondents. For the purpose of producing the relevant records, a number of opportunities have already been granted to the respondents which unfortunately, is not available even on date. In the

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representation, the applicant has referred to an earlier representation made by him on 16.3.1992 which had also not been replied to by the respondents and hence he has submitted the second representation dated 24.11.1992.

6. During the course of hearing, Shri P.A.Prabhakaran, learned counsel has submitted that he does not press the claims of the applicant with regard to the 1981 Departmental examination, in which according to the respondents the panel was extended upto 25.2.1982. The main contention of the learned counsel for the applicant is that in terms of the respondents letter dated 18.4.1983, the respondents have not placed the persons who qualified in the aforesaid Departmental qualifying examination as per "11 point roster system" adopted by them. He has drawn our attention to the office order dated 25.6.1982 (annexure A-7) which is a list of candidates of group 'D' employees who had qualified in the Departmental examination held in Feb., 1982. In this list, respondents 4 and 5 have been shown at Serial Nos. 8 and 1, respectively, whereas the applicant is shown at Serial No. 26 in a list which is prepared alphabetically and not merit-wise. Learned counsel contends that if the respondents had correctly followed the Rules and instructions for placement on promotion of the eligible candidates at the relevant time in 1990 and 1991, the applicant should have been promoted along with Respondent No. 5 and in any case with respondent No. 4. His main

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grievance against the promotion of respondents 4 and 5 is most specifically mentioned in Paragraph 6 of his later representation dated 24.11.1992.


8. Learned counsel for the respondents, Shri K.D.Kelkar has submitted that in view of the fact that the applicant had given an earlier representation on 6.3.1992 and the OA has been filed on 22.11.1993, the same is barred by limitation. However, taking into account the facts and circumstances of the case and the submissions made by both the learned counsel, we are of the view that this is a case where the delay should be condoned under the provisions of Section 21(3) of the Administrative Tribunals Act, 1985. Apart from this, it is also relevant to note that in spite of the representations made by the applicant, the respondents have not cared to give him a reply nor they have produced the relevant records for the perusal of the Court and further this case has been pending for a number of years before the Tribunal. Therefore, the delay, filing the application is condoned.

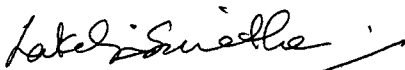
9. In the result, for the reasons given above, the OA is disposed of with the following directions:-

Respondents 1-3 shall consider the aforesaid representation of the applicant dated 24.11.1992 and in particular his grievance that ~~they~~ have not followed the "11

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point roster" strictly in his case, with regard to his qualifying in the departmental examination in 1982 and also having regard to the observations made above, pass a reasoned and speaking order, ^{18.} together with copies of the relevant rules and instructions on which they rely upon, with intimation to the applicant. Necessary action in this regard shall be taken within two months from the date of receipt of a copy of this order. No order as to costs.


(Smt. Shanta Shastry)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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