

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

C.P. No. 115/95 in

OPEN COURT / PRE DELIVERY JUDGMENT IN/OA 138/93

~~Hon'ble Vice Chairman / Member (J) / Member (A)~~

may kindly see the above Judgment for

approval / signature.

~~X.C. / Member (J) / Member (A) (K/S)~~

~~Hon'ble Vice Chairman~~

~~Hon'ble Member (J)~~

~~Hon'ble Member (A) (K/S)~~

I agree

M. K. S.

17/1/96

M(J)

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

GULESTAN BLDG. NO. 6, 3RD/4TH FLOOR,
PRESCOT ROAD, FORT, BOMBAY-400 001.

CONTEMPT PETITION NO. 115/95

IN

ORIGINAL APPLICATION NO.: 1309/93

Dated, this Thursday day of 18th JAN, 1996.)

CORAM : Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

Dr. A.U. Ahmed ... Applicant
(Advocate by Shri M. S. Ramamurthy)

Versus

Union Of India & Others

and

1. Shri S.A. Zaidi
2. Shri A. C. Bakshi

... Respondents.

(Advocate by Shri M.I. Sethna alongwith
Shri S. C. Dhavan).

: ORDER :

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

1. Heard the Learned Counsel Shri M.S. Ramamurthy for the applicant and Shri M.I. Sethna alongwith Shri S. C. Dhavan, Counsel for the respondents. The applicant has filed the contempt petition no., 115/95 in O.A. No. 1309/93. The O.A. was admitted on 21.12.1994. Thereafter, the applicant has filed M.P. No. 795/94 seeking consideration for selection grade. The Tribunal while disposing of the M.P. passed the following order vide dated 10.02.1995.

"All that we need to say is that the respondents may consider whether pending the decision of the O.A., the applicant can be granted adhoc promotion to the Selection Grade, which has already been granted to number of his juniors including Shri (Dr.) B.M. Agarwal.

M.P. No. 795/94 disposed of."

According to the Learned Counsel for the applicant, the reply filed by the respondents to the Contempt Petition is extraneous to the issue involved. What the Tribunal meant at the time of passing the order was that his junior Shri (Dr.) B.M. Agarwal was promoted on adhoc basis with effect from 19.06.1989, accordingly, the applicant should have also been promoted from that date i.e. from the day his junior was promoted, and this is what is meant in the Tribunal's order dated 10.02.1995 which has been defied by the respondents.

2. The Learned Counsel for the respondents, Shri Sethna urged that it is a Selection post and the applicant was harping upon the seniority list in the senior scale, which is not relevant for the purpose of deciding the selection grade appointments. It is true, that the applicant was senior to Shri B.M. Agarwal in the senior scale. From senior scale further promotion is to the post of Junior Administrative Grade. The applicant vide this contempt petition seeks retrospective promotion to the post of Junior Administrative Grade in the

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scale of Rs. 3700-5000 from the year 1989 with consequential benefits and further promotion for Selection Grade from 02/1992 onwards. It is not the case of the applicant that he has not been considered for entitlement of the Junior Administrative Grade in the panel approved by the Competent Authority on 30.10.1989, 27.04.1991 and 15.12.1991 respectively. In the year 1989 when the applicant's name was considered, there were some pending enquiries against him, therefore, though he was considered, they could not publish the final findings of the D.P.C. and the result was kept in a sealed cover. The result of this enquiry was not known to the D.P.C. at the relevant time. It was published only in the year 1992. Further, the contention of the respondents is that the exoneration of departmental enquiry does not help the applicant because he was given promotion to the post of Junior Administrative Grade on 13.05.1991 on proforma basis. Though the result of the enquiry came to be known only in the year 1992, the respondents promoted the applicant in the year 1991 and when the sealed cover was opened, it was found that he was 'unfit' for [redacted] further promotion to the post of Junior Administrative Grade. Though Shri B.M. Agarwal appears to be junior in the senior scale, by virtue of his promotion in the year 1989 through selection, he became senior to the applicant in the Junior Administrative Grade and the applicant became junior to him. For the purpose of selection to the post of Selection Grade, seniority in the Junior Administrative Grade is relevant and not the seniority in the senior scale, which is one grade below. Since the applicant was found 'unfit' for promotion in the year 1989, mere quashing of the departmental enquiry against him does not have any

bearing on his selection to the post of Junior Administrative Grade.

3. In the result, we do not see any merit in the Contempt Petition. All these contentions can be looked into at the time of final disposal of the O.A. and no contempt has been made out by the applicant. The Contempt Petition No. 115/95 is accordingly discharged.

M R Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

B S Hegde
(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1309 OF 1993

Date of Decision: 17/7/2001

Dr. Agil Uddin Ahmed.

Applicant(s)

Shri M.S. Ramamurthy.

Advocate for Applicants

Versus

Union of India & 2 others

.. Respondents

Shri S.C. Dhawan.

Advocate for Respondents

CORAM: HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal? /x
- (3) Library ✓

Shanta
(SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1309 OF 1993

THIS 27th THE ~~17~~ DAY OF July, 2001

CORAM: HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. ... MEMBER (A)

Dr. Agil Uddin Ahmed,
Senior Divisional Medical Officer,
Central Railway Hospital,
Byculla,
Bombay.

.. Applicant

By Advocate Shri M.S. Ramamurthy.

Vs.

1. Union of India,
through the General Manager,
Central Railway,
Bombay V.T.,
Bombay.
2. Chief Personnel Officer,
Central Railway,
Bombay VT,
Bombay.
3. The Secretary,
Ministry of Railways,
Rail Bhavan,
New Delhi-110 001.

... Respondents

By Advocate Shri S.C. Dhawan.

O R D E R

Hon'ble Smt. Shanta Shastry.

.. Member (A)

The relief; sought by the applicant in this OA
are to give retrospective effect to his promotion to the
Junior Administrative Grade (Rs. 3700 -5000) with
effect from 19.6.1989 on adhoc basis and from 31.10.89

on regular basis with consequential monetary benefits, seniority and payment of due arrears and further to give him selection grade (Rs. 4500 - 5700) with retrospective effect from 1.2.1992 with all consequential benefits.

2. Brief facts in this case are that the applicant joined Railway Medical Services on 30.10.1967 and was promoted in due course as Divisional Medical Officer with effect from 9.10.1987. As a result of the cadre review of the Medical Department in the Railways, a number of posts of DMO in the Senior Scale were upgraded to the Junior Administrative Grade in 1989. The Railway Board decided that the upgraded posts may initially be filled on adhoc basis. Accordingly adhoc promotions were considered and ordered with effect from 19.6.1989. The applicant was also due for consideration for such adhoc promotion, but his name was not included in the panel prepared on 19.6.1989. On adhoc promotion, the officers were entitled to draw their pay in the senior scale with special pay of Rs. 300/- per month as charge allowance. The pay of the Junior Administrative Grade was allowed only after they could be empaneled for regular promotion. The applicant was left out of this.

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3. Subsequently DPC meetings were held for regular promotion in October, 1989, April, 1991 and December, 1991 and several persons were promoted, but not the applicant and several juniors to the applicant were also promoted.

4. The applicant was not considered for adhoc promotion on 19.6.1989 because disciplinary proceedings for major penalty were contemplated against him in terms of the OM dated 12.1.1988 of DOP & T following the circular dated 23.1.1989. Thereafter, a regular charge sheet was issued to the applicant on 12.10.1989 as per procedure. In the DPC meetings, which were held for empanelment to the Junior Administrative Grade on 30.10.1989, 22.4.1991 and 3.12.1991, the applicant's case was considered for promotion. However, the findings of the DPC were kept in a sealed cover since disciplinary proceedings were pending against him.

5. The enquiry was completed and the enquiry officer submitted his report in October, 1990. Further, a denovo enquiry was ordered and the Railway Board in consultation with the CVC accepted the report of the enquiry officer and dropped the proceedings against the applicant. Thereafter, as per the prescribed procedure, the sealed covers were opened on his exoneration. It was found that the applicant was assessed as "not fit" in the panel approved on 30.10.1989 on the basis of his performance. He was, however, assessed "fit" in the

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later panels and accordingly his name was interpolated in the selection list approved by the competent authority on 27.4.1991 issued on 13.5.1991. He was then promoted to the Junior Administrative Grade with effect from 07.8.1992 and subsequently was allowed proforma fixation with effect from 13.5.1991 with reference to the date of promotion of his immediate junior without payment of any arrears.

6. The applicant, however, could not be promoted to selection grade as he was not yet senior enough to be considered for selection grade. Later on during the pendency of the OA, the applicant was granted selection grade in 1998.

7. The contention of the applicant is that as Divisional Medical Officer, he was senior to several Divisional Medical Officers, who were granted the adhoc promotion on 19.6.1989. At that relevant time, no charge sheet had actually been issued. In terms of the judgment of the Supreme Court in the case of Janakiraman Vs. Union of India unless a charge sheet is issued, disciplinary proceedings are not deemed to have been initiated and, therefore, consideration for promotion cannot be withheld on that ground. The applicant was unnecessarily deprived of the adhoc promotion putting him to huge monetary loss as well as affecting his further promotion on regular basis. All those, who were promoted on adhoc basis were regularised later on. He

too would have been regularised if he had been granted the adhoc promotion. The respondents' action is illegal and contrary to the instructions of the DOP & T^{in O.M.} dated 12.1.1998 and Railway Board circular^{dated} 21.1.1991. Even after his exoneration he was not granted adhoc promotion.

8. The applicant submits that he was not found fit in the DPC held for the panel dated 31.10.1989. But according to the applicant^{he} had excellent meritorious record all along, he was chosen for Haj delegation, he was awarded family welfare prize during 1988/89. No adverse entry whatsoever was communicated to him. The applicant, therefore, submits that his record must not have been upto the bench mark of "very good" perhaps. Since in such cases even "good" grading, amounts to adverse entry, the respondents ought to have communicated the said entry to the applicant and in the absence of any communication of the said entry, they should not have considered the ACR containing this entry for purpose of selection and a review DPC should have been held by them to reconsider his case. The respondents failed to do so. Therefore, they should be directed to hold a review DPC and reconsider his fitness for promotion with effect from 31.10.1989 on regular basis when his immediate junior Dr. B.M. Agarwal was promoted. The learned counsel for the applicant also submits that during an earlier hearing of this case, the Tribunal had directed the respondents to produce the

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relevant records of the DPCs as well as the ACR of the applicant. The learned counsel for the applicant has also alleged that the respondents suppressed the fact that one more DPC was held in January, 1990 and the panel was declared on 7.3.1990 of Divisional Medical Officers promoted to the Junior Administrative Grade. The applicant's case was not at all considered in this DPC. There was no reason why his case should not have been considered. Had he been considered and selected, his promotion could have been with effect from that date. The finding could have been kept in a sealed cover. The applicant's claim is, therefore, that he is entitled to promotion from 19.6.1989 with all consequential benefits.

9. The learned counsel for the applicant cites a judgment in Charan Singh Azad Vs. State of Maharashtra & Others in O.A. 117/99 delivered on 7th January, 2000 by this Tribunal wherein the Tribunal considered the various judgments regarding adverse ACRs and the down grading of entries in the ACRs and held that the adverse entries which were not communicated, will be ignored for considering the case of the applicant for promotion by the review screening committee. He further relies on the judgment of this Tribunal in O.A. 125/92 in the case of Bhaktadas Roy Vs. Union of India & Others, wherein again a review DPC was ordered by directing to ignore the CR for those years wherein adverse entries have not been communicated including the "Good" remark which

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Janakiraman & Others) reported at 1991 (4) SCC 109. He is entitled to arrears from 13.5.91. The learned counsel further insists to direct the respondents to produce the record relating to the DPC proceedings on both adhoc promotion as well as regular promotion for perusal of the Tribunal.

12. The respondents submit that the applicant could not be given adhoc promotion because major penalty proceedings were contemplated against him. This is strictly in keeping with the OM dated 12.1.1988 and the circular dated 21.8.1988 of the Railways. In October, 1989 he was duly considered for promotion but was not found fit. The post of Junior Administrative Grade is a selection post and comparative merit counts. The respondents admit that a DPC was held in January, 1990, but it was not a fresh DPC but continuation of the DPC held ⁱⁿ October, ~~in~~ 1989. The applicant's case was not due for review and the ACRs which were available for consideration would have been the same as those available in the 1989 DPC. Therefore, the applicant's case was not considered in the DPC held in January, 1990. The respondents, further contend that the applicant has taken the plea regarding communication of adverse remarks etc., at a very belated stage. The applicant is seeking to challenge the procedure adopted for selection for the first time in 1998 while he is

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trying to challenge his non selection in the year 1989. It is not permissible at such a belated stage. It is hit by limitation.

12. The respondents have acted in a fair manner and since the applicant was exonerated in the enquiry, he has been granted promotion with effect from the date when his junior got promotion. As regards, the arrears, the learned counsel has drawn our attention to the Railway Board circular of 21.8.1988 wherein, it has been clearly laid down that on being promoted after exoneration no arrears are to be paid and therefore, the non payment of arrears during the proforma promotion is very much within order.

13. We have heard the learned counsel for both the parties and have given careful consideration to the arguments advanced. We note that the applicant has been given promotion to the Junior Administrative Grade with effect from 13.5.1991 since the applicant was exonerated. We cannot, therefore find any fault with the respondents in this matter. However, considering the judgments of the Supreme Court in the case of Janakiraman (supra) we hold that the applicant is entitled to arrears of pay etc., from 13.5.1991. The plea taken by the respondents was that since the applicant was exonerated only from 1992 ~~and~~ therefore, he cannot be paid arrears from 13.5.91. At the same time on their own, they have given proforma promotion

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from an earlier date to the applicant. Having conceded proforma promotion, therefore, they cannot deny the arrears from the earlier date. Also though the respondents have relied on the circular by the Railway Board, the judgment in the case of Janakiraman (supra) being of a later date, will apply.

14. We have noted the submissions made by the applicant in regard to his adhoc promotion and regular promotion from 31.8.89 when his junior Dr. B.M. Agarwal was promoted. In our considered view, the respondents have acted in a very fair manner. The applicant has not challenged in time his non promotion on adhoc basis on 19.6.1989. He cannot challenge the same now after several years. Also the applicant has no vested right for adhoc promotion ^{not to} ^{it} ^{on him} does not bestow any right for regularisation. As we find that the applicant was not found fit four months later, he would have been regularised only after he has been found fit. In any case, if the applicant had been aggrieved, he should have approached this Tribunal immediately, which he failed to do. This prayer of the applicant suffers from delay and latches and is barred by limitation as the cause of action arose on 19.6.1989.

15. The request for promotion from 31.10.1989 to the Junior Administrative Grade is again similarly affected by limitation. In fact, when the applicant was promoted in 1992 he accepted the promotion, he cannot

challenge the ACR of 1988-89 or prior to that through this OA. With regard to new relief sought by the applicant, we agree with the respondent. He cannot seek to raise a new issue now belatedly. It is also to be noted that the applicant had filed MP 599/98 in 1998 during the pendency of the OA to amend the OA to bring in the fact regarding the DPC held in January, 1990 and the promotion order dated 7.3.1990 as also the procedure/ criterion adopted in the selection to the Junior Administrative Grade and the ACRs considered in the DPC held in 1989. The Tribunal vide order dated 26.2.1999 did not allow the amendment. The Tribunal stated therein that after perusal of the MP it was found that most of the allegations are argumentative, some of the arguments pertain to legal points for which no amendment is necessary and it can be heard at the time of final hearing. It was added further that when the whole matter is heard and it was pending for six years, a move to raise new points on the ground of legal points is not called for. The applicant can address the points raised in the MP at the time of further arguments. Thus, MP was rejected. It is, therefore, not considered necessary to call for the records of the DPCs held earlier from 1989 to 1991 and the relief sought thereby.

16. We further note that the applicant had asked for selection grade from 01.2.1992. We are satisfied that the applicant had no case for grant of selection grade from the aforesaid date as he was promoted to the



Junior Administrative Grade only with effect from 13.5.1991 and the respondents have now granted the selection grade to the applicant in 1998.

17. In view of the discussions made above, in our considered view, the only relief that can be granted to the applicant in this case is to grant the difference of arrears of pay etc., from 13.5.1991 on the higher post, which was denied by the respondents. We, therefore, direct the respondents to grant the arrears of pay to the applicant in the Junior Administrative Grade post with effect from 13.5.1991. The OA is disposed of accordingly. We do not order any costs.

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M SHANTA SHASTRY)
MEMBER (A)

Lakshmi Swaminathan

M LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

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