

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1331/93

Transfer Application No.

Date of Decision 3.12.1997

P.G.Waikule

Petitioner/s

Shri S.P.Saxena

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.D.Vadhavkar for Shri M.I.Sethna

Advocate for
the Respondents

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 ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?

(P.P.SRIVASTAVA)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1331/93

Wednesday this the 3rd day of December, 1997

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

Pandurang Govind Waikule,
r/o S.NO.27, Munjabavasti,
Dhanori Village, P.O.Dighi,
Pune-15.

By Advocate Shri S.P.Saxena ... Applicant
V/s.

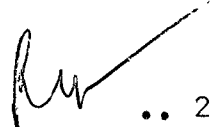
1. The Union of India, through
the Surveyer General of India,
Hathi Barkala Estate, Dehradun.
2. The Director (SCC), Survey of India,
3-4-526/38 Barkatpura, Hyderabad,
3. The Officer-in-charge,
No.31 Party (SCC), Survey of India,
Phule Nagar, Alandi Road, Pune.
4. The Officer-in-charge,
NO. 52 Party (SCC),
Survey of India, Phule Nagar,
Alandi Road, Pune.
5. S.C.Rangaiah, Jemadar,
NO. 52 Party (SCC),
Survey of India,
Phule Nagar, Pune.

By Advocate Shri V.D.Vadhavkar
for Shri M.I.Sethna, C.G.S.C. ... Respondents

O R D E R

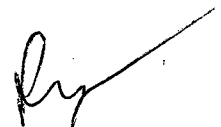
(Per: Shri Justice R.G.Vaidyanatha, VC)

This is an application filed under Section
19 of the A.T.Act. Respondents have filed reply.
Heard both sides.

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2. The applicant at the relevant time was a Daffadar in the Department of Survey of India. He was considered for promotion but was not promoted but his junior Respondent No. 5 Rangaiah came to be promoted as Jemadar w.e.f. 1.5.1991. According to the applicant, he has good record of service and he was entitled to be promoted but since he was not promoted and his junior was promoted, he has approached this Tribunal praying for an order to direct the administration to promote him to the post of Jemadar by holding a review D.P.C. and give effect to the same from the date his junior Respondent No. 5 came to be promoted.

3. In the reply filed by the Respondents No. 1 to 4, it is admitted that the case of the applicant was not considered properly in the first D.P.C. in order to do justice to him, the department held a review D.P.C. and duly promoted the applicant by an order of promotion dated 10.7.1992 where the applicant was promoted w.e.f. 30.4.1991 and was posted in the transferred vacancy of one S.Ambaiah but it transpires that Mr.Ambaiah who has sought transfer to Hyderabad on request withdrew his request and did not want a transfer and as a result there was no vacancy of Jemadar and therefore the order of applicant could not be implemented. Subsequently, the department issued a fresh order dated 24.9.1992 and posted the



applicant on promotion to a vacancy at Nagpur. However, the applicant declined to accept that offer. Since he was not willing to go to Nagpur, therefore, the department's case is since the applicant has refused promotion, he cannot get the benefit of retrospective promotion from the date when his juniors came to be promoted.

4. At the time of arguments, it is brought to our notice that the applicant has since been ^{promoted} promoted and took charge on 5.9.1995 at Pune. Now only question is whether the applicant is entitled to retrospective promotion from 30.4.1991 or not.

5. The learned counsel for the applicant contended that when applicant was wrongly denied promotion and his junior came to be promoted on 1.5.1991, the applicant is entitled to be promoted with effect from that date. While conceding the point that the applicant's promotion was denied by mistake or otherwise, the learned counsel for the respondents contended that the department has issued a promotion order giving retrospective effect from 30.4.1991, but since the applicant refused promotion, he cannot now get the benefit of retrospective promotion.

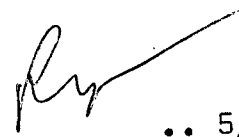
6. The department has produced a letter given by the applicant dated 21.12.1992. In this letter, the applicant has clearly stated that he is not interested to move out from Pune on transfer to Nagpur on promotion

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as Jemadar due to personal/domestic problems.
He is prepared to continue in the present vacancy
as Daffadar at Pune so that he can solve his problems
by remaining in Pune itself.

The Department has tried to remedy the
situation and give justice to the applicant by
giving retorspective promotion from 30.4.1991.
Since the applicant himself has denied the promotion
by expressing unwillingness to go to Nagpur and kept
quiet for three years till he was again promoted in
1995, Now he cannot complain~~x~~ that he should be given
retrospective promotion from 1.5.1991. An official
who voluntarily declines promotion cannot turn^{round}~~down~~
and say that he should get promotion from retrospective
date. Therefore, we are not prepared to accept the case
of the applicant that inspite of refusal of promotion,
he should be given the benefit of retorspective promotion.
Hence, in our view, the applicant is not entitled to any
relief.

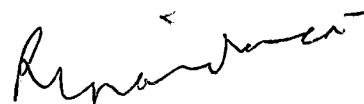
7. In the application he has asked for two reliefs,
one is seeking promotion as per prayer clause 8 (a)
which has since been given to him and he has already
join^{ed}~~x~~ the post on promotion. As far as prayer 8 (b)
is concerned, he cannot be given the benefit of retorspective
promotion for the reasons mentioned above.


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8. In the result, the application has become infructuous so far as prayer § (a) is concerned, since the applicant has already been promoted and taken charge and applicant is not entitled to other reliefs prayed by him. The application is accordingly dismissed.
No costs.



(P.P. SRIVASTAVA)
MEMBER (A)



(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.