

In the Central Administrative Tribunal
Mumbai Bench, Mumbai

Camp at Nagpur

O.A. No. 144 of 1993

Decided 9/11/1998.

Shri S.K. Jambulkar : Applicant

(By Advocate: Shri B.J. Kawade)

Versus

Central Railway, Bombay & Anr.

(By Advocate: Shri P.S. Lambat)

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HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. RATAN PRAKASH, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches
of the Tribunal? No

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(S.R. Adige)
Vice Chairman (A)

In the Central Administrative Tribunal
Mumbai Bench, Mumbai

Camp at Nagpur

O.A. No. 144 of 1993

Nagpur, dated this the 9th day of November 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. RATAN PRAKASH, MEMBER (J)

Shri Shripad Kashiramji Jambulkar,
Retd. Chief Health Inspector,
Central Railway,
R/o 81, Rathod Layout (Anant Nagar),
Katol Raod,
Nagpur-440013. Applicant

(By Advocate: Shri B.J. Kawade)

Versus

1. Union of India through
the General Manager,
Central Railway, Bombay V.T.
2. Chief Personnel Officer (Medical),
Central Railway,
Bombay V.T. Respondents

(By Advocate: Shri P.S. Lambat)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant who belongs to SC community
impugns respondents orders dated 19.7.91 and seeks
assignment of correct seniority and promotion in
grade of Health Inspector Gr. I (Rs.700-900 RS)
w.e.f. 1.1.84 against upgraded possts together
with difference of back wages and interest @ 12%
p.a. thereon.

2. Admittedly there were initially two posts
of Health Inspector Gr. I, and consequent to
restructuring, 8 additional posts were added to the
existing strength w.e.f. 1.1.84, resulting in 10
posts becoming available, of which two posts (15%)
were reserved for SC and one (7 1/2%) post for ST,

which were to be filled on the basis of 40 point roster. Promotion to the post of Health Inspector Gr. I was to be made by promotion from Health Inspector Gr. II (Rs.550-750 RS) on non-selection basis, that is seniority-cum-suitability. As per seniority list of Health Inspector Gr. II, applicant was Sl. No.7 in order of seniority (Ann. 7).

3. Applicant had approached the CAT, Jabalpur Bench earlier in regard to the grievance vide O.A. No. 356/987, which was disposed of with certain directions vide common judgment dated 21.12.90 in TA-566/86 DB Deodhar & Ors. Vs. UOI & Ors. and connected cases (including O.A. No. 356/87). Thereupon applicant filed C.P. No. 273/91 alleging non-compliance of those directions, which came up before that Bench on 17.9.92. None appeared for the applicant on that date. Counsel for respondents appeared and furnished a copy of the impugned order dated 19.7.91 contending that the compliance of the judgment and order dated 21.12.90 had been made. This position was accepted by the Bench and the C.P. was rejected as having become infructuous, and notices to respondents were thereby discharged. There is no averment that any review application was filed against the aforesaid order dated 17.9.92. Respondents have taken the plea that the present O.A. is therefore barred by Res Judicata, but as the C.P. was limited to the alleged contumacious

disobedience of the impugned order dated 21.12.90 and did not discuss the correctness on merits of the order dated 19.7.91 we are not inclined to accept respondents' contention that the O.A. is hit by Res Judicata. Nor is the O.A. hit by limitation as contended by respondents, because applicant contends that he received the impugned order dated 19.7.91 only with a copy of the Bench's order dated 17.9.92 on his C.P. No. 273/91, which is not denied by ^{respondents} them in their reply, and he filed the present O.A. on 20.1.93, that is well within 6 months of 17.9.92. Hence the plea of limitation is also rejected.

4. We have heard applicant's counsel Shri Kawade and respondents' counsel Shri Lambat.

5. Respondents do not deny (see their reply to Para 4.5 of the O.A.) that applicant was promoted to the feeder grade of Health Inspector Gr.II ((Rs.550-750) against ^a ~~the~~ general post in 1981. The question for adjudication is whether applicant can be denied his further promotion to Health Inspector Gr.I (Rs.700-900) against one of the 10 available posts as on 1.1.84, when he is at Sl. No.7 in the seniority list of the feeder grade of Health Inspector Gr.II. Even if as per impugned order dated 19.7.91 the 3 reserved posts were occupied by reserved candidates through promotion, or because they were already working against ^{leaves} ~~the~~ posts, that still ^{leaves} ~~had~~ 7 available

vacancies, and even by respondents own seniority list annexed with their reply (Exh. R-1) applicant would very well be eligible for promotion against one of the general vacancies by virtue of his seniority, after excluding S/Shri Deshbhratar and Kadri both of whom belong to SC community, and were stated to be already working or were promoted against the two posts reserved for SC. In fact in our view, non-consideration of applicant's case for promotion as Health Inspector Gr. I (Rs.700-900) w.e.f. 1.1.84 despite his seniority position, and vacancies being available, would mean denying him such consideration merely because he belongs to SC community, which would be illegal, arbitrary and violative of Articles 14 & 16 of the Constitution. We are supported in our view by the Hon'ble Supreme Court's judgment delivered by a three judges Bench on 7.5.97 in Jagdish Lal Vs. State of Haryana AIR 1997 SC 2366 relevant extracts of Para 12 of which reads as follows:

"On promotion to the higher grade, the reserved candidate steals a march over general candidates and becomes a member of the service in the higher cadre or grade earlier to the general candidates. Continuous length of service gives him the seniority as determined under Rule 11. Therefore, seniority cannot get re-opened, after the general candidate gets promoted to the higher cadre/grade. Would a dual principle of seniority of Dalits and Tribes and general candidates is valid and constitutionally permissible? If a positive finding in that behalf is recorded, it would run contrary to the beed role of judicial precedents and it would be fraught with irreconcilable incongruities in matters of integrating employees drawn from

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different streams to forge into common seniority or promoted according to rules which hitherto is well-trenched in service jurisprudence.

It is true that the aforesaid judgment was delivered in the context of the ^{Jharkhand State} Education Dept. Class II Service Rules, Rule 11 of which is referred to in the above extracts, but the ratio of the aforesaid judgment extracted above, is fully applicable to the facts and circumstances of this case, namely that applicant upon being promoted to Health Inspector Gr.II becomes a member of that grade, and his seniority cannot get reopened after a general candidate gets promoted to Health Inspector Gr.II though he was senior to him in the feeder grade. In the present case applicant's claim is even stronger, because as per respondents' own seniority list (Ann. R-1) applicant is at St. No.8 (it should actually be 7 because Shri K. Oomen would have stood retired on superannuation on 1.1.84, his date of birth being 24.4.25); And two of those above him, namely S/Shri Deshbratar and Kadri have been working/promoted against reserved posts, and there are still 10-2=8 posts against one of which applicant should have been promoted.

7. We find additional support in our view from the following extracts occurring in Para 44 of the Hon'ble Supreme Court's judgment dated 21.3.97 in A.K. Gupta & Anr. Vs. State of U.P. and another also delivered by a three judges Bench (1997(5)SCC 201)

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.....The candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand, the reserved category candidates can compete for the non-reserved posts. In the event of their appointment to the said posts, their number cannot be added and taken into consideration for working out the percentage of reservation."

8. In the result this O.A. succeeds and is allowed to the extent that applicant should be considered for promotion as Health Inspector Gr. I w.e.f. 1.1.84 in accordance with rules and instructions and if promoted he will be entitled to the difference of back pay and allowances from the date of promotion till the date of his retirement together with refixation of his retiral benefits. These directions should be implemented within four months from the date of receipt of a copy of this order. The prayer for interest is rejected as there was no deliberate or wanton delay on the part of respondents and the impugned dated 19.7.91 was based upon an incomplete understanding of the law. No costs.

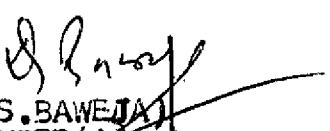

(RATAN PRAKASH)
Member (J)


(S.R. ADIGE)
Vice Chairman (A)

/GK/

Dated: 9.11.1998.

This Judgment is pronounced in the open Court to day by the Bench comprising of Justice Shri R.G.Vaidyanatha, Vice- Chairman and Shri D.S.Baweja, Member(A) under Rule 106 of the CAT Rules of Practice at Mumbai.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE - CHAIRMAN