

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 148/93

Transfer Application No.

Date of Decision 6-6-97

M.A.Tamhankar

Petitioner/s

Applicant in person

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri R.K.Shetty

Advocate for
the Respondents

CORAM :

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

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

- (1) To be referred to the Reporter or not ? ☒
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? ☒

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

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO. 148/93

6th this the 14th day of June 1997

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri M.R.Kolhatkar, Member (A)

MES-160280

M.A.Tamhankar,
AE B/R SO III (Navy),
C/o Chief Engineer,
Southern Command,
Pune-411 001.

Applicant in person

... Applicant

V/S.

Union of India through

1. Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Engineer-in-chief,
AHQ, Kashmir House,
DHQ PO :New Delhi 110011.
3. Chief Engineer,
Southern Command,
Pune-411 001.

By Advocate Shri R.K.Shetty
C.G.S.C.

... Respondents

O R D E R

(Per: Shri M.R.Kolhatkar, Member (A))

The applicant joined the department as Superintendent B(Buildings)/R (Roads) on 3.6.1965. He was a Degree Holder when he joined. He passed departmental examination on 23.10.1983. He was promoted to the next higher grade w.e.f. 13.6.1986. He filed the DA. on 16.2.1993. He retired on 31.3.1996 which date he was ~~till~~ not promoted as Executive Engineer being the next promotional grade. The applicant is governed by Recruitment Rules for the post of Assistant Engineer

B/R notified in SRO 304 of 6.10.1978 amended by SRO 107 dated 20.4.1985. The contention of the applicant is ^{that} the Recruitment Rules as framed discriminate against direct recruits/degree holders, that DPC also ^{was} not held regularly, that the rules are also not properly interpreted as a result of which, he has lost opportunities for promotion and ~~has~~ consequently lost financially. He has, therefore, sought the following reliefs :-

"(a) As per the provisions of the 1:1 quota between the Direct Recruits & promotees and taking into account the numerous promotions made on 13 May 65 from B/R gde II to gde I and from the date of my appointment on 3 Jun 65, the Seniority list is to be amended at first.

(b) Or by the provisions of the Recruitment Rules of Assistant Engineers (Buildings/Roads in MES vide SRO 304 dtd. 6 Oct. 78, for the eligibility for consideration, a separate seniority list of Degree holders (Direct recruits) & Diploma Holders (Promotees) be prepared showing the date of eligibility by adding 3 & 7 in the respective grades.

(c) Since I was fully eligible for promotion from 21 Oct. 83, after passing the MES procedure examination, I am required to be promoted on regular basis in the promotions of 1983 with reference to the 1:1 quota between the Degree holders & Diploma holders and by seeing the remarks of the Confidential Reports, placing me at an appropriate place in the Merit-cum-Select Panel & the actual promotion.

(d) To give all the consequential benefits of promotion, pay and allowances, seniority, prospects of further promotions etc. from 21 Oct. 83.

2. Respondents have opposed the OA. By way of historical background, the respondents have pointed out as below :-

" in the Military Engineer Services (MES for short), there were two separate cadres i.e. Engineer Cadre and Surveyor Cadre. These two cadres were merged into one cadre upto the level of Assistant Executive Engineer/Assistant Surveyor of Works under the scheme

outlined in Govt. of India, Ministry of Defence letter No. 64287/E1B/13732/D(Appts) dated 23 Mar 64. However, keeping in view the problem which arose after the merger, Govt. of India decided to demerge the two cadre in 1978. Options were called for accordingly and options were exercised by some engineers. After issue of G of I, M of D letter No. PC/64287/E1B/346/S/D(W-II) dated 31 Mar 1978 conveying the decision to demerge the surveyor cadre completely from engr cadre, there were representations by the personnel of surveyor cadre to the office that their career prospects would be affected in case personnel of engr cadre are inducted into surveyor cadre. Pending detailed consideration of the representations and decision thereon, follow up action could not be taken on options exercised and these options were cancelled. After considering the representations from surveyor cadre, it was decided by Govt. that the then existing personnel of surveyor cadre will be en bloc senior to the optees who might be inducted into the cadre. After this decision of Govt. and issue of GOI, MOD letter No. PC/64287/E1B/D(W-II) dated 05 Sept. 80 incorporating these modifications, fresh options were called for. These were accepted with effect from 05 Jan 81 and optees from Engr cadre were transferred to surveyor cadre. Till the transfers were effected and the recruitment rules of both cadres were revised to cater for transfer of optees, no promotions could be made on regular basis. Thus, there was no alternative except to make ad-hoc promotions to meet the exigencies of service. Secondly consequent on designating Engineer-in-Chief Army HQ as the appointing authority in respect of Group 'B' posts in MES and amending the Schedule to CCS(CC&A) Rules 1965 accordingly vide Govt. of India, Dept. of Personnel & A.R. Notification No. F.11012/7/12/7/82-Estt(A) dt. 25 Apr 84 the recruitment rules for the post of AE B/R were required to be amended, especially with regard to the composition of Departmental Promotion Committee. The Recruitment Rules for Assistant Engineer B/R were amended vide SRO No. 107 dated 20 Apr 1985 (a copy of which is annexed hereto marked R-1). Until the composition of DPC was decided and notified in gazette, no DPCs could be held."

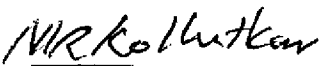
3. According to the respondents, in the DPC held in July, 1992, 39 Assistant Engineers with seniority upto 26.3.1980 were falling within the zone of consideration and 18 amongst them were empanelled for promotion to the post of EE based on selection method. 13.6. The applicant counts his seniority from 1986 and, therefore, he was far too junior to be considered for the post of Executive Engineer."


4. The respondents have stated that the applicant is labouring under a misconception that the degree holders and diploma holders fall into two different feeder grades. There are no separate feeder grades for promotion to the post of Assistant Engineer. The respondents further contend that what the applicant wants the Tribunal to do is to direct respondents to amend Recruitment Rules as desired by the applicant. The Tribunal has no such powers as laid down by the Supreme Court in the following cases :-

- (1) Mallikarjuna Rao vs. State of Andhra Pradesh
1990 (13) ATC 724 S.C.
- (2) Azif Hamid vs. State of J & K
1989 Supp (2) SCC 364
- (3) Palluru Ramkrishniah vs. Union of India
1989 II LLJ page 47
- (4) S.S. Attal vs. Union of India - OA.267/87
CAT, Bombay judgement dt. 23.8.1990.

5. Respondents have further argued that the applicant is seeking promotion to the post of Executive Engineer with retrospective effect, viz. from October, 1983 but the OA. has been filed only in February, 1993 and therefore the OA. is barred by limitation. Respondents contend that if the plea of the applicant for revising his seniority is considered at this stage after a long lapse of time, such action would be in contravention of binding ratio of Supreme Court judgement in Malcom Lawrence Cecil D'Souza vs. Union of India and others reported in 1976 SCC (L&S) 115.

6. We have considered the rival contentions. It appears to us that the OA. suffers from the vice of vagueness. The reliefs are based on certain assumptions derived from his own interpretation of Recruitment Rules regarding 1 : 1 quota regarding direct recruitment. Department has rightly pointed out that these assumptions are not correct. It is also well settled that unless the Recruitment Rules are shown to be arbitrary and illegal, it is not open for this Tribunal to quash them much less to issue direction to amend them. The prayer of the applicant to consider his case for promotion from the date he passed departmental examination, namely, 21.10.1983 for the promotional post is also barred by limitation. If the applicant was aggrieved by any particular order promoting his alleged juniors, he ought to have approached the Tribunal in time for redressal of his grievance. He has not done so but instead he has approached the Tribunal for reliefs based on imaginary grievances. The OA., therefore, has no merit and is, therefore, dismissed with no orders as to costs.


(M.R.KOLHATKAR)
MEMBER (A)


(B.S.HEGDE)
MEMBER (J)

mrj.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW PETITION NO. 66/97 IN O.A.148/93

CORAM: HON'BLE SHRI B.S. HEGDE, MEMBER (J)
HON'BLE SHRI M.R. KOLHATKAR, MEMBER (A)

M.A. TAMHANKAR

.. Review Petitioner
(Original Applicant)

-versus-

U.C.I. & Ors.

.. Respondents

Tribunal's Order on Review
Petition by circulation

Date: 24.7.97

(Per M.R. Kolhatkar, Member(A))

In this R.P. the Review Petitioner (original applicant) has sought review of our order dt. 16.6.97. The precise grounds for review are not clear. However, in the body of the review petition the applicant has set out the arguments on which he had relied when the matter was heard. It also appears that the applicant feels aggrieved by the fact that he was arguing in person whereas the respondents were represented by legally trained Govt. counsel. These contentions of the applicant have no bearing to the grounds on which the review has to be sought because applicant is not able to show any apparent errors on the face of the record in the judgment or any other satisfactory reasons. It would appear that the applicant considered the judgment to be wrong but in that case the appropriate remedy for the applicant is not ^{file} to ~~to~~ review but approach the appropriate forum by way of a judicial scrutiny of the order of the Tribunal.

2. We are therefore of the view that the R.P. has no merit and the same is therefore dismissed by circulation as provided by the rules.

M.R. Kolhatkar
(M.R. KOLHATKAR)
Member(A)

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

M