

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 804 OF 1993.

Date of Decision: July 05, 1999.

Manohar Burde,

Applicant.

In Person,

Advocate for
Applicant.

Versus

Union Of India & Others,

Respondent(s)

Shri R. K. Shetty,

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice S. Venkataraman, Vice-Chairman.

Hon'ble Shri. S. K. Ghosal, Member (A).

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

(S. VENKATARAMAN)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 804 OF 1993.

Dated this Monday, the 5th day of July, 1999.

CORAM : HON'BLE SHRI JUSTICE S. VENKATARAMAN,
VICE-CHAIRMAN.

HON'BLE SHRI S. K. GHOSAL, MEMBER (A).

Manohar Burde,
Works Manager (ADMN),
Machine Tool Prototype Factory,
Thane District,
Ambernath - 421 502.

... Applicant

(In Person).

VERSUS

1. Union Of India through
The Secretary,
Department of Defence Production
& Supplies, New Delhi.
2. Director General of Ordnance
Factories/Chairman, Ordnance
Factory Board,
10-A, Auckland Road,
Calcutta - 700 001.
3. The General Manager,
High Explosive Factory,
Kierkee, Pune - 411 003.
4. The Secretary,
Union Public Service Commission,
Shahjahan Road, Dolpur House,
New Delhi - 110 011. ... Respondents.

(By Advocate Shri R. K. Shetty).

OPEN COURT ORDER

PER.: SHRI JUSTICE S. VENKATARAMAN, VICE-CHAIRMAN.

The applicant has sought for promotion to Senior Time Scale and J.A.G. post from the date his juniors have been promoted and has also sought for correction of the seniority list by placing him above the juniors who were promoted without considering his case.

He has also sought for correction of the combined seniority list as well as arrears of pay and allowances due to him as the consequences of the above relief.

2. After the filing of this application, the respondents have stated that they have now given notional promotion to the applicant to the Senior Time Scale w.e.f. 29.02.1988, on which date he completed four years service, that they have also notionally promoted him to the J.A.G. cadre from the date his junior had been promoted, that the seniority list has also been corrected by giving the applicant seniority above his juniors and below his senior and that as such this application has become infructuous.

3. The applicant, however, still contends that the respondents have not given him promotion from 30.06.1987, on which date his juniors were promoted, though in the seniority list he has been placed above them and that the respondents have also denied him the arrears of salary, etc. for the period from 29.02.1988 to 03.11.1988. He has also submitted that necessary corrections have not been made in the combined seniority list.

4. With regard to the first point, the applicant has submitted that as per Annexure A.4 dated 30.06.1987, his juniors, namely - Shri S. Chandra, Shri A. K. Mukherjee and Shri A. K. Panda have been promoted to the Senior Time Scale and that as such he also should have been promoted from that date. The Learned Counsel for the respondents contended that as the applicant had not completed four years in the Junior Time Scale, he could not be promoted from 30.06.1987.

5. It is now admitted by the respondents that the three juniors referred to above have been placed below the applicant in the seniority list of Senior Time Scale officers. When those juniors have been promoted on 30.06.1987, it is unintelligible as to how without notionally promoting the applicant, who is senior to them, from the same date, namely - 30.06.1987 he could be made senior to those persons. In fact Annexure A.5, the recruitment rules of 1972 contains a note No. 4 which stipulates that if an officer appointed to any post in the service is considered for the purpose of promotion to the higher post, all persons senior to him in the grade shall also be considered notwithstanding that they may not have rendered the requisite number of years of service. This note is an exception to the earlier rule which stipulates that a Junior Time Scale officer should have put in four years of service before he could become eligible for promotion to the Senior Time Scale. In the instant case, as the respondents have considered the applicant's juniors for promotion on 30.06.1987, they ought to have considered the applicant's case also for promotion on that date, even though he might not have completed the requisite number of years of service. It is only by such notional promotion from that date the applicant could legally be placed above the three juniors. As such, we will have to give a direction in this regard, as sought for by the applicant.


6. Coming to the question of arrears of salary, etc. consequent to the notional promotion given to the applicant, it is seen that the period for which the arrears are due if at all, pertains to the period from 30.06.1987 to 03.11.1988. This application is filed in 1994. Even if we can grant arrears in a case of this type, it will have to be restricted only to a period for one year prior

to the date of filing of this application. As such, we cannot give the relief of back-wages in the present case.

7. For the above reasons, recording the submissions made by the Learned Counsel for the respondents about giving the relief to the applicant which he has sought for, we dispose of this application giving a direction to the respondents to consider him for notional promotion from 30.06.1987, the date on which his juniors were promoted to the Senior Time Scale and to give him consequential fixation of pay if he is promoted from that date as he is entitled.

8. It is seen that for no fault of the applicant, the respondents have made the applicant to file this application and this application has been pending for nearly four years. He has been put to unnecessary expenses. In view of this, we award the cost of Rs. 3,000/- (Rupees : Three Thousand only) to the applicant. The above direction shall be complied within three months from the date of receipt of a copy of this order.


(S. K. GHOSAL)
MEMBER(A).


(S. VENKATARAMAN)
VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

REVIEW PETITION NO.31/99
IN
ORIGINAL APPLICATION NO.804/1993

DATED THIS 27th DAY OF JUNE, 2000

CORAM: HON'BLE SHRI JUSTICE R.G. VAIDYANATHA, VICE CHAIRMAN
AND
HON'BLE SHRI B.N.BAHADUR, MEMBER (A)

Manohar Burde Applicant
(Applicant in person)

VS.

Union of India & Others Respondents
(By Shri R.K.Shetty, Advocate)

ORDER (ORAL)

[Per: Justice R.G.Vaidyanatha, VC]

This Review Petition is filed by the Applicant against the Order of the Tribunal dated 5.7.1999 in O.A. No. 804/93. We have heard the Applicant who appeared in person and Shri R.K. Shetty learned counsel for the Respondents.

2. The Applicant had filed the O.A. praying for a direction to Respondents to promote him, to fix his seniority above Shri S.P. Mishra, on the seniority list, to grant him arrears of Pay and Allowances and for other consequential reliefs. Respondents filed the reply contesting the Application. After hearing both sides, a Division Bench of the Tribunal accepted the case of the Applicant in part and allowed the Application by order dated 5th July 1999. The Respondents were directed to consider the case of the Applicant for promotion. However, the Applicant prayer for back wages was rejected.

3. Now the Applicant has filed the present Review Petition raising 3 points. The first two points are about clerical mistakes occurring in the order of the Tribunal dated 5th July, 1999.



4. In para 6 of the petition it is mentioned that the application was filed in 1994, but it was actually filed in 1993.

We have perused the record and find that the O.A. was actually filed in the Registry on 2.8.1993. Therefore, the year of filing of the O.A. mentioned as 94 at para 6 of the Tribunal is an apparent error on record and therefore, has to be corrected.

5. In para 8 of the Order of the Tribunal it is mentioned that the Application is pending for nearly 4 years. As rightly pointed out by the Applicant even here there is a clerical mistake in showing the period as 4 years but it should be 6 years since the Application was filed in 1993 and it was disposed of 1999. Here also there is an apparent error on the face of the record, which requires to be corrected.

6. The third point in his R.P. is that he is entitled for back wages from the date of his promotion till the date of filing of the Original Application. We have perused the Order of the Tribunal. The Tribunal has specifically gone into the question whether the Applicant is entitled for backwages or not. Then after discussion, in para 6 of the Order, the Tribunal has held that no relief of backwages can be given to the Applicant in the facts and circumstances of the case.

7. Now the Applicant wants to argue us that the rejection of his claim was not justified and possibly wants us to review judgement of the Tribunal which we cannot do while exercising Review jurisdiction under Order 47 rule 1 CPC. The scope of Review is very limited viz. which there is apparent error on record or discovery of new material etc. review can be granted. No review can be asked for on the ground that the decision of the Tribunal



is erroneous or wrong and which requires reconsideration. If the Applicant is aggrieved by the Order of the Tribunal on the prayer for backwages, the Applicant should have approached the higher forum questioning the correctness and legality of the Order of the Tribunal. But he cannot approach the same Tribunal and ask for review presumably on the ground that the order is erroneous or wrong. We cannot decide the correctness of the order of a coordinate Bench of the Tribunal.

7. The Applicant has also filed an MP No.384/2000 asking for Interim Relief regarding his question of transfer etc. Now that we are disposing of Review Petition itself, MP/384/200 for Interim Order does not survive and accordingly disposed of.

8. In the result the Review Petition is partly allowed as under:

(a) In para 6 of the Order of the Tribunal in O.A. No. 804/93 it is mentioned that "This application is filed in 1994." It should be read as "This application is filed in 1993."

(b) In para 8 of the Order of the Tribunal in O.A. No.804/93 it is mentioned "The Application is pending for nearly 4 years." Instead it should be read as "the Application is pending for nearly 6 years."

(c) M.P. No.384/2000 does not survive for the reasons already stated.

(d) No order as to costs.

B. N. Bahadur
(B.N. Bahadur)

Member (A)

sj*

R. G. Vaidyanatha
(R.G. Vaidyanatha)

Vice-Chairman

dt. 27/6/00
order/Judgement despatched
to Legal Officer sent (s)
on 5/7/00

W. G. V.