

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

GA.NO.868/93

Dated this the 4th day of September, 1997

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

S.L.Jogdande
House No.274/P/72/1,
Rahul Sang, Ambedkar Nagar,
Survey No.39/1, Bopodi,
Aundh Road, Kirkee, Pune.

By Advocate Shri Suresh Kumar

... Applicant

V/S.

1. The Secretary,
Govt. of India,
Ministry of Defence,
South Block, DHQ PO New Delhi.
2. The Chairman & Director General
of Ordnance Factories, Ordnance
Factory Board, 10-A, Auckland Road,
Calcutta.
3. The General Manager,
Ammunition Factory,
Kirkee, Pune.

By Advocate Shri Ravi Shetty
for Shri R.K.Shetty, C.G.S.C.

... Respondents

O R D E R

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

This is an application seeking review
of promotion and giving retrospective notional
promotion. The respondents have filed reply opposing
admission. Heard both the parties.

2. Few facts are necessary for considering this OA. The applicant was working under Respondent No. 3. On 30.5.1979 he took up a new job of Chargehand in Bhabha Atomic Research Centre, Srinagar and held lien in parent department, viz. in office of Respondent No.3. He worked in BARC from 30.5.1979 to 5.1.1981. In the meanwhile, his juniors have been promoted to the higher cadre of Chargeman Grade II (Technical) w.e.f. 26.5.1980. The applicant has not been given proforma promotion and notional seniority on the ground that he has joined BARC on his own volition and not being deputed in public interest. After returning to the parent department, the applicant had been sending number of representations with no effect. Respondent No. 3 has refused applicant's prayer for retrospective notional proforma promotion. His case is that he had gone to BARC, ^{and} his lien was there in the parent department and he is entitled to be considered for promotion from the date his junior was promoted in the parent department. The juniors were promoted by the DPC on 26.5.1990. Therefore, the applicant wants his retrospective notional promotion w.e.f. 26.5.1990 and the application is filed for necessary consequential reliefs.

3. The respondents have filed the reply opposing ^{application} admission. Their main defence is that the applicant went to BARC in respect of advertised post on his own volition and therefore he was not entitled to keep his lien in his parent department. At any rate, he is not entitled to consider for promotion when his juniors were promoted since he was working in BARC on his own volition.

It is further stated that the application is barred by limitation. It is also stated that the applicant has since been promoted and he has been given all the benefits but he is not entitled to any retrospective notional promotion. It is also stated that in view of the amendment of the rules in December, 1980, officials who go to other jobs on their own volition are not entitled to claim seniority in the parent department. Hence, it is prayed that the application be dismissed with costs.

4. The point for determination is whether the applicant has made out a case for getting retrospective notional proforma promotion w.e.f. 26.5.1980. Then, we have to consider the delay in approaching the Tribunal and whether the applicant is entitled to grant of relief sought for.

5. The question whether the applicant is entitled for notional proforma promotion is a ^{much} ~~mere~~ point. Both the parties are depending on the rules. It is not disputed that according to original rules if a person goes to another department either ^{on} public interest or ~~in~~ his own volition, he is entitled to keep his lien and is entitled to promotion as and when the juniors are promoted. But the department is relying on new rules as per Circular 24.12.1980. In this Circular, ~~the~~ distinction is made about persons taking a job in a different department on ^{their} ~~his~~ own volition. It is stated that if a person on his own volition accepts a new job in response to an advertisement, then he cannot be considered for promotion in his

parent department when his juniors are promoted. But the learned counsel for the applicant pointed out that even under this amendment, whenever the parent department takes up the question of promotion, then the parent department may write to the official who has gone on deputation, to revert to his parent department failing which his name would be deleted. It was the argument of the applicant that the parent department never called the applicant to revert to the parent department when the cases of juniors to the applicant were taken up for promotion.

6. ^{As} ~~It is~~ already stated that it is a ^{must} ~~must~~ point to consider ^{as to} which contention is correct. In our view, we need not enter into ^{discussion} ~~contention~~ as to which contention is correct. After the applicant joined the parent department, he was given promotion in 1981 and another promotion consequently. His application asking for notional promotion from the date his juniors were promoted was rejected by the department by letter dated 12.2.1983.

The endorsement reads as follow :-

" Your request for promotion to Ch'man Gr.II(T) to be effected during your service in BARC while holding a lien on your appointment in this Factory is not acceptable under existing Govt. Orders since you were not deputed to BARC by the Factory but had obtained employment there at your own volition."

It is, therefore, seen that in ^{unequivocal terms} ~~open terms~~ the department has rejected the claim of the applicant for notional retrospective promotion in the year 1983. By mere sending representations, the applicant cannot revive the matter. Rightly or wrongly when the department rejected his claim, he should have approached the Tribunal to get ^{necessary review} ~~his prayer~~ revived. He comes to the Tribunal about 10 years later. On the face of it, the application is barred by limitation.

7. The learned counsel for the applicant invited our attention to a decision reported in (1991) 18 ATC 367 (Tota Ram Sharma vs. Union of India & Ors.) where the Division Bench of the Principal Bench at Delhi has observed that there is no question of limitation in the case of breach of fundamental rights which amounts to a continuing wrong. A perusal of the judgement shows that many officials had gone on strike in the Postal Department but those who did not participate in the strike were rewarded with promotion. The applicant in that case and 30 junior colleagues were entitled to reward but ~~the~~ only 13 juniors were rewarded with promotion but the applicant who was similarly situated was not granted promotion. In those circumstances, it was observed that it is a case of discrimination under Articles 14 & 16 of the Constitution of India and thereby it is violation of Fundamental Rights and there was no question of limitation involved. In our view, the said decision is not applicable to the facts and circumstances of the present case. In the

In the present case, the applicant has gone to BARC on his own volition and not deputed to BARC in public interest. If some persons had gone on ~~leave~~ ^{deputation} and who had returned to parent department had been given promotion and applicant was denied promotion, then it will be denial of promotion within the meaning of Articles 14 & 16 of the Constitution of India.

8. Even, irrespective of the question of limitation, in our view, the learned counsel is right in his submission that the applicant is not entitled to succeed in view of the long delay and latches on the part of the applicant. ^{must} We bear in mind that the juniors were promoted in 1980, the applicant's request for notional promotion was rejected in 1983 and now he has come to this Tribunal in 1993 and we are deciding this case in 1997. We have to disturb the seniority of all those juniors who were promoted as long back as in 1980. The learned counsel invited our attention to a decision of Apex Court reported in (1993) 23 ATC 358 (S.B.Dogra vs. State of Himachal Pradesh & Ors.) where the Administrative Tribunal had passed an order disturbing the seniority. The Apex court observed that "the Tribunal ought not to have disturbed the seniority after such a long lapse of time when respondent had not challenged it before the same was finalised in 1979". In our view, the principle laid down in that case is fully attracted to this case. In the present application, the applicant wants to disturb the seniority of his juniors who were promoted in 1980.

In view of the long delay and laches on the part of the applicant, we hold that this is not a fit case for our interference after a lapse of 17 years as on today. Hence, the application deserves to be dismissed.

9. In the result, the application is dismissed.
In the circumstances, no orders as to costs.



(P.P. SRIVASTAVA)

MEMBER (A)



(R.G. VAIDYANATHA)

VICE CHAIRMAN

mrj.