

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 1132/94

DATE OF DECISION: 1.11.1999

Shri V.K.Shukla Applicant.

Shri A.I.Bhatkar Advocate for  
Applicant.

Versus

Union of India and others Respondents.

Shri V.S.Masurkar Advocate for  
Respondent(s).

CORAM


Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri B.N.Bahadur, Member (A)

(1) To be referred to the Reporter or not?

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

(3) Library. - Yes

  
(R.G. Vaidyanatha)  
Vice Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO:1132.94

MONDAY the 1st day of NOVEMBER 1999

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri B.N.Bahadur, Member(A)

V.K.Shukla  
Residing at  
Survey No.83/19.20 MP-1  
Sant Gyaneshwar  
Society, Plot No.15  
Shastri Nagar, Kothrud,  
Pune.

...Applicant

By Advocate Shri A.I.Bhatkar.

V/s

1. Union of India through  
The Chief Controller of Accounts  
Ministry of Urban Developments,  
Nirman Bhavan, New Delhi.
2. Pay and Accounts Officer  
Principal Accounts Office  
Ministry of Urban Development  
Nirman Bhavan, New Delhi.
3. Superintending Engineer(Coord)  
C.P.W.D. Co-ordination Circle,  
CGO Building, Churchgate,  
Bombay.


...Respondents

By Advocate Shri V.S.Masurkar.

ORDER (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice Chairman)

This is an application filed under Section 19 of the  
Administrative Tribunals Act 1985. The respondents have filed  
reply. We have heard counsel for both sides.



2. The two prayers pressed by the learned counsel for the applicant are that the applicant is entitled to regularise as regular Divisional Accountant from 16.4.1977 or in the alternative applicant is entitled to promotion as Superintendent in the parent Department from the date his immediate junior Shri A.V.Bendre got promotion.

3. To consider the first prayer the facts are that the applicant was appointed as LDC in the parent department in CPWD in 1955 and promoted as UDC in 1963. He was further promoted as Emergency Divisional Accountant by order dated 15.4.1977 and posted to Ministry of Urban Development. He took charge on 16.4.1977. He continued in that post till his date of superannuation namely 30.4.1994 except two or three breaks when he came to be reverted and again re-promoted as Emergency Divisional Accountant. Since the applicant has continued as Emergency Divisional Accountant for 17 years except with short breaks, the applicant wants the said service should be regularised and he should be treated as regular Divisional Accountant.

4. To become regular Divisional Accountant one has to pass comitative examination, SAS examination. Admittedly the applicant had not passed SAS examination. There is no other provision in the rule that person who is working as Emergency Divisional Accountant is entitled to be regularised as Divisional Accountant after certain number of service. The only mode of promotion as regular Divisional Accountant is after passing SAS examination.

Since the applicant had not passed SAS examination and there is no rule for regularisation the applicant's prayer for regularisation as regular Divisional Accountant cannot be granted.

5. The other prayer of the applicant is that he should be deemed to have promoted as Superintendent on par with Shri A.V. Bendre in the parent department. This prayer the applicant has made after the amendment of the OA in 1995. There was no such prayer mentioning the name of the junior in the OA. The applicant would get cause of action immediately after his junior got promotion in the parent department. The amendment application or even the amendment which is carried out does not give any particular as to when Shri A.V. Bendre got promotion as Superintendent. Promotion order of Shri Bendre is not produced and even the date of promotion is not known. On the other hand the learned counsel for the respondents on instructions stated that Shri Bendre was promoted sometime in 1995. The question of proforma promotion in the parent department does not arise when his junior was promoted in 1995 long after the retirement of the applicant. Therefore in the facts and circumstances of the case we cannot grant alternative prayer also.

6. The learned counsel for the applicant contended that department has continued the applicant for 17 years as Emergency Divisional Accountant, therefore he should be deemed to have been regularised the service and respondents are estopped from contending otherwise. It is well settled and there can be no dispute that there can be no estoppel against statute. If the rules do not permit for regularisation as Emergency Divisional Accountant then the fact that the applicant had continued in the


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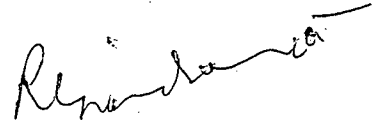
post for number of years will not help the applicant in any way, when according to rules only a person who has passed SAS examination is entitled to be considered for regular promotion as Divisional Accountant. This Tribunal cannot give any direction contrary to rules. Another contention was that the applicant was not relieved in 1980 when he was promoted as Head Clerk. There is no material on record to show that the applicant made a request of being relieved and it was refused by the competent authority. If the applicant was prevented from joining his post as Head Clerk on promotion the applicant should have complained to higher authority or could have challenged the action of the authority or could have challenged the action of the administration by approaching Court of Law. Now after 14 years the applicant cannot complain that he was prevented from taking the promotion as Head Clerk and that he was not relieved etc. Such a belated claim of the applicant cannot be considered and that too when it was made after he has attained superannuation.

7. In the facts and circumstances of the case we hold that the applicant is not entitled for any relief prayed in the OA.

8. In the result the OA is dismissed. No order as to costs.



~~(B. N. BAHADUR)~~  
MEMBER (A)



(R. G. VAIDYANATHA)  
VICE CHAIRMAN