

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 892/94

Date of Decision: 1-6-99

D.R.Gurumukhi

Applicant.

Shri P.G.Zare

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.R.Shetty on behalf of Shri R.K.Shetty

Advocate for  
Respondent(s)

CORAM:

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

Hon'ble Shri. D.S.Baweja, Member (A)

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

(D.S.BAWEJA)

MEMBER (A)

(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA.NO. 892/94

Dated this the 1st day of JUNE 1999.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri D.S.Baweja, Member (A)

Dewaji Ramji Gurumukhi  
Joint Director (Dev.) and  
Director-in-charge,  
Directorate of Cotton Development,  
Indian Mercantile Chambers Bldg.,  
14, Ramjibhai Kamani Marg,  
Ballard Estate, Bombay.

By Advocate Shri P.G.Zare ... Applicant

V/S.

1. Union of India  
through its Secretary,  
Ministry of Agriculture,  
Department of Agriculture  
and Cooperation, Krishi Bhavan,  
New Delhi.
2. Union of India through its  
Secretary, Union Public  
Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi.

By Advocate Shri R.R.Shetty  
for Shri R.K.Shetty ... Respondents

O R D E R

(Per: Shri D.S.Baweja, Member (A))

This OA. has been filed by the applicant making a prayer that respondents be directed to allow him to appear in the "personal talk" scheduled to be held on 12.8.1994 for promotion to the post of Director in the Directorate of Cotton Development, Mumbai. The applicant has also prayed as an alternative that respondents be restrained from holding the scheduled personal talk to to be held on 12.8.1994 till the

disposal of another OA.NO. 996/92 filed by him with regard to his retrospective promotion as Joint Director (Development) from 2.5.1989.

2. The case of the applicant in this OA. is as follows :- The applicant has been promoted as Joint Director (Development) from 21.6.1993. The claim of the applicant is that he is entitled for retrospective promotion from 2.5.1989 for which he had made representations to the department. <sup>he</sup> Subsequently, on not getting <sup>his</sup> grievance <sup>redressed</sup> / OA.NO. <sup>filed</sup> 996/92. The applicant further submits that as per the letter dated 23.8.1993 from Respondent No. 1, i.e. Secretary, Ministry of Agriculture, Department of Agriculture & Cooperation, New Delhi, he was advised that his case for retrospective promotion from 2.5.1989 is under consideration. The applicant also further adds that as per Circular dated 8.8.1991, it was proposed to fill up the post of Director in the Directorate of Cotton Development through recruitment. The applicant claims that he fulfils the educational qualification as laid down for the post of Director as per the recruitment rules. Accordingly, he sent an application as per letter dated 22.8.1991 through the proper channel. The applicant also further contends that after his promotion as Joint Director from 21.6.1993 he fulfilled the criteria of working for a period of 5 years combined as Joint Director and Deputy Director. The applicant had also been directed to look after the current duties of the post of Director from 18.6.1994. For selection to the post of Director, 'personal talk' had been fixed

on 12.8.1994 and the claim of the applicant is that he ~~was~~ entitled to be called for the same, ~~because~~ he fulfils all the requirements as per the recruitment rules. The grievance of the applicant is that he had not been called for the 'personal talk' on 12.8.1994 and therefore he has filed the present OA. on 2.8.1994 seeking the above referred reliefs..

3. The respondents have opposed the application through the written statement. The respondents submit that the applications were initially called for recruitment to the post of Director in August, 1991. However, the date for submission of applications was subsequently extended as per letter dated 13.12.1991 upto 12.1.1992. The eligibility requirements were to be determined with reference to last date of <sup>submission of applications</sup> ~~of~~ and not on subsequent date. The applicant was ineligible on the last date of submission of applications and therefore was not ~~entitled~~ to be called for 'personal talk' by the Union Public Service Commission. The respondents further submit that since the selection to the post of <sup>Director</sup> ~~was~~ still pending and the applicant was promoted as joint Director on 21.6.1993, UPSC was advised of the promotion of the applicant and his confidential reports were also sent. However, his case could not be considered as he did not meet with the essential requirement of the service of 5 years on the crucial date of 12.1.1992.

4. The applicant has filed the rejoinder reply controverting the submissions of the respondents.

5. The respondents have filed supplementary written statement in reply to the rejoinder of the applicant.

6. Heard the arguments of Shri P.G.Zare, learned counsel for the applicant and Shri R.R. Shetty on behalf of Shri R.K.Shetty, learned counsel for the respondents.

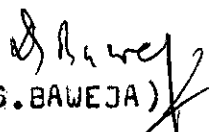
7. The relief prayed for in this OA. is closely linked with OA.NO. 996/92. OA.NO.996/92 has been filed by the applicant claiming for promotion as Joint Director from 2.5.1989, i.e. from the date of occurrence of vacancy instead of promotion from 21.6.1993 when the applicant has been actually promoted. In this OA. the applicant has claimed his eligibility for recruitment to the post of Director on the plea that if his promotion as Joint Director from 2.5.1989 is allowed, then he would have been fulfilled the critaria laid down for recruitment to the post of Director in the Directorate of Cotton Development, Mumbai. It is admitted fact that the applications were called for the recruitment to the post of Director as per notification issued in August, 1991. The date was subsequently extended and the last date was fixed as 12.1.1992. The respondents have contended that this was a crucial date for determining the eligibility and since the applicant was not working as Joint Director on this date, he was not eligible to be called for


the 'personal talk'. After careful consideration of the facts and circumstances of the case, we are in agreement with the stand of the respondents. OA.NO. 996/92 has been separately disposed of wherein the claim of the applicant

that he is entitled for retrospective promotion from 2.5.1989/ <sup>has not been upheld</sup> Once the claim of the applicant for retrospective promotion from 2.5.1989 as Joint Director (Development) is rejected, then the present OA. also does not survive. In the present OA. the last date for submission of application was 12.1.1992 and the eligibility <sup>reference to</sup> criteria has to be looked at with the crucial date. Any subsequent developments cannot be taken into account for determining the eligibility even though the selection might **have not** been finalised by the time the applicant was promoted to the post of Joint Director. Since the applicant was not working as Joint Director on 12.1.1992, the applicant cannot claim for being declared eligible for recruitment to the post of Director.

8. In the result of the above, we do not find any merit in the present OA. and the same is dismissed accordingly.

The stay order granted as per the order dated 30.11.1994 that any appointments made hereafter to the post of Director will be subject to the final outcome of the OA. is accordingly vacated. No order as to costs.

  
(D.S. BAWEJA)  
MEMBER (A)

  
1.6.99  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY.

Original Application No.809/90.

Shri K.T.Janbandhu.

... Applicant.

V/s.

Secretary,  
Ministry of Agriculture,  
Krishi Bhavan,  
New Delhi.

... Respondent.

Justice

Coram: Hon'ble Vice-Chairman, Shri U.C.Srivastava,  
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:-

Applicant by Mr.N.L.Singh,  
Respondents by Mr.V.S.Masurkar.

Oral Judgment:



Shri U.C.Srivastava, Vice-Chairman Dt. 9.10.1991

The applicant who rose from the Inspector in the Directorate of Marketing and Inspection in the Ministry of Agriculture, which post he joined in August, 1960 to the post of ad hoc Director in the Directorate of Cotton Development in the Ministry and for the time being was also Member Secretary in the Indian Cotton Development Council has approached this Tribunal against a penalty awarded to him by the President compulsorily retiring him from service with further stipulation that 25% of the monthly pension otherwise admissible to him be withheld on permanent basis. The charge sheet dt. 24.5.1988 was served upon him and the imputation against him that while functioning as Director of the Directorate of Cotton Development, Bombay during the period in August, 1986, he went to Nagpur on an official tour to study the Kharif Crops Situation and he left Nagpur on 24th August, 1986 and arrived at Bombay on 25th August, 1986. Although he ~~was~~ did not travel

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by 1st Class he claimed in his T.A. Bill submitted for journey for Rail was meant for 1st Class. Thus he made a false claim in T.A. bill for wrongful amount which he was not entitled to. The applicant prior to his charge sheet had deposited the said amount of Rs.406/- when he learnt that such an amount has been charged. He also made a reference to ticket number which was also not found correct. Before the Enquiry Officer the applicant submitted an application stating that it was only a bona fide mistake on his part and there was no mala fide or dis-honest intention to over charge the department for unlawful monetary gain and at the time he was undergoing acute mental agony due to his daughters prolonged sickness, the said error on ~~may~~ his part may be viewed in a proper perspective and pardon for the same may be granted. The applicant also addressed a representation to the Minister concerned who later on granted him an interview. The Enquiry Officer submitted his report and after submission of his report a penalty order was passed.

2. The counsel on behalf of the applicant contended that of course, the Disciplinary Authority wrongfully took this to be an admission on his part although there was no such admission and there were certain flaws in the inquiry, inasmuch as, opportunity to cross-examine the witnesses were not given. This was a simple case of over charging the amount and there was no denial of the fact that this amount was charged. The applicant deposited the said amount and what he contended was that he was under mental strain and that it was a bona fide error on his part. May be so, but the Disciplinary Authority could have taken action against the applicant

...3.



because a mis-conduct had already been committed. It was within the hands of the Disciplinary authority to view the evidence so committed lightly or not. They could have condoned the mistake or they could have pardoned it, but they chose not to do so. The matter was referred to the Public Service Commission which also agreed with the recommendation so made.

3. As such in these circumstances it cannot be said that there was ~~any~~ defect in the inquiry or the punishing authority had acted in violation of any rule or it exceeded its jurisdiction, so far as the other part of the penalty of 25% cut in pension is concerned, it may be that under the Pension Rules the punishment could have been given.

But neither in the charge sheet, nor at any point of time

had the applicant was appraised with the fact that it was proposed not only to compulsorily retire him, but to cut his pension for all times to come and opportunity whatsoever, was given to the applicant for this punishment.

Obviously, not only the principles of natural justice is violated but the powers have not been exercised in this behalf in a good faith and it can be said that there has been colourable exercise of the powers and accordingly the second part of the penalty i.e. cutting 25% of pension for all times to come is quashed. Otherwise, but for this modification the punishment order will stand. There will be no order as to costs.

*Trinity*

*[Signature]*  
DEPUTY REGISTRAR  
FEDERAL GOVERNMENT  
Y. BINCH