

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1381/94

24-8-99

Date of Decision:

K.S.Kanitkar

Applicant.

Shri B.Dattamurthy

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.S.Karkera for Shri P.M.Pradhan

Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. S.L.Jain, Member (J)

- (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
(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1381/94

Dated this the 24th day of August 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)
Hon'ble Shri S.L.Jain, Member (J)

Kanhaiyalal Shivram Kanitkar,
R/o "Sai" Agarkar Mala,
Station Road, Ahmednagar,
Dist. Ahmednagar - 414 001.

... Applicant

By Advocate Shri B.Dattamurthy

V/S.

Union of India through

1. Chief Postmaster General,
Maharashtra Circle,
G.P.O. Building (Old),
2nd floor, Near V.T.Rly.Stn.,
Bombay.
2. Postmaster General,
Pune Region, Pune.
3. Shri M.C.Nimkar
Deputy Senior Superintendent
of Post Offices, Nashik,
(Designate S.S.P., Panaji, Goa)
at Nashik
4. Shri I.A.Deshpande,
Senior Post Master,
Solapur, and acting
Superintendent of Post
Offices, Solapur.

... Respondents

By Advocate Shri S.S.Karkera
for Shri P.M.Pradhan

O R D E R

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

This application has been filed by the
applicant on being aggrieved on account of his not
being promoted to Junior Time Scale Group 'A' on

the basis of seniority against the vacancy when he became eligible but his juniors have been promoted.

2. The applicant joined the Postal Department as a Clerk on 10.12.1956. He was promoted as Inspector of Post Offices in 1973. Thereafter, he was promoted as Postal Superintendent in Group 'B' Gazetted on 26.12.1990. The applicant claims that he was eligible for further promotion to Junior Time Scale Group 'A' after completion of 3 years of service from 26.12.1993. A vacancy in Junior Time Scale Group 'A' occurred on 31.8.1994 in Solapur Division on retirement of Shri V.T.Senavane, Senior Superintendent of Post Offices but over-looking the applicant, Shri I.A.Deshpande an un-approved officer working on adhoc basis was arbitrarily posted to work as Superintendent of Post Offices by down-grading the post. The applicant being senior to him was made to work under a junior and therefore the applicant represented on 4.10.1994 to Chief Postmaster General, Maharashtra Circle. But he did not get any response to his representation. He again represented on 17.10.1994 followed by a reminder dated 15.11.1994. But ^{again} he did not get any response. Thereafter, he sent a telegram dated 21.11.1994 to Director General, Department of Posts. In the meantime, Respondent No. 3 Shri M.C.Nimkar who is also junior to the applicant was ordered to

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be promoted as Senior Superintendent of Post Offices, Panaji in Junior Time Scale post. Feeling aggrieved by these promotions, the present application has been filed by the applicant on 21.12.1994.

3. The respondents have filed the written statement opposing the application. The respondents submit that the Chief Postmaster General, i.e. Respondent No. 1 is competent to issue promotion for a temporary period till regular promotion is ordered on All India basis by the Director General of Posts, New Delhi. The respondents submit that for adhoc promotion as a stop gap arrangement, the competent authority considered the applicant along with others as per seniority and he was not found suitable for the post and therefore his junior was promoted to Junior Time Scale Group 'A'. The respondents further add that the representation of the applicant dated 14.10.1994 was replied by the letter dated 1.2.1995 and therefore his subsequent representations which were in the nature of reminders were not replied. The respondents also submit that in addition to the applicant not being found suitable, a vigilance enquiry was also under process against him and therefore on this count also he was not found suitable for promotion. Therefore, the respondents based on the averments made in the written statement submit that the action taken in not promoting the applicant is not arbitrary, perverse or bad in law.

4. The applicant has filed a rejoinder reply rebutting the submissions of the respondents and reiterating his contentions made in the OA.

5. Heard the arguments of Shri B.Dattamurthy, learned counsel for the applicant and Shri S.S.Karkera on behalf of Shri P.M.Pradhan, learned counsel for the respondents. The respondents have made available the relevant file containing the promotion order on adhoc basis by which the applicant is aggrieved.

6. The basic facts with regard to occurrence of vacancy and the eligibility of the applicant for promotion to Junior Time Scale Group 'A' on adhoc basis as a stop gap arrangement are not in dispute. The respondents in the written statement have made two contrary submissions with regard to non promotion of the applicant. In para 7 of the written statement the respondents have contended that the applicant as per seniority was considered along with others for adhoc promotion to Junior Time Scale Group 'A' and he was not found suitable. At the same time, in para 9 of the written statement, it is stated that a vigilance enquiry was pending against the applicant and therefore he was not considered for promotion. In view of these conflicting averments made in the written statement with regard to non-promotion of the applicant, we have gone through the file containing the notings of the competent authority who had ordered the adhoc

promotion to Junior Time Scale Group 'A' ignoring the applicant and promoting the juniors to him. On going through a note dated 4.10.1994, ^{we note that} the name of the applicant is shown at Sr.No. 7 under item 4 - "officers eligible for promotion". In the remarks Col. it is ^{indicated} that the case under vigilance Branch is in progress and vigilance officer has not given any ^{approved} report. This note is ^{approved} by the Chief PMG. From this note, it is quite clear that the fitness of the applicant for adhoc promotion was not considered by the competent authority. He was over-looked merely because a vigilance enquiry was pending against him as advised by the vigilance branch. In view of this, it is not understood as to how the respondents in the written statement have mentioned that the applicant was considered for promotion but was not found fit for the same.

7. From the above facts, it is quite clear that the applicant was not considered for promotion on adhoc basis in his turn as per seniority since some vigilance investigation was pending against him. A mere pending of vigilance enquiry against an employee cannot be a cause for not considering the employee for promotion as held by the Hon'ble Supreme Court in the case of Union of India vs. K.V.Jankiraman & Ors., 1993 SCC (L&S) 387. In view of what is held by the Hon'ble Supreme Court in this judgement, the respondents could not over-look the

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applicant for consideration for promotion on account of pending vigilance investigation. The action taken by the respondents therefore cannot be legally sustained.

8. The learned counsel for the applicant has cited a Full Bench order in the case of N.T. Joseph vs. Union of India & Ors. dated 10.6.1992 in OA.NO. 37/91. to support his contention that even for adhoc promotion any vigilance enquiry if pending cannot be a bar for promotion. What is held in this order is not very relevant here ^{such} as the respondents have not taken any plea that since the promotion under challenge was only on adhoc basis, the applicant could be over-looked for promotion if the vigilance enquiry was pending against him. In view of this, what is held in this order is not being gone into.

9. It was brought out during the arguments that the applicant has since retired from service on 31.8.1995.

10. In the result of the above, we find merit in the OA. and the same is allowed with the following directions :-

- (a) Competent authority will consider the fitness of the applicant for promotion on adhoc basis as per his seniority without any reference to the pending vigilance enquiry. In case he is

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found fit, the applicant will be given adhoc promotion from the due date when his junior had been given.

- (b) Since the promotion as per order dated 10.10.1994 was for a period of 180 days, the applicant will be promoted for a period of 180 days and in case his juniors were continued further on promotion for subsequent periods ^{then} also, the applicant will also ^{to be promoted} continued on adhoc basis in the same manner till his date of retirement.
- (c) The applicant will be entitled for all the consequential benefits of pay and allowances including on revision of pensionary and other retiral benefits.
- (d) In case the applicant is not found fit for promotion when the order dated 10.10.1994 was issued, the applicant would be suitably advised. His suitability for adhoc promotion for subsequent periods will then be considered ignoring the fact that vigilance enquiry was pending against him and given promotion when found fit with ^{all} consequential benefits as stated above.

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(e) Compliance of the order shall be done within a period of three months from the date of receipt of this order.

(f) No order as to costs.

S.L.Jain
(S.L.JAIN)

MEMBER (J)

D.S. Baweja
(D.S. BAWEJA)

MEMBER (A)

mrj.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

C.P.No.60/99 in OA.NO.1381/94

Dated this the 9th day of November 2000.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastri, Member (A)

K.S.Kanitkar,
R/o "Sai" Agarkar Mala,
Station Road, Ahmednagar.

... Applicant

By Advocate Shri S.P.Saxena

V/S.

Shri D.S.Bhalchandra,
Chief Post-Master General,
G.P.O., Bombay.

... Respondent/
Contemner.

By Advocate Shri S.S.Karkera
for Shri P.M.Pradhan

O R D E R

{Per: Shri S.L.Jain, Member (J)}

OA.NO.1381/94 was decided on 24.8.1999 and the following order was passed :-

"(a) Competent authority will consider the fitness of the applicant for promotion on adhoc basis as per his seniority without any reference to the pending vigilance enquiry. In case he is found fit, the applicant will be given adhoc promotion from the due date when his junior had been given.

(b) Since the promotion as per order dated 10.10.1994 was for a period of 180 days, the applicant will be promoted for a period of 180 days and in case his juniors were continued further on promotion for subsequent periods also, then the applicant will also be continued to be promoted on adhoc basis in the same manner till his date of retirement.

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(c) The applicant will be entitled for all the consequential benefits of pay and allowances including on revision of pensionary and other retiral benefits.

(d) In case the applicant is not found fit for promotion when the order dated 10.10.1994 was issued, the applicant would be suitably advised. His suitability for adhoc promotion will then be considered for subsequent periods ignoring the fact that vigilance enquiry was pending against him and given promotion when found fit with all consequential benefits as stated above.

(e) Compliance of the order shall be done within a period of three months from the date of receipt of this order.

(f) No order as to costs."

2. The applicant in OA. has filed this application on the allegation that the respondent thereafter have issued a letter No. STA/48-1/507/94 dated 29.10.1999 addressed to him which amounts to contempt.

3. The respondent submitted the reply and alleged that Indian Postal Services Group A Rules 1987 were amended which came in force on 1.10.1994 and the eligibility was raised from 3 years to 5 years, hence applicant was even not eligible for consideration. A further defence is raised that junior to the applicant, Respondent No. 3 M.C.Nimkar was promoted on adhoc basis on 10.10.1994 but he expressed his unwillingness to accept the promotion as S.S.P. Goa Division and prayed for posting on promotion either in Aurangabad Region or Pune Region expecting a vacancy of S.S.P. Dhule Division due to superannuation on 30.11.1994. Hence it is contended that junior- Respondent No. 3 is not promoted.

P. J. /

..3/-

4. It is suffice to mention that there was no such defence from the side of respondents in OA. that the applicant along with Respondent No. 3 & others were considered in view of the Amended Rules and the applicant is not found eligible. The fact was also not so, for the reason that the Amended Rules were not noticed by the respondents till adhoc promotions were considered that is the reason that in the order passed by the respondent, i.e. contemner it is mentioned as under :-

"As per the Indian Postal Service (Group-A Rules 1987 as amended by the notification dated 23.9.94 issued by the Department of Posts vide memo No. 4-41/86-SPG, the appointment of Junior Time Scale in the service was to be made by selection on merit from amongst the officers regularly appointed to the Postal Service Group-B with 5 years of regular service in that case. The same eligibility condition would apply for promotion on adhoc basis also. This notification was received by the office of Chief PMG on 9.11.1994. By that time, the promotion order of Respondent No. 3 was already issued. From this date, Shri K.S.Kanitkar, the applicant, even otherwise ceased to be eligible for adhoc promotion to JTS Group-A as he had not put in 5 years regular service in Postal Service Group-B by that time. He was promoted to Postal Service Group-B on 26.12.90. Similarly, RespondentNo. 3 had also not put in 5 years service in the grade."

5. A defence which was not raised by the respondents, may be due to unawareness of the Amended Rules, cannot be put forth for non-compliance of the order as it is barred on principles of constructive Resjudicata.

6. It is true that Shri M.C.Nimkar has not availed the promotion, but it does not mean that he was not promoted.

P. Upa /

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7. Thus, the consideration of the case of the applicant by the respondent/contemner is vitiated on account of the fact that the eligibility criteria which was changed due to amendment in rules was taken into consideration, which could not have been taken in to consideration in view of the discussion above. To adopt such criteria would be discriminatory in view of Article 14 of the Constitution.

8. We further direct the respondent/contemner to consider the case of the applicant in view of the order of the Tribunal already passed on 24.8.1999 ignoring the amended rules within a period of 45 days.

9. C.P. is with-held till the passing of the order by the respondent/contemner in the period already ordered alongwith a copy of the order to the applicant for further action in accordance with law.

10. List the case for orders on 30.1.2001.

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

S.L. Jain
(S.L. JAIN)
MEMBER (J)

mrj.

22.9/11/00
order/Judgement despatched
to Applicant/Respondent(s)
on *11/12/00*

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24/12/00