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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 948/94

Transfer Application No:

DATE OF DECISION: 22.11.1994

Shri D.B.Dixit Petitioner

Shri G.S.Walia Advocate for the Petitioner

Versus

Union of India & Ors. Respondent

Shri N.K.Srinivasan Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri

1. To be referred to the Reporter or not ? NO

2. Whether it needs to be circulated to other Benches of
the Tribunal ? NO


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

(S)

OA.NO. 948/94

Shri D.B.Dixit

... Applicant

v/s.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande

Appearance

Shri G.S.Walia
Advocate
for the Applicant

Shri N.K.Srinivasan
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 22.11.1994

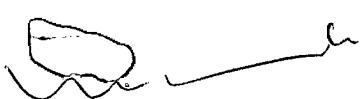
(PER: M.S.Deshpande, Vice Chairman)

By this application the applicant seeks the post of Office Superintendent scale Rs.2000-3200 w.e.f. 1.8.1992 with all consequential benefits.

2. The applicant was working as a Chief Clerk at Bombay Central with the respondents. He was appointed to the post of Office Superintendent on 10.12.1992 though the post, which was a non-selection post, fell vacant on 1.8.1992 upon the retirement of Ashra on 31.7.1992. The applicant was appointed to that post only on 10.12.1992. Another post of Office Superintendent which had fallen vacant upon the retirement of B.R.Muthu on 30.6.1992 was filled by the order dated 15.10.1992 by appointing D.V.Kalvit. That order read that it was an officiating adhoc appointment as a local arrangement and Kalvit did not have any claim for regular promotion. According to the applicant since he was the senior most person, he should have been appointed w.e.f. 1.8.1992 to the post which fell vacant due to Ashra's retirement or 1.7.1992 when Kalvit was appointed on the retirement of B.R.Muthu.

3. The respondents' contention is that there were four persons whose claims were to be considered and Arun Merchant ^{who} was senior came to be promoted w.e.f. 10.12.1992. There is no dispute that Kalvit was junior to the applicant and that the applicant and Kalvit were both stationed at Bombay Central and were borne on a common seniority list. It is urged that since Kalvit's appointment was only on adhoc basis as a local arrangement, the applicant cannot lay a right to that post and Arun Merchant was senior to them had not made a grievance about his promotion w.e.f. 10.12.1992, the applicant also cannot make any grievance.

4. There is no dispute about the position that the post to which Kalvit was appointed had fallen vacant on 1.7.1992 and the post of Office Superintendent which fell vacant on 1.7.1992 upon ~~Ashra~~'s retirement were non-selection posts and that Kalvit was junior to the applicant. Since there were two posts which were available, the fact that Arun Merchant did not make any grievance about his promotion w.e.f. 10.12.1992 cannot be of any consequences. That It was open to the respondents to make adhoc officiating arrangement in respect of the other posting, ^{and} since the applicant was also stationed at Bombay Central and was a competitor for the post, the officiating arrangement which had been made by the order dated 15.10.1992 was made to the detriment of the applicant though it was stated to be a local adhoc arrangement w.e.f. 1.7.1992. By virtue of his seniority, the applicant though junior to Arun Merchant should have been considered for the post which fell vacant by ~~Ashra's~~ retirement on 31.7.1992 ~~and applicant's retirement w.e.f.~~ 31.10.1992. By virtue of his seniority Merchant could have laid a claim to the post which fell vacant w.e.f. 1.7.1992, I see no merit in the contention of the respondents



that the applicant had no claim to the post, once adhoc local arrangement was made to the detriment of the applicant who was also available locally, and the applicant had a right to prefer a claim to that post.

5. The applicant, however, retired on 31.10.1993, Shri Walia for the applicant urges that the applicant's pensionary benefits should be calculated on the basis that the applicant was notionally promoted w.e.f. 1.8.1992 and this request in the circumstances appears to me ^{to be} very fair.

6. In the result, the application is allowed. The respondents are directed to grant notional promotion to the applicant w.e.f. 1.8.1992 in place of 10.12.1992 and fix the applicant's pay on that basis until the date of retirement on 31.10.1993 and on that basis grant pensionary benefits to the applicant together with the arrears. This shall be done within three months from the date of communication of this order. No order as to costs.



(M.S.DESHPANDE)

VICE CHAIRMAN

mrj.