

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.353/1994

Dated this Wednesday, the 13th Day of June, 2001.

Shri Laxmichand Dass, Applicants

(Applicant by Smt. N.V.Masurkar, Advocate)

Versus

UDI & Ors. Respondents

(Respondents by Shri J.P.Deodhar, Adv.)

CORAM

HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

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

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

(3) Library. ✓

Shanta Shastri

(Smt. Shanta Shastri)
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.353/1994

Date of Decision: 13.6.2001

CORAM: HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Shri Laxmichand Dass,
Assistant Security Officer, BARC,
aged about 40 years residing at
Type-B 93/13, BARC Colongy,
BARC, Boisar.

... Applicant

(Applicant by Smt. N.V. Masurkar, Adv.)

vs.

1. Union of India through the Secretary
Department of Atomic Energy,
CSM Marg,
Bombay 400 039.
2. Inspector General (Security)
Department of Atomic Energy,
CSM Marg,
Bombay 400 039.
3. Controller, BARC, Central Complex,
BARC, Trombay, Bombay 400 085. Respondents

(Respondents by Shri J. P. Deodhar, Advocate)

O R D E R (ORAL)

[Per: Smt. Shanta Shastri, Member (A)]:

By this O.A. the Applicant has claimed the following
reliefs:

- a) That it be declared that the promotion order
by the respondents in pursuance of DPC held in
12993 be quashed and set aside and order dated
26.10.1993 (Exhibit A-1) rejecting the
representation of the applicant is bad in law,

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contrary to the orders/instruction of Govt. of India with regard to the reservation policy and the same be quashed and set aside.

b) That it be declared that the respondents are bound to maintain 40 Point Roster with effect from 1978 for the post of Security Officer and the respondents are bound to implement the policy of reservation.

c) That the respondents be directed to call review DPC to consider the case of the applicant with effect from 1987 onwards and if found selected to promote with effect from relevant date with all consequential benefits arising therefrom.

d) That the respondents be directed to publish the select panel of every DPC from 1978 onwards.

e) That the respondents be directed to publish the norms for selection to the post of Security Officer and clarify the weightage given to viva-voce and confidential reports.

f) That the respondents be directed to compute the back-log of unfilled reserved quota available to SC/ST officers in the Security Officers post with effect from 1978.

g) That such other order or direction be issued as may be just and proper in the facts and circumstances of the case.

h) That the costs of this application be provided for.

2. The Applicant is an ex paramilitary personnel belonging to the Scheduled Tribe community. He was appointed as Assistant Security Officer on 20.2.1982. The next post available in promotion is that of Security Officer for which 5 years service in the Assistant Security Officer's post is required. The Applicant completed 5 years as ASO on 20.2.1997. According to the Applicant he is entitled for consideration for promotion to the Post of Security Officer from 1987 onwards till date.

....3/-

3. Learned Counsel for the Applicant submits that the Applicant in spite of having good record and belonging to the ST Community has not been promoted till now, a Junior Officer Shri Ratan Chand who also belongs to ST superseded the Applicant in 1991. It is the contention of the Applicant that the Respondents did not follow the norms. The Respondents did not maintain any Roster from 1978 till 1985. The Rosters were maintained by Unit wise and not on All India basis. The selection was to be made on the basis of Confidential Records. However, the respondents resorted to holding interviews which was against the procedures prescribed. Also the Respondents would consider the Officers for promotion only if they applied in advance. The Applicant did not apply in 1987 to 1989. In 1989, the applicant applied to be considered for the post of Security Officer. However, the applicant was not selected, against selection was held in 1990. The Applicant was not found suitable. As far as the selection made in 1993 is concerned again the Applicant was not found suitable but a junior to the Applicant was selected. The Applicant is, therefore, aggrieved that inspite of being senior most ST candidate and being eligible from 1987 onwards the Applicant has not still been considered for promotion.

4. The Respondents submit that the Applicant was not in the zone of consideration from 1987 till 1990. As soon as the Applicant came into the zone of consideration his case was considered. However, he was not found suitable and, therefore,

he could not be promoted. Learned Counsel for the Respondents submits that as far as following of the norms etc. is concerned as per the directions in pursuance of the judgement in O.A.123/91 in the case of V.Srinivasan and Ors., the Tribunal had set aside the selection of 1991 for the post of Security Officer holding it as vitiated because, the Respondents had conducted interview which was not prescribed. The Respondents had been directed to prepare the Roster from 1978 onwards and to hold Review DPC. Accordingly, the Respondents held a Review DPC of the DPCs held in 1991 and 1993 after bringing the Roster upto date from 1978 onwards. Even after holding Review DPC the applicant was not found suitable, and therefore, the Applicant's prayer cannot be granted. Further the learned Counsel submits that as far as the prayer for considering the Applicant for promotion from 1987 onwards is concerned, the Application suffers from delay and laches. The Applicant has approached this Tribunal only in 1994 for the first time and the main thrust of the prayer is about the selection in 1993. The Applicant's prayer for granting promotion from 1987 cannot be considered as it is hit by limitation.

5. It was necessary for us to ascertain the correct position regarding the Roster point as well as the DPC proceedings in the matter. Accordingly the Respondents on being directed to produce the record have produced the same today for our perusal.

6. We have heard the learned Counsel for both sides and have given careful consideration to the pleadings as well as perused the DPC proceedings and the Roster.

7. As far as the Roster is concerned no doubt the Respondents have updated it from 1978 as per the directions of this Tribunal in O.A.123/91. We, however, find that though there were Roster points available for ST candidates they were not really filled by the reserved category but were filled by General Category candidates. A Roster point was available in the year 1988 as well as in 1990. If the applicant was senior most certainly the Applicant should have been considered and the Applicant would have been in the zone of consideration but that does not seem to have been done. The learned Counsel for the Respondents informs that this Roster point was dereserved in 1992 and after recasting the roster ^{as a} whole in 1995 a general candidate was adjusted against this Roster point. In any case, it would be difficult to go back to 1987 after such a long lapse of period. In our considered view the Roster point being available the Applicant's case ~~could~~ have been considered at that time. However, the Applicant has slept over his rights for six long years.

8. At this stage, the learned Counsel for the Applicant argues that in the present matter delay cannot be made a ground for rejection of the O.A. as the Applicant's claim is genuine. She is relying on the judgement of the Supreme Court in the matter of *K. Thimmappa and Ors. vs. Chairman, Central Board of Directors, SBI & Anr.* 2001 SCC (L&S) 374. The headnote in para (C) of this judgement states that a Petition cannot be rejected solely on the ground of laches ^{and} the question of violation of fundamental right is involved in it. But when there is no

infraction of Art.14 of the Petitioner on question of delay in filing the Petition cannot be ignored. The learned Counsel has also cited another judgement in the case of *State of M.P. vs. J.S.Bansal & Anr. 1998 (1) ATJ 553* wherein it has been held that consideration for promotion along with other eligible candidates is done so as to give effect to the fundamental right available even ~~to~~^{to} a delinquent employee under Articles 14 and 16 of the Constitution. Since in the present case, the Applicant was ~~entitled~~^{eligible} for the promotion in 1987, after completing 5 years of qualifying service, ~~It is effecting~~ by denying her the same ^{her} fundamental right has been affected, and, therefore, the delay and laches could not come in the way of the Applicant getting retrospective promotion from 1987.

9. ~~In one considered view~~, However, the Respondents did not consider the case of applicant and he was not in the zone of consideration in 1989, Giving any retrospective effect would unsettle the settled seniority position now. The Applicant has not given any satisfactory explanation as to why he kept quiet over his right for several years, unless the explanation is satisfactory, delay cannot be condoned. The Supreme Court has held in several judgements that courts and tribunals should be slow in disturbing the settled affairs in a service after a long period. There is no application for condonation of delay submitted in this case. Further in the case of *State of Karnataka and Ors. v. S.M.Kotrayya and Ors. 1996 SCC (L&S) 1488* it has been clearly held that explanation should be given for the delay which occurred after the expiry of the limitation period applicable to the appropriate case and the Tribunal should

satisfy itself whether the explanation offered was proper. Also in the case of *Ex.Capt. Harish Uppal vs. Union of India & Ors JT 1994 (3) SC 126*, it has been ~~held~~ observed that parties should pursue their rights and remedies promptly and not sleep over their rights. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Art.226 of the Constitution of India. We are, therefore, not inclined to condone the delay in this matter.

10. We have also perused the Review DPC proceedings of 1990 i.e. panel for 1991. The Applicant was considered along with others for the post of Security Officer. The Applicant did not make the Grade whereas his junior Shri Ratan Chand had a better record than that of an Applicant and was selected. In this Connection, the learned Counsel for the Applicant has urged that there was no "Adverse Entry" in any of the CRs for the period under consideration. Also as for the Govt. of India orders issued vide OM dated 11.7.1968 by the Ministry of Home Affairs, some weightage is to be given to the Scheduled Castes and Scheduled Tribe Officers. According to para B (a) of this O.M. as a measure of improving representation of scheduled castes and scheduled Tribe in services it has been decided that if within the zone of consideration there are any Scheduled Castes and Scheduled Tribe employees those amongst them who are considered unfit for promotion by the DPC will be excluded from consideration. Thereafter the remaining Scheduled Castes and Scheduled Tribe employees will be given by the DPC one grade higher than the grading otherwise assignable to them on the basis

of their record of service. Thus the grading of 'Good' they would be recategorised by the Committee as 'Very Good' and likewise if any Scheduled Castes or Scheduled Tribes employees is graded as "Very Good" on the basis of his record of service, he will be recategorised by the Committee as "Outstanding". In short they will be granted higher grading. This concession would be confined to only 25% of the vacancies in a particular grade to be filled in the Select List. Based on this the learned Counsel pleads that the Applicant should have been given one Grade Higher while considering the case. We find from the DPC proceedings that the Applicant was shown as "Unfit" based on the Grading which could be "Average". Even if this grade has to be upgraded to "Good" still there was a better candidate amongst ST candidates who had secured higher Grading than his and this being a selection post the better candidate would succeed and therefore, in our view, the Applicant was rightly not selected in 1991 Selection. Coming to the 1993 proceedings of the DPC, we find that in spite of an Adverse Entry for the period 1990-91, Applicant's overall grading was between "Average and Good". If the benefit of O.M. dated 11.7.1968 were to be extended, the Applicant would have got "Good" easily, which is the Bench Mark, and would then been entitled for selection. However, the Applicant was again not selected and the Applicant was the only ST candidate. We, therefore, hold that the Applicant had a good case for selection. We, therefore direct the Respondents to hold the Review DPC and reconsider the case of the Applicant in terms of the OM dated 11.7.1968 by giving a higher Grading, and if found fit grant consequential benefits thereof. This exercise

may be carried out within a period of 3 months from the date of receipt of a copy of this order.

11. In the circumstances of the case, we do not order any costs.

S. Ram

(Shanker Raju)

Member (J)

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(Smt. Shanta Shastry)

Member (A)

sj*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

REVIEW APPLICATION NO. 49/2001
IN
ORIGINAL APPLICATION NO. 353/1994

THIS THE 19TH DAY OF SEPTEMBER 2001

CORAM: SMT. SHANTA SHASTRY. ... MEMBER (A)
SHRI SHANKAR RAJU. ... MEMBER (J)

Union of India
through the Secretary,
Department of Atomic Energy,
CSM Marg,
Mumbai-400 001.

.. Review Applicant/
Respondent

By Advocate Smt. N.V. Masurkar.

Versus

Shri L.c. Dass,
Assistant Security Officer,
B.A.R.C.

... Respondent/
Applicant in OA.

O R D E R (CIRCULATION)

Smt. Shanta Shastri. ... Member (A)

This review application has been filed against the order dated 13.6.2001 in OA No.353/94 by the respondents in the aforesaid OA.

2. This Tribunal directed the respondents in the OA to hold a review DPC and to reconsider the case of the applicant in terms of OM dated 11.7.1968 by giving the higher grading and if found fit to grant

...2.

consequential benefits thereof. The review applicants have submitted that this OM of 11.7.68 was superseded by the DOP & aR OM dated 10/41/73-Estt. (SCT) dated 20.7.1974 on the subject of reservation in posts filled by promotion byselection to Class II, within Class II, and up to the lowest rung of Class I and as such, the provisions contained in clauses (i) and (ii) of paragraph 2 (B) (a) therein have become inoperative. The review applicants have stated that this plea could not be taken up in the OA as it was sought to be raised in the rejoinder for the first time belatedly. The points raised at the time of arguments based on rejoinder could not be answered and therefore, this supersession of a part of the OM dated 11.7.68 by OM dated 20.7.74 of othe DP&AR could not be pointed out.

3. We have considered the the above mentioned ground taken by the review applicants. The judgment was dictated in the open court. The review applicants/respondents could have definitely raised this point during the course of the arguments. Whether the rejoinder was taken on record or not it was certainly discussed during the hearing. Further, the consolidated instructions/ guidelines of the DOP & T on promotions, issued by OM dated 10th April, 1989 clearly

lays down in para 6.3.2 that in such case where the SC/ST officers are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has been drawn up not withstanding the prescription of 'bench mark' be included in that list provided they are not considered unfit for promotion.

In view of this the review application is rejected.

Sakari

(SHANKAR RAJU)
MEMBER (J)

Shanta S-

(SMT. SHANTA SHASTRY)
MEMBER (A)

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dt-19/9/01
order/...
to Applicant(s)
on 29/11/01

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C.P.No.34/2002

in

O.A.No.353/94.

Date : 31.5.2002.

Heard: Mrs.N.V. Masurkar, Counsel for applicant
and Shri R.R. Shetty, Counsel for contemnor-respondents.

We have gone through the DPC proceedings,
However, Counsel for respondents states that he would
like to have the instructions from the department in
respect of this matter, and, therefore, the case be
adjourned on his request for 4 weeks.

Let the case be listed on 28.6.2002.

2-9-
(Smt. Shanta Shastry)
Member (A).

B. Dikshit
(Birendra Dikshit)
Vice Chairman.

H.

5) 28.6.2002.

Both counsel present.

on request by Shri R.R.
Shetty, case adjourned and posted
to 5/7/2002.

W
(Shankar Raju)
MCA

B. N. B. Dikshit
(B. N. B. Dikshit)
MCA

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