

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 530/94.

Date of Decision: 23.06.99.

S.C.Shrivastava

Applicant.

Shri A.I.Bhatkar

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar for R-1 and R-2  
and Shri M.S.Ramamurthy for R-3.

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. Justice K.M.Agarwal, Chairman,

Hon'ble Shri. R.K.Ahooja, Member(A).

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

(K.M.AGARWAL)  
CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.530/94.

Wednesday, this the 23rd day of June, 1999.

Coram: Hon'ble Shri Justice K.M.Agarwal, Chairman,  
Hon'ble Shri R.K.Ahooja, Member(A).

S.C.Shrivastava,  
D-3/4, P & T Colony,  
Mulund (West),  
Bombay - 400 080.

...Applicant.

(By Advocate Shri A.I.Bhatkar)

Vs.

1. Union of India  
Through Secretary Department of  
Telecommunications,  
20-Ashoka Road, Sanchar Bhavan,  
New Delhi.
2. DDG (Establishment)  
Department of Telecommunications,  
20-Ashoka Road, Sanchar Bhavan,  
New Delhi.
3. Chandra Bhushan,  
No.6, Type - V Quarters,  
C.T.O. Compound,  
Juhu Road,  
Mumbai - 400 054. ....Respondents.

(By Advocate Shri V.S.Masurkar  
for R-1 and R-2 and Shri M.S.Ramamurthy  
for R-3 (Intervener)

: O R D E R :

(Per Shri Justice K.M.Agarwal, Chairman)

In this O.A. the applicant has claimed regularisation against the post of Executive Engineer (Civil) and promotion to the post of Executive Engineer (Civil) w.e.f. October, 1978 along with ancillary reliefs.

2. This O.A. was initially filed against the first two Respondents. On a decision on M.P. No.635/98 for intervening in the matter, the 3rd respondent was added as a party respondent to these proceedings.

3. The learned counsel for the first two respondents submitted that the applicant has been given promotion to the post of Executive Engineer (C) against the vacancy of 1978 and thus this O.A. has become infructuous. A copy of the letter No.19-21/94-CWG dt. 22nd June, 1999 issued by the Ministry of Communications, Department of Telecommunications, New Delhi has been produced before us by the learned counsel for the official respondents to support his

*Yours*

aforesaid submission. The letter reads as follows :

"I am directed to refer to your letter No.20(4)/97-CEWZ dt.22.6.99 on the above subject and to say that Shri S.C.Srivastava was considered for promotion in the DPC held in February, 1997 and was selected against the vacancy of 1978. He was promoted as Executive Engineer (C) on regular basis with effect from 20.3.97. At present he is working as Superintending Engineer (Civil) on active basis."

After going through the contents of the said letter, the learned counsel for the applicant conceded that this O.A. has become infructuous insofar as his claim for promotion to the post of Executive Engineer (Civil) on regular basis is concerned, but the dispute remains about his position in the seniority list in view of the fact that his promotion is said to be w.e.f. 20.3.97, whereas the selection is said to be against the vacancy of 1978. In this regard the learned counsel for the official respondents wanted to submit that the seniority will be determined after the various vacancies of different years are filled in. We are of the view, that if on the basis of seniority fixation that may be made hereafter, if the applicant feels aggrieved, he shall be at liberty to re-agitate his case for fixation of his seniority at an appropriate place.

4. Shri M.S.Ramamurthy, the learned counsel for the third respondent wanted to make his submissions to say that 8 years experience was one of the eligibility qualifications for promotion to the post of Executive Engineer (Civil), whereas, the applicant had completed only six years service in the feeder category and therefore, he was not eligible to be given promotion w.e.f. 1978.

The learned counsel wanted to make further submissions before us, but we refused to hear him because he was only permitted to intervene and allowed to be joined as third respondent in this OA. If he feels aggrieved by the order or decision taken by the official respondents to promote the applicant w.e.f. 1978, his remedy is by filing a separate petition in that regard. In a petition filed by the applicant he cannot get any such relief as he wanted to claim by making his submissions. No relief was claimed by the applicant against the third respondent. The relief was only against the official respondents i.e. R-1 and R-2 and therefore, if the

third respondent feels aggrieved by the promotion given to the applicant by the second respondent vide aforesaid letter dt.22.6.99, he is at liberty to file a separate petition for appropriate relief as may be advised to him. Subject to the observations and reservations and opportunities reserved to the applicant and the third respondent, this OA is hereby dismissed as having become infructuous.

No costs.

  
(R.K.AHOOGA)

MEMBER(A)

B.

  
(K.M.AGARWAL)

CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

Contempt Petition No. 45/99 in  
ORIGINAL APPLICATION NO: 530/94

the 16<sup>th</sup> day of JANUARY 2001.

CORAM: Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

S.C.Srivastava

...Applicant.

By Advocate Shri G.K.Masand alongwith  
Shri A.I.Bhatkar.

V/s

Shri Anil Kumar and Anr.

...Respondents

By Advocate Shri M.I. Sethna.

O R D E R

{Per Shri Kuldip Singh, Member (J)}

By this order we will decide the C.P. filed by the applicant whereby the applicant has alleged that the respondents/proposed Contemners, as they have deliberately and willfully dis-obeyed the orders passed by this Tribunal to promote the applicant with effect from 1978 by treating him to have been promoted from 1997. The proposal sent to UPSC for promotion to the grade of SE (Civil) on regular basis against the vacancies upto the year 1996 does not include the name of the applicant, had the applicant been given promotion with effect from 1978 as held in the OA, the name of the applicant would have been sent to UPSC for promotion to the Grade of SE. It is further stated that contemners have gone back on their commitment given to this Tribunal to revise the seniority of the applicant and forward the case of applicant for promotion in the grade of SE (C) based on the present unrevised seniority list of EEz dated 11.1.1999 which includes the name of AEs also.

2. The applicant prayed for the following relief in the C.P.

i) To consider the case of Applicant for promotion to the post of Superintending Engineer (Civil) on regular basis, on the basis of his "revised" seniority position and regular services as Executive Engineer (Civil) from 1978.

ii) To follow only the applicable rules for filling up the vacancies of Superintending Engineer (Civil) on regular basis i.e. 1976 rules (duly amended on 5.4.80) for vacancies occurring prior to 6.8.1994 and 1994 rules for post 6.8.1994 vacancies.

c) This Hon'ble Tribunal will be graciously pleased to pass any other and further orders in the facts and circumstances of the case.

d) The cost of the contempt petition be provided for by Respondents/ Proposed Contemners.

3. The respondents submits that the applicant mis-read the orders passed by the Tribunal on 23.6.1999 in the OA and filed the present C.P. In fact this Tribunal did not pass any order or direction to promote the applicant with effect from 1978 nor there is any finding in the judgement that the applicant is entitled for retrospective promotion with effect from 1978 to the post of EE. Therefore the present C.P. is mis-concieved and does not lie at all. It is further stated that as per letter dated 22.6.1999 it was made clear that the applicant was promoted as EE(C) on regular basis with effect from 20.3.1997 against the vacancy for the year 1978. It is further stated that as per instructions of DOPT and <sup>u</sup>gide lines of DOPT dated 10.4.1989 the promotions will be with effect from prospective date i.e. 20.3.1997 when admittedly the applicant was selected against the vacancy occurred in the year 1978. As such the respondents have not violated any order passed by the Tribunal and more over the

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respondents had not given any undertaking before the Tribunal that the applicant will be given promotion retrospectively from the year 1978.

4. We have heard counsel for the parties and perused the records. It is to be seen whether the respondents have disobeyed any order passed by this Tribunal or have gone back from any undertaking which they might have given to the Tribunal. For this purpose we will have to go to the order passed in this OA. At the outset on perusal of the order it shows that the OA is dismissed ~~as~~ having become infructuous. However the relief portion for the purpose of C.P. from the judgement is extracted herein below:

After going through the contents of the said letter, the learned counsel for the applicant conceded that this OA has become infructuous insofar as his claim for promotion to the post of Executive Engineer (Civil) on regular basis is concerned, but the dispute remains about his position in the seniority list in view of the fact that his promotion is said to be with effect from 20.3.97, whereas the selection is said to be against the vacancy of 1978. In this regard the learned counsel for the official respondents wanted to submit that the seniority will be determined after the various vacancies of different years are filled in. We are of the view, that if on the basis of seniority fixation that may be made hereafter, if the applicant feels aggrieved, he shall be at liberty to re-agitate his case for fixation of his seniority at an appropriate place. (Emphasis supplied).

5. On going through this extract from the order we find that the Tribunal had nowhere directed the respondents to give promotion to the applicant to the post of EE from the year 1978. The order suggests that question of fixation of seniority was left open and the applicant was also at liberty that if at all he felt

aggrieved about the question of fixation of seniority he shall be at liberty to re-agitate his case for fixation of his seniority at proper place. Thus the order nowhere suggests nor there is any undertaking given by the respondents/ contemner that the respondents had ever agreed to fix the seniority of the applicant against vacancy of 1978. Hence we are of the considered opinion that the Contemner had not violated any of the directions given by the Court nor they have violated any under taking given by them to the Court.

6. Even from the perusal of the prayer clause in the C.P. we find that the applicant had not prayed that the contemner be summoned, proceeded against for contempt of Court. As regards the prayer for seniority fixation on regularisation of post as EE from the year 1978 or direction be issued, to follow certain rules, we find that such type of direction cannot be given in the C.P. particularly after disposal of the OA because it amounts to re-opening the entire matter and giving further directions beyond the scope of the judgement given in the OA. With these observations we find that the Contempt Petition has no merits. The Contempt Petition is therefore dismissed. No costs.

*Shanta*

(MS. SHANTA SHAstry)  
MEMBER(A)

*Kuldeep*

(KULDIP SINGH)  
MEMBER(J)

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