

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 1442, 95

DATE OF DECISION: 01.03.2001.

Subhash Sadashiv Birhade Applicant.

Shri D.V.Gangal Advocate for
Applicant.

Versus

Union of India and others. Respondents.

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

CORAM

Hon'ble Shri Justice Ashok C.Agarwal, Chairman.

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

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

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

(3) Library.

Shanta S
(Ms. Shanta Shastry)
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 1442.95

THURSDAY the 1st day of March 2001

CORAM: Hon'ble Shri Justice Ashok C. Agarwal, Chairman

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

Subhash Sadashiv Birhade,
Chargeeman Grade I,
Extrusion & Foundry,
Ordnance Factory,
Ambarnath, Thane.

...Applicant.

By Advocate Shri D.V. Gangal.

V/s.

1. The Union of India through
the Director General Ordnance
Factory Board, 10-A, Auckland
Road, Calcutta.
2. The General Manager
Ordnance Factory,
Ambarnath.
3. Shri R.R. Matkati
Chargeman Grade I, Training Section,
Ordnance Factory, Ambarnath. Respondents.

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

ORDER(ORAL)

{Per Ms. Shanta Shastry, Member (A)}

The applicant has claimed notional seniority with effect
from the date of his junior's promotion i.e. from 26.10.1979 and
the consequential backwages etc. from 6.7.1981 when he was
actually appointed.

2. The applicant had approached this Tribunal by OA 124/91, which was decided on 4.1.1994. The Tribunal had passed the following order:

" After having heard both sides we are persuaded to accept this claim. The applicant may be given seniority from the date his junior, respondent No. 3 was given and he should be placed above respondent No.3. However there shall be no payment of wages and allowances for that period. After recasting of seniority list all consequential benefits will be given to him on merits. No order as to costs.

3. The respondents accordingly have given notional seniority to the applicant but did not give him backwages and allowances. The applicant therefore filed CP No.126/94. The CP was dismissed there being no willful dis-obedience on the part of the respondents as the respondents had recast the seniority pursuant to the order of the Tribunal and had granted the monetary benefits from 4.1.1994 i.e. the date of judgement.

4. It is the contention of the applicant that the Tribunal's order was very clear and the CP was dismissed only on the ground that there was no willful disobedience. However the Tribunal clearly mentioned that consequential benefit on the recasting of seniority should have been extended to the applicant. The applicant has filed a comparative statement showing the pay fixation of applicant and respondent No.3 at Annexure A8. According to the applicant his junior i.e. respondent No.3 was appointed on 26.10.1979 and there was a delay of two years in

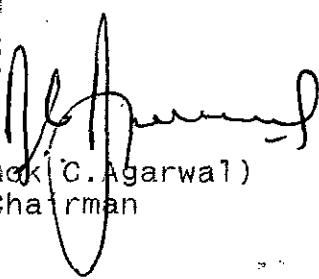
appointing the applicant. He was appointed on 6.7.1981. However he has been granted notional seniority from the date his junior was appointed. He should however be granted notional seniority from the date he was appointed i.e. from 6.7.1981 and not from 4.1.1994 as has been done.

5. We have perused the Tribunal's order and have heard the counsel for both sides. In our considered view having considered notional seniority from 26.10.1979, the applicant is entitled to backwages at least from the day he started working i.e. from 6.7.1981 when he was appointed. The learned counsel for the applicant has also produced a judgement of the Hon'ble Supreme Court of India in the case of H.N. Ramaul V/s Himachal Pradesh and others reported in 1991(17)ATC 259. In this case though there was no specific direction for providing monetary benefits along with the promotion, the applicant was directed to be paid monetary benefits. In the present case there is a direction for consequential benefits as such it is on a stronger footing.

6. We therefore direct the respondents to grant the applicant the arrears of pay and allowances with effect from 6.7.1981 as prayed for. The applicant's pay fixation may be done on the basis of notional seniority and thereafter the arrears be paid vis-a-vis respondent No.3, his junior. In the result the OA is allowed. We do not order any costs.

Shanta S^r

(Ms. Shanta Shastry)
Member(A)


(Ashok C. Agarwal)
Chairman