

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH : MUMBAI

OA 389/1995

Mumbai this the 30th day of July, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Smt. Shanta Shastry, Member (A)

1. Vasant Gangaram Tambe
(President)
2. Deepak Vasant Karmarkar
Genl. Secretary of Civil
Construction Wing All India
Radio, Mazdoor Union (Regd).
Indian Inhabitant having their
address at room No.22, First
floor, Doordarshan Kendra, P.B.
Marg, Worli, Bombay.

..Applicants

(By Advocate Shri A.I.Patel)

VERSUS

1. Director General (CCW AIR),
All India Radio, Akashvani
Bhawan, Parliament Street,
New Delhi.
2. Chief Engineer (Civil -1)
CCW: AIR IInd Floor, P.T.I.
Building, Parliament Street,
New Delhi.
3. Superintending Engineer (Elect.),
Civil Construction Wing (Elect.)
Circle, All India Radio, Siminary
Hills, Nagpur.
4. Secretary, Ministry of Information
and Broadcasting, through the
Central Govt. Pleader having their
office at CGO Building, M.K.Mg.,
Bombay.

..Respondents

(By Advocate Sh.M.I.Sethna, Learned
counsel through proxy counsel Sh.
V.D.Vadhavkar)

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O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)

This application has been filed by the Civil Construction Wing of All India Radio Mazoor Union (Regd). through its President and Secretary, in which they are aggrieved that the respondents are not considering them for promotion as well as putting them in the higher pay scale job, which according to them, they have performed in the post.

2. We note that no reply had been filed by the respondents to the OA but Shri V.D.Vadhavkar, learned proxy counsel for the respondents submits that they rely on the reply filed by them on 28.4.1996 to MP 67/1996. We, however, note that on 30.4.1996 that MA has itself been dismissed.

3. We have heard Shri A.I.Patil, learned counsel for the applicants and Shri V.S.Vadhavkar, learned proxy counsel for the respondents and perused the documents on record.

4. The learned counsel for the applicants has relied on certain correspondence issued by the respondents, for example, letter dated 15.9.1993 from the Executive Engineer(E), CCW: AIR, Bombay in which it has been stated that the promotion of Work Charge Staff (WCS) is

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under consideration and decision will be taken "very soon". According to him, no such decision has been forthcoming from the respondents till date. His further contention is that the respondents are actually taking work of higher post from the applicants without giving them the relevant pay scale.

5. The above averments have been controverted by the respondents. Shri V.D.Vadhavkar, learned proxy counsel has submitted that, in the reply filed by the respondents to MA 67/1996, they have submitted to the contrary, that despite offering promotions to the staff in various categories, in many of the cases the offer was not accepted by the incumbents, for their own reasons. Learned counsel has submitted that some of the applicants preferred to work on overtime basis rather than get the pay scale in the higher post. An explanation has been given in the reply that the office had to get the work of an emergent ~~nature~~ done through private agencies on contract basis as the staff have refused to work in some instances. However, it is relevant to note that neither the applicants nor the respondents have supported their averments in the pleadings by relevant record, for example, as to how many applicants had refused the offer of promotion and how many applicants had done the jobs in the higher scale and for what periods etc. In other words, we find

that the reply of the respondents in the aforesaid MP are somewhat vague. It is also relevant to note that the applicants are relying on the letter issued by the respondents as far back as 15.9.1993, in which it has been stated that the question of promotion of WC Staff was under their consideration and decision would be taken 'very soon'. Unfortunately the learned proxy counsel for the respondents has not been able to show what decision, if any, the respondents have taken during the pendency of this OA in terms of this letter. It is also relevant to note that admittedly the applicants have filed an application in the year, 2000 before the Central Government Industrial Tribunal (CGIT) Mumbai. According to the learned counsel for the applicants, the reliefs prayed for before the CGIT are different from the reliefs prayed for in the present OA. This has been stoutly denied by the learned proxy counsel for the respondents who has submitted that the reliefs are almost similar, namely, promotion, filling up posts as per the CPWD yardstick, regularisation of WC Staff and so on. Learned proxy counsel has also drawn our attention to the written statement filed on behalf of respondents before CGIT in case No. CGIT 2/30 of 2000, copy placed on record. The relevant portion of that reply reads as below:-

....The matter covering the same is also subject matter of the application in CAT Central Administrative Tribunal, Mumbai, Bench

in No.389/95 which also covers the CPWD award to CWC WC Staff. The matter of CPWD award and recategorisation is also subjudice, *inter-alia*, in the Principal Bench(CAT) New Delhi by OA No.CWP No.5427, hence the matter could not be taken up for any final decision by the Opp.Party."

6. We further note that in the Tribunal's, order dated 2.7.2001 it has been noted that a point was made out by the counsel for the applicants about similar proceedings before CGIT.

7. It is noted from the facts mentioned above, that the respondents are only relying on their reply dated 28.4.1996 to MP 67/1996 while the said MP 67/1996 was dismissed on 30.4.1996. In the circumstances, we find force in the submissions made by the learned counsel for the applicants that applicants had not been given an opportunity to rebut any of the factual averments made by them. However, we note that the respondents have annexed certain orders in respect of WC Staff to whom promotions have been given in 1993 and 1994 which have apparently not been accepted by applicants within the specified time. What further action, if any, have been taken by the respondents in accordance with the relevant rules and instructions is not known to us. This position is not clear as respondents have not cared to file a detail reply to OA till date.

8. In the above facts and circumstances of the case and taking into account the submissions made by the learned counsel for the parties, we consider it

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appropriate to dispose of the OA with the following directions:-

- (i) Applicants shall make a detailed and self contained representation, together with all relevant documents to support their claim for appointments in the higher pay scale for the periods they have worked from 25.1.1994 i.e. one year prior to the filing of this OA. The representation shall be submitted by them within four weeks from today to respondent No.3. Thereafter, on receipt of such representation, respondents shall consider the same in accordance with the relevant rules and instructions and pass a detail, reasoned and speaking order within a period of four months;
- (ii) The respondents shall also consider further action to be taken with regard to the aforesaid promotion orders, annexed to their reply to MP 67/1996, in accordance with the provisions of law and rules .
- (iii) Such of the applicants who are eligible for consideration for promotion to the higher posts may be considered, subject to their fulfilling the eligibility conditions as prescribed in the relevant Recruitment Rules and availability of vacancies.

No order as to costs.

Shanta
Shastray

(Smt. Shanta Shastray)
Member(A)

Lakshmi
Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman(J)