

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1048/95

DATE OF DECISION:

The 9th Day of June 2000

Shri Ainsley Braganza. Applicant

Shri V.N.Velankar Advocate for
Applicants.

Versus

Union of India thru Regr Gnr & Ors. Respondents

Shri R.K. Shetty. Advocate for
Respondents

CORAM .

Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L. Jain, Member (J)

- (1) To be referred to the Reporter or not? Yes
- (2) Whether it needs to be circulated to No
other Benches of the Tribunal?
- (3) Library. Yes.

B.N.
(B.N.Bahadur)
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No. 1048/1995

Dated this 09th Day of June 2000.

(Ninth June 2000).

Coram: Hon'ble Shri B.N. Bahadur, Member (A)

And

Hon'ble Shri S.L. Jain, Member (J)

Shri Ainsley Braganza
Geographer in the Directorate
of Census Operations,
Maharashtra, R/a: Range View,
7th Road, Santa Cruz (East)
Mumbai 400 055.

..... Applicant

(Applicant represented by Dr. V.N. Velankar, Advocate)

vs.

Union of India through

1. The Registrar General
Kotah House Annex
2-A Mansingh Road
New Delhi 110 011.
2. Director of Census
Operations Maharashtra,
having his office at
Exchange Building, 2nd floor
Sprott Road, Ballard Estate
Mumbai 400 038.

..... Respondents

(Respondents represented by Shri R.K. Shetty, Advocate)

ORDER

[Per B.N. Bahadur, Hon'ble Member (A):

This is an Application filed by Shri Ainsley Braganza,
seeking the relief from this Tribunal as follows:

- a) The impugned decision of respondent No.1 not
to count the adhoc service of the applicant prior
to regularisation for seniority as well
eligibility for promotion be quashed and set
aside.

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a1) Alternatively this Hon'ble Tribunal be pleased to declare that the applicant was entitled to regularisation of his service with retrospective effect from the initial date of his appointment, i.e. from 1-9-1980 and be further pleased to direct the Respondents to forthwith revoke the order dated 15th September 1992 at Exh. A-6 and issue a fresh order appointing the applicant on regular basis with effect from 1-9-1980.

b) The final seniority list of Geographers accompanying letter datd 14.6.1995 be quashed and set aside qua the placement of applicant at Sr.No.21.

c) The respondents be directed forthwith to place the applicant at Sr. No.6 in the final seniority list of Geographers/ Cartographers as on 30.9.1993 and consider him for promotion to the post of senior Geographer as consequential relief.

d) The respondents be directed to give the applicant as deemed date of promotion to the post of Senior Geographer the date on which the officer at present at Sr. No.6 in the final list Shri T.S. Khadatkhar was promoted.

e) Cost of this application be awarded to the applicant.

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f) Any such other and further reliefs be granted to the applicant as this Hon'ble Tribunal deems fit.

2. The facts of the case as, putforth by the applicant, are that after passing BA (Geography) from Bombay University in 1977 and MA in the same subject with first class, in 1979, the Applicant was sponsored by Employment Exchange, and after a written test and interview was appointed as Geographer/Cartographer in the Directorate of Census Operation, Maharashtra, with effect from 1.9.1980 in the Pay Scale of Rs.550 -- 900. This appointment was adhoc and temporary (Ex.A). The Applicant's grievance is that when even after five years of service, his appointment was still adhoc, he therefore represented for being declared regular vide representation dated 7.3.1986 (Ex.A2). He received a reply dated 22nd May 1986, rejecting his request but also stating that he must qualify in the examination of SSC before regularisation (Ex.A3).

3. The Applicant goes on to explain that after hearing that some others had been regularised, he again represented to the authorities in April, 1987, but no reply was received. He was ultimately regularised with effect from 15.9.1992, and in the same order it was stated that the adhoc service w.e.f 1.9.80 would be considered for purpose of seniority and eligibility for promotion.

4. The respondents have filed a written reply, in which it is stated that all Cartographers/Geographers have been given the same treatment and that Seniority List dated 1.8.1991 was merely

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a provisional list of Seniority. The adhoc services of applicant in the post of Cartographers has not been taken into account for purposes of fixation of their Seniority. It is stated that Applicant was appointed on a purely adhoc basis, and since regular appointments are made only in accordance with Recruitment Rules there was no commitment, on the part of Respondents, for providing regular appointment to the applicant. It is, further averred that Applicant has to compete with others, when notification for regular appointments to the grade were issued. Another averment made by Respondents in the written statement is that the representations of applicant were in grievance of non regularisation whereas the present OA is for seniority. It is further stated that finalisation of Provisional Seniority List was done in consultation with Department of Personnel and, as per their advice the adhoc service is not counted, for purposes of seniority and promotion.

5. The respondents further explain as to why the decision for providing seniority by counting period of adhoc service was subsequently changed in view of a decision of Hyderabad Bench of this Tribunal, in respect of Computers in the Respondent's Organisation. The Respondents assert that they are bound by the advice of the Department of Personnel in this regard.

6. We have heard the learned Counsels on both sides. The learned counsel for the Applicant took us over the facts of the case, and first took the point relating to discrimination in the case of the applicant. She cited the case of Ms.Suman Gupta and Shri Prem Chand, who was similarly placed, and took the help of

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the statement at page 21 to show that whereas Suman Gupta and Prem Chand were also adhoc appointees, and were appointed almost at the same time as the applicant, they have been regularised with effect from 23.8.1980 and 26.8.1980 respectively. Learned Counsel argued that this was a case of hostile discrimination.

7. The learned Counsel further made the point that there is, firstly, no categorical Rule or Law against regularisation as such and took support from the case of *Direct Recruit Class II Engineers* [AIR 1990 SC 1607] It was further argued that the fact that regularisation was provided to Shri Prem Chand and Ms. Suman Gupta were clear indications of hostile discrimination. It was stated that these two were working in the Head Office in Delhi and perhaps this was the reason that they were able to get regularisation several years ahead of the applicant, although they are similarly situated.

8. Learned Counsel for the Applicant stated that although reliefs were asked from the date of appointment these could be made available from the date of regularisation now given to the applicant. The Learned counsel also strenuously sought to invoke the principle of promisory estoppel, and said that once an order has been issued providing the applicant the benefit to the effect that adhoc service will count for purposes of seniority (Ex.A-6), this cannot be withdrawn by change of seniority in the final list. No such change was effected for Shri Prem Chand and Ms.Suman Gupta.



9. Learned Counsel for applicant also took us over the various documents especially his representations made from time to time and also those letters from the Mumbai Office where the case of applicant has been recommended strongly by the Jt. Director of Census Operations, at Mumbai (Ex.A-7). It was also argued that no opportunity was provided to him for appearing at an Examination as suggested by the Govt. itself.

10. Learned Counsel for the Respondents reiterated the stand in his arguments, that since the period of Adhoc appointment cannot be considered for any benefits there is no case for the applicant. The Department of Personnel had clearly advised against counting of Adhoc period for seniority and this was reflected in the subsequent decision of Govt.

11. On the point relating to discrimination, learned counsel argued that regularisations in the case of *Prem Chand & Suman Gupta* was made on 4.6.1983 and the law is changing, and no benefits can be given de hors the procedures envisaged. In response to a query by us, it was admitted by Counsel for Respondent that no opportunity for appearance at an Examination was provided to the Applicant. Similarly, to a question as to why Applicant's case was not considered along with the aforesaid Prem Chand and Suman Gupta, no convincing answer was forthcoming. Learned Counsel however, took the support of the case of *Davinder Bathia* [(1998) 2SC SLJ 132].

12. Learned counsel further took the defence that there was no estoppel against law and depended in the case of *Ashok Kumar* [1998] (3) AI SLJ SC 30]. He argued that in any case, the position in respect of Ms.Suman and Prem Chand cannot be unsettled now. Learned Counsel stated that the Judgement of Hyderabad CAT could

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not be the basis for providing any benefit. Counsel for Respondent also took support of the case of *Valsa Kumari* [(1999)(2) SC SLJ 107, he argued that unsettling things now would creat complications.

13. In a short reargument Learned Counsel for Applicant defended her case on the point of limitation and stated that the applicant was not guilty of delay and latches and he was constantly representing his case from time to time. Importantly, his case has been recommended by the Mumbai Office as can be seen from the documents on record.

14. The first and important point that is evident from the facts in the case is that there has been clear discrimination against the present Applicant. vis-a-vis Premchand and Suman Gupta. No convincing reason has been advanced by Respondents or set forth even at the time of arguments, beyond a feeble attempt made during argument but with no substantial justification. In fact it is a clear position that there has been hostile discrimination against the Applicant. In the reply filed by Respondents in March, 1996 an assertiion of intended review of the case of Prem Chand & Suman Gupta was indicated but this has not been done.

15. It is an admitted position that there is no law or rule *per se* against regularisation, and that each case will need to be viewed on its merits. Here, the Respondents have provided regularisation to two persons who were similarly placed with the only difference that these two were posted in Delhi, which

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obviously can be no ground for differential treatment. The Applicant was asked to appear for qualifying examination but, for long period of time no such opportunity was provided to him, although such an opportunity was provided by the Calcutta Office to another person. In this context, what is also helpful to the case of the Applicant is the fact that there is a common All India Seniority and all decisions are taken by the Headquarters in New Delhi. It is not as if there is different seniority in different regions in the country.

16. We have also considered the argument made at length about the reason for the change in decision in Applicant's seniority because of subsequent advice by Department of Personnel. The mere stand that Department of Personnel's advice has to be followed cannot provide an overriding factor of support to the Respondent Department. The Respondents have issued orders for providing seniority to the Applicant consciously and have later gone against their own decision.

17. In regard to the argument relating to delay and laches, taken in this case, we note that the Applicant has been constantly agitating the matter. Not only that, but there are strong letters from the Head of the Bombay Office of Respondents, written by Senior Officers, recommending the case of the Applicant giving justification. These letters were strongly relied upon for support on behalf of the Applicant, and are available on record at pages 29 and 42 of the paper book. A legitimate expectation was indeed created. Further, there is a continued suffering by the Applicant in the treatment meted out

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to him which will have an effect on his career throughout, till its end. The real grievance arose on 14.6.1995 when the earlier order of 15/9/1992 was ~~negated~~ ^{negated} and hence the Application cannot be said to be hit by limitation/delay and laches.

18. The Learned Counsel for the Respondent had drawn support from the case of D.S. Bathia (1998 (2) SCSLJ 132). The ratio decided in this case is not applicable to the case before us, as will be clear from a reading of the judgement of the Hon'ble Apex Court. Hence no support will be available to Respondents on this basis. There is a conscious absorption in Bathia's case. Regarding the Direct Recruit Engineering Officers of Maharashtra cited it may be seen that the main ground on which the Applicant's case gain strength of one of discrimination and the fact that even though no clear Rules exists one way or the other, the Respondents have consciously provided regularisation to two candidates who are similarly placed. In the case of direct recruit engineers the question involved was recruitment from two sources. For the same reason the case of Ashok Kumar cited by Learned Counsel for Respondents also cannot come to the help of the Respondents.

19. In view of the peculiar facts and circumstances of this case, where hostile discrimination has been made against the Applicant, and where a regularisation and benefit of seniority once ordered has been changed, It will be grossly unjust to the Applicant not to provide him with the seniority that was promised to him and actually ordered at one stage. It is also however, to be remembered by us that in view of the long period of time that has lapsed, we would not like to unsettle the promotions already made or benefits granted to other persons.

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20. Keeping in mind the facts and circumstances of this case, we therefore allow the OA to the extent, and in terms of the following orders:-

The letter dated 14th June, 1995 addressed by the Registrar General and the appended final Seniority List as on 30.9.1993 is quashed, in so far as the Applicant is concerned. The communication to the Applicant dated 15th September, 1996 (A.6), therefore, stands restored. Accordingly, Respondents are directed to provide all benefits including consideration for promotion, seniority etc. as per this letter dated 15.09.1992. However, no arrears of pay etc. will be payable to the Applicant. Also, the case of promotion of Applicant will be ⁿconsidered only when the next (non reserved vacancy) comes up (or immediately, if one exists at present).

Bnd 21. No costs.

S.L.Jain
(S.L.Jain)

Member (J)

sj*

B.N.Bahadur
(B.N.Bahadur)

Member (A)

09-06-2000

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO.72/2000
in
ORIGINAL APPLICATION NO.1048/95

CORAM: HON'BLE SHRI B.N. BAHADUR, MEMBER (A)
HON'BLE SHRI S.L.JAIN, MEMBER (A)

Shri A. Braganza Applicant

vs.

Union of India & Ors. Respondents

TRIBUNAL'S ORDER ON REVIEW PETITION BY CIRCULATION
DATED 17 TH DECEMBER, 2000.

[Per: B.N.Bahadur, Member (A)]

This Review Petition (No.72/2000) is filed in O.A. No.1048/95. We have seen the Review Petition filed and on its perusal it is clear that the main ground raised is that the Respondents could not produce the copy of an order dated 17.4.1997, during the course of hearing and that through a consideration of this order, ^{vis-a-vis BNB} the decision in the case will materially change ^{the ground of hostile discrimination.} It is stated that copy of this order could not be ^{procured} during the hearing, as it was procured from New Delhi i.e. in the Office of Registrar General of India.

2. Going by the principles of the Civil Procedure Code, the ground can be taken in Review on the basis of discovery of new matter/evidence which, after the exercise of due diligence was not within the knowledge of the party or could not be produced..... Now here the very party in whose office the document was available was a party in the O.A. and that too as Respondent No.1. The Respondent No.2 is directly under the control of Respondent No.1. Sufficient time was given to file Written Statement and the point made was one of the important

points. By no stretch of imagination can it be said that the document could not be produced even after the exercise of due diligence. The other points raised in the R.P. specially citations of some case law cannot become the ground in a Review Petition. The present Petitioner (Original Respondent) may well have a grievance against the orders made in the O.A. but this grievance has to be agitated elsewhere and not in a Review Petition.

3. In consequence, this Review Petition is, hereby rejected.

4. No costs.

ASJ
(S.L.Jain)

Member (J)

sj*

B.N. Bahadur
(B.N.Bahadur)

11-12-00
Member (A)