

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 1053 of 1995.

Dated this Thursday, the 27th day of July, 2000.

M. R. Rohit, _____ Applicant.

Shri A. I. Bhatkar, _____ Advocate for the
applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri V. S. Masurkar, _____ Advocate for
the respondents.

CORAM : Hon'ble Shri B. S. Jai Parameshwar, Member (J).

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

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ?
- (iii) Library.

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Jai
(B.S. JAI PARAMESHWAR)
MEMBER (J).

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CORAM : Hon'ble Shri B. S. Jai Parameshwar, Member (J).
Hon'ble Shri B. N. Bahadur, Member (A).

M. R. Rohit,
Police Sub Inspector,
(Crime Branch),
O/o. the Asstt. Inspector
General of Police,
U.T. of Daman & Diu,
DAMAN.

... Applicant.

(By Advocate Shri A. I. Bhatkar)

VERSUS

1. Administrator,
Daman & Diu,
Dadra, Nagar Haveli,
Head Quarters,
Moti Daman.
2. Asstt. Secretary,
Dadra, Nagar Haveli,
Head Quarters, Silvassa,
Pin Code - 396 230.
3. Asstt. Inspector General
Of Police,
Dadra, Nagar Haveli,
Head Quarters, Silvassa,
U.T. Daman & Diu,
Pin Code - 396 230.
4. Assistant Secretary (Personnel),
Secretariate, Moti Daman,
U.T. of Daman & Diu &
Dadra Nagar Haveli.
... Respondents.

(By Advocate Shri V. S. Masurkar).

O R D E R

PER : Shri B.S. Jai Parameshwar, Member (J).

Heard Mr. A. I. Bhatkar, the Learned Counsel for the applicant and Shri V. S. Masurkar, the Learned Counsel for the Respondents.



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2. The applicant herein belongs to Scheduled Caste community. He was appointed as Head Constable under the Respondents on or about 04.06.1970. He was promoted as Assistant Sub-Inspector during February, 1990. His next promotion is to the post of Police Sub-Inspector.

3. It appears, one Mr. G. C. Patel, a candidate belonging to Scheduled Tribe community, was promoted as Police Sub-Inspector. The applicant appears to have had a grievance that his case had been overlooked. It was his contention that roster no. 1 was to go to Scheduled Caste community, ^{Candidate} and that ignoring the roster point, his junior, G. C. Patel, was promoted. Against that promotion, he appears to have submitted a representation. However, the applicant by order No. ADM/AIGP/DD-DNH/138 dated 09.07.1991, exhibit 'B' page 15 to the O.A., was deputed as Police Sub-Inspector in the scale of pay of Rs. 1400-2300 and posted to Police Station, Diu.

4. While he was working on such deputation, by the impugned order dated 30.08.1995, exhibit 'A' page 14 to the O.A., he was reverted to his parent department.

5. Being aggrieved by the impugned order dated 30.08.1995, the applicant has filed this application for the following reliefs :

"to call for the records and proceedings which led to the passing of the impugned order dated 30.08.1995 and after going through its validity, constitutionality, propriety, quash and set aside the same and declare that the applicant was duly promoted to the post of PSI by the order dated 09.07.1991 and that he should not be reverted from that post, with all consequential benefits of seniority, increments, arrears of pay from the date said Shri G. C. Patel was promoted, i.e. 21.03.1985."

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5(a) By interim order status as on date was ordered to be maintained.

6. The respondents have filed the written statement. They submit that the post of Police Inspector is a selection post. The applicant was not recommended by the D.P.C. for the said post. The Recruitment Rules cannot be overlooked for providing promotion to the applicant. The applicant was not recommended by the D.P.C. for promotion to the post of Police Sub-Inspector. Even though he was in the lower post of Assistant Sub-Inspector, he was sent on deputation and was promoted on ad hoc basis. The applicant cannot be regularised in the post of Police Sub-Inspector which he is holding on deputation basis. The criteria indicated in the Recruitment Rules, as available at that time, for the post of Police Sub-Inspector was to be made in a manner such that 50% of the post are filled directly and 50% from the Senior Head Constables. The D.P.C. considered eight Head Constables for the post of Police Sub-Inspector, as they were within the zone of consideration. Accordingly, the D.P.C. recommended G. C. Patel, a candidate belonging to Scheduled Tribe Community and that the post reserved for SC/ST are interchangeable. The said G. C. Patel was posted against a roster point. The D.P.C. considered the case of the applicant and found to be not meritorious enough as G. C. Patel. The applicant cannot be on deputation forever. By the impugned order, he has been reverted to his parent department. Thus, the applicant cannot claim to be on deputation and his case for promotion to the post of Police Sub-Inspector was considered at the relevant point of time. Thus, they submit that there are no grounds to accept the application. The applicant cannot be entitled to the relief prayed for.

7. The applicant has filed a rejoinder more or less reiterating the averments made in the application and claims that he must be deemed to have been promoted to the post of Police Sub-Inspector w.e.f. 21.03.1985, on which date his junior was promoted.



8. During the course of arguments, the Learned Counsel for the applicant submitted that he is not at all pressing the relief claimed at para 8 (a) above. Therefore, the question of propriety or otherwise of the impugned order dated 30.08.1995 no longer survives for consideration.

9. The next relief is that to declare that the applicant was duly promoted to the post of Police Sub-Inspector by the order dated 09.07.1991 and that he should not be reverted from that post with all consequential benefits of seniority, increments, arrears of pay from the date Shri G.C. Patel was promoted i.e. from 21.03.1985.

10. The letter dated 09.07.1991 clearly indicates that the applicant was posted to the Police Station, Diu, purely on deputation basis. At that time, he was holding the post of Assistant Sub-Inspector. When that is so, he cannot claim to be in the grade of Police Sub-Inspector on a regular basis. A deputationist cannot claim to remain on deputation forever. He is bound to be reverted to the parent department. As the applicant has not chosen to challenge the order dated 30.08.1995, the question of considering his reversion to the parent department does not arise.

11. Merely because the applicant was posted on deputation basis to the post of Police Sub-Inspector, it cannot be said that he was promoted as such regularly. The respondents have stated the Recruitment Rules and the manner of filling the post of Police Sub-Inspector. When that is so, contrary to the rules the applicant ^{cannot} claim any benefit on the ground that he was discharging the duties of a Police Sub-Inspector right from 09.07.1971.

12. During the course of argument, the Learned Counsel for the applicant produced a letter bearing no. COP/EST/I/15/496 dated 23.07.1998 wherein the applicant was considered for promotion against the S/C reservation and was accorded promotion w.e.f. 21.03.1985. Para 2 of the letter reads as follows :

"2. Shri M. R. Rohit will not be paid any arrears of pay and allowances for the period of notional promotion to the post of PSI."

13. It is on this ground the applicant submits that he is eligible for monetary benefits right from 21.03.1985. The letter dated 23.07.1998 has been passed while the O.A. was pending. The applicant has not chosen to challenge the said letter. Evidently, the respondent authorities have considered his claim for promotion from a retrospective date on par with his junior, G. C. Patel.

14. We are not sitting in appeal over the letter dated 23.07.1998. If the applicant feels aggrieved by the notional promotion granted to him from 21.03.1985, he may submit a detailed representation. As it is, the applicant was in the post of Police Sub-Inspector right from 09.07.1991, though on deputation. His grievance may be to have monetary benefits of the post of Police Sub-Inspector from 21.03.1985 to 08.07.1991. This period has been considered by the Respondents as a notional promotional period. We do not know the reasons that compelled the respondents to treat the said period as a notional promotional period. Even the respondents have not been able to explain the reasons for giving such a direction in the order dated 23.07.1998. The period during which the applicant was on deputation, was already receiving substantial emoluments

equivalent to the grade of Police Sub-Inspector. Therefore, we find no reason to give any monetary benefit for the period from 09.07.1991 onwards. However, the respondent authorities may consider the representation of the applicant to provide monetary benefits from 21.03.1985 to 08.07.1991.

15. Hence, we feel proper to direct the applicant, if so advised, to submit a detailed representation to the respondent authorities to grant him monetary benefits for the period from 21.03.1985 to 08.07.1991. In fact, the Learned Counsel for the applicant relied upon the decision of the Chandigarh Bench of this Tribunal in the case of Om Prakash v/s. Union of India reported in 1987 (3) CAT (SLJ) 507 to contend that arrears of pay cannot be denied when promotion legally due to the person is given retrospectively. It is for the respondent authorities to take note of the above decision and consider the representation of the applicant in accordance with the rules.

16. Hence we pass the following order :

- (a) The applicant may, if so advised, submit a detailed representation to the respondent authorities claiming monetary benefits for the period from 21.03.1985 to 08.07.1991.
- (b) He shall submit such a representation within one month from the date of receipt of a copy of this order.

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(c) If such a representation is received within the stipulated period, then the respondent authorities shall consider the representation in accordance with the rules bearing in mind the decision of the Chandigarh Bench of this Tribunal cited above.

(d) Time for compliance is four months from the date of receipt of a copy of the representation.

(e) No order as to costs.

B. N. Bahadur

(B. N. BAHADUR)

MEMBER (A)..

B. S. Jai Parameshwar

(B. S. JAI PARAMESHWAR)

22.7.1995 MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO: 46/2000
ORIGINAL APPLICATION NO: 1053/95

TRIBUNAL'S ORDER

DATED: 6.7.2001

Shri A.I. Bhatkar counsel for the applicant. Shri V.S. Masurkar counsel for the respondents.

The applicant in OA 1053/95 has filed this Review Petition against the order passed by this Tribunal on 27.7.2000.

In OA, the applicant has claimed the reliefs as under:

(a) This Hon'ble Tribunal will be pleased to call for the records and proceedings which led to the passing of the impugned order dated 30.8.1995 and after going through its validity, constitutionality, propriety, quash and set aside the same.

(b) This Hon'ble Tribunal will be pleased to hold and declare that the applicant was duly promoted to the post of PSI by the order dated 9.7.1991 and that he should not be reverted from that post, with all consequential benefits of seniority, increments, arrears of pay from the date said Shri G.C. Patel was promoted, i.e. 21.03.1985.

(c) Any other or further order as to this Hon'ble Tribunal may deem necessary and fit in the circumstances of the case may be passed.

(d) Cost of this application be provided for.

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In respect of relief at para 8(a) it was not pressed. The Tribunal granted relief to the applicant as

under:

(a) The applicant may, if so advised, submit a detailed representation to the respondent authorities claiming monetary benefits for the period from 21.3.1985 to 8.7.1991.

(b) He shall submit such a representation within one month from the date of receipt of copy of this order.

(c) If such a representation is received within the stipulated period, then the respondent authorities shall consider the representation in accordance with the rules bearing in mind the decision of the Chandigarh Bench of this Tribunal cited above.

(d) Time for compliance is four months from the date of receipt of a copy of the representation.

(e) No order as to costs.

During the pendency of the OA, on 23.7.1998 the respondents have passed order which is annexed as Exhibit 1 to the Review application. The grievance of the applicant is that in para 2 of the said order the respondents have stated that the applicant will not be paid any arrears of pay and allowances for the period of notional promotion to the post of PSI. Even after an order dated 23.7.1998 the applicant did not amend his OA seeking the relief in respect of the said order. However a representation is

S. J. S. —

permitted to the applicant which the respondents are bound to decide as per direction in the order but we do not find any error apparent on the face of the record which entitles the applicant to consider the matter in review. The Review Petition deserves to be dismissed and is dismissed accordingly. No order as to costs.

S.L.Jain

(S.L.Jain)
Member(J)

B.N.Bahadur

(B.N.Bahadur)
Member(A)

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