

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 119/97

Date of Decision: 9.1.98

Shri Vaijanath Parshuram Pendse. Applicant.

Shri K.R. Deshpande. Advocate for
Applicant.

Versus

The Comptroller & Auditor Respondent(s)
New Delhi and others.

Shri V.S. Masurkar. Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri. M.R. Kolhatkar, Member (A)

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

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

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 119/97.

Friday the 9th day of January 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri M.R. Kolhatkar, Member (A)

Vaijanath Parshuram Pendse,
R/o " Shailakunj"
5/2 Yerandvana,
Near Telephone Exchange
Karve Road, Pune.

... Applicant.

By Advocate Shri K.R. Deshpande.

V/s.

The Comptroller & Auditor
General of India, Bahadur
Shah Jafar Marg., New Delhi.

The Accountant General II
Maharashtra (A & E)
Nagpur.

... Respondents.

By Advocate Shri V.S. Masurkar.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application filed by the applicant claiming certain reliefs regarding retrospective promotion and consequential monetary benefits. This application ^{was} had originally filed in the Bombay High Court in Writ Petition No. 710/89. The respondents have filed reply and the documents before the Bombay High Court. The High Court by order dated 14.10.96 transferred the Writ Petition to this Tribunal, since this Tribunal has jurisdiction to decide the point in dispute. But somehow while transmitting the papers, the reply filed by the respondents alongwith the documents are not send. Today on our request, the learned counsel for the respondents ^{has} have given the zerox copy of the reply and the documents. We have heard the counsel for both sides.

2. The applicant was working as Divisional Accountant in the office of Accountant General. In 1975 there was re-structuring of the post of Divisional Accountant by providing selection grade. It is now brought to our notice that the applicant has since been promoted originally as Divisional Accountant (Selection Grade) and subsequently as Accounts Officer (Group B. Gazetted). Now the grievance of the applicant as on today is only about the monetary benefits with retrospective date. The contention of the applicant now is that though he has been given selection grade from 2.7.84, he should have been given this benefit from April 1975 and he is entitled to monetary benefits in that cadre from April 1975. Further as on today though he was given promotion as Divisional Accounts Officer Grade I with effect from 1.7.88 he should get this benefit from 1.1.86. In view of the subsequent event it is not necessary ^{to refer to} for ~~grant of~~ other allegations in the application.

3. The respondents have filed reply opposing the application. They have stated that the application is not maintainable as the applicant has suppressed the facts and on merit it is stated that the applicant is not entitled to any monetary benefits. They have also taken a plea that the application is barred by limitation.

4. In view of the subsequent event and ⁱⁿ on the light of the arguments before us, only two points ^{can} ~~called~~ for consideration. (1) Whether the applicant is entitled to monetary benefit from 1.4.75 in



the selection grade of Divisional Accountant instead of 2.7.84. (2) Whether the applicant is entitled to monetary benefits in the grade of Accounts Officer Grade I from 1.1.86 instead of 1.7.88.

5. We ^{may} also mention that the applicant has filed an M.P. 602/97 praying for the reliefs which are covered by points No 1 and 2 mentioned above.

As far as point No 1 is concerned, on the face of it, it is not maintainable not only on the ground of limitation but also on the ground of res-judicata. The learned counsel for the respondents have invited our attention ^{to the fact} that the applicant had earlier filed an O.A. 757/87, before this Tribunal, wherein one of the reliefs asked for was monetary benefit from 1975. This Tribunal rejected that prayer with the following observations. " Though in the application he has prayed for promotion from prior to December 1984, in our opinion that request will be barred by limitation in view of Section 21 of the Administrative Tribunal's Act." In view of this finding given by this Tribunal and the claim ~~is~~ prior to 1984 ~~and~~ has been rejected by this Tribunal the same point cannot again be canvassed in the present application. We, therefore, reject the first prayer covered by point No.1 both on the ground of limitation and also on the ground of res-judicata.

So far as point No2 is concerned, ^{in our} in our view, even this claim is barred by limitation. This application ^{was} has filed in 1989 and applicant wants monetary benefit from 1.1.86. According to the provisions of the Administrative Tribunals Act, the applicant has to come before this Tribunal

within one year from the date of cause of action. The writ petition ^{was} ~~has~~ filed in 1989 and therefore he can claim only the relief on the basis of cause of action one year prior to the date of Writ Petition. Therefore, the applicant's ^{claim} ~~claim for~~ monetary benefit from 1.1.86 on the face of ^{which} ~~which~~ is barred by limitation.

6. It is further seen that in the promotion order of 24.12.91 the applicant has been given the promotion of Divisional Accounts Officer from 1.7.88. It is on record and not disputed that in January 1985 Disciplinary enquiry was initiated against the applicant and as per Government Rules findings of the D.P.C. regarding promotion of the applicant was kept in sealed cover. Subsequently the Disciplinary Authority has exonerated the applicant from all the charges. Thereafter the sealed cover ~~has~~ opened and the applicant has been promoted. Therefore, we do not find any illegality or infirmity in the order dated 24.12.91, giving effect from 1.7.88. Even his two juniors are also granted promotion from 1.7.88. The applicant did not make any submission that any junior had been promoted prior to the applicant either in 1984 or in 1988. Merely because there was some vacancy, the applicant cannot claim ~~arrear~~ ^{arrears} of salary from date ^{of} ~~of~~ vacancy arose.

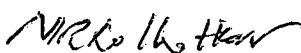
7. The learned counsel for the respondents contended that the Writ Petition filed before the High Court itself was not maintainable after the Administrative Tribunal came into force. It may be so, but the Writ Petition has been admitted by the High Court and subsequently transferred to this Tribunal. Therefore that would not come in the

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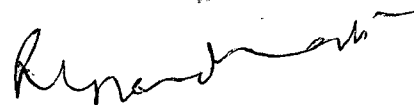
way to consider present application on merits. We find that the applicant is not entitled to any relief. The learned counsel for the applicant has drawn our attention to ^{an} ~~the~~ ^{un} ~~non-~~ reported judgement of the Chandigarh Bench, wherein the monetary relief ^{has} have been given from 1.1.86. But in the present case, as we have pointed, the applicant could not have been promoted during the pendency of Disciplinary proceedings. The Department has rightly followed the sealed cover procedure and the decision of the Chandigarh ^{Bench does} did not apply ^{to} on the facts and circumstances of the present case.

8. In our view both points No. 1 and 2 are to be answered in negative.

9. In the result, application fails. The O.A. is dismissed but in the circumstances of the case no order as to costs. Accordingly M.P. 620/87 is also dismissed.



(M.R. Kolhatkar)
Member(A)



(R.G. Vaidyanatha)
Vice Chairman

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