

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 129/1997.

Date of Decision: 25.6.97

Kooran Joseph Joseph

Petitioner/s

Shri B. Ranganathan,

Advocate for the  
Petitioner/s

V/s.

Union Of India & Anr.

Respondent/s

Shri V. S. Masurkar,


Advocate for the  
Respondent/s

CORAM:

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. KOLHATKAR, MEMBER (A).

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

  
(B. S. HEGDE)  
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 129 OF 1997.

Dated this 25<sup>th</sup> the twentieth day of June, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Kooran Joseph Joseph,  
Head Clerk,  
Central P.W.D.,  
Mumba-i.

... Applicant

(By Advocate Shri B. Ranganathan)

VERSUS

1. The Union Of India through  
The Director General (Works),  
C.P.W.D., Nirman Bhavan,  
New Delhi - 110 011.

2. The Chief Engineer (WZ),  
C.P.W.D., Old C.G.O. Annexe,  
14th floor, 101 M.K. Road,  
New Marine Lines,  
Mumbai - 400 020.

... Respondents.

(By Advocate Shri V.S. Masurkar)

: ORDER :

¶ PER.: SHRI B.S. HEGDE, MEMBER (J) ¶

Heard Shri B. Ranganathan for the applicant  
and Shri V.S. Masurkar for the respondents.

2. In this O.A., the applicant is challenging the seniority list issued by the respondents vide dated 26.09.1996 and <sup>also</sup> seeks consequential benefits on his not getting the promotion to the post of Circle office Superintendent before his juniors were promoted. The brief facts are - the applicant was working as an Assistant till 11.06.1995 and on 12.06.1995 he came on deputation to C.A.T., Mumbai Bench. The respondents issued a promotion order vide dated 08.02.1995 and posted the applicant from Bombay to Siliguri Central Circle of C.P.W.D. as Circle Office Superintendent. Against this

order, the applicant made a representation on 28.02.1995 narrating his difficulties stating that he would not be able to accept the promotion and the posting at Siliguri and requested the respondents to post him at Mumba-i. The respondents vide their reply dated 30.03.1995 reiterated that he could not be posted at Bombay and they could not accede to his request and directed him to join at Siliguri, failing which the applicant would be debarred for promotion for a period of one year from that date and that the applicant would not be considered for promotion till the expiry of one year. The one year bar was over on 08.02.1996 and the next vacancy arose in the Circle Office at Mumbai due to the retirement of one Shri V. G. Athawale on 30.04.1996. In the meanwhile, the respondents published the seniority list vide dated 26.09.1996 wherein the applicants name was not shown. Thereafter, the applicant brought to the notice of the respondents the anomaly created in the seniority list and asked them to rectify the above anomaly and to interpolate the applicant's name as required. In the meanwhile, some juniors to the applicant were promoted and he made further representation vide dated 25.07.1996 but the same has not been answered by the respondents. The applicant again reminded the respondents vide his letter dated 16.10.1996 stating that due to the impending cadre restructuring more number of posts of Circle Office Superintendents are to be filled at Mumbai and hence he may be promoted and posted at Mumbai at the earliest. The applicant again made a detailed representation on 06.01.1997 and ultimately, the applicant has been promoted to the post of Office Superintendent vide order dated

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27.02.1997 by virtue of D.P.C. held in December 1996.

The applicant sought for consequential relief since his juniors have been promoted earlier than the applicant.

3. The respondents in their reply contended that the O.A. does not survive, since the applicant has already been appointed as Office Superintendent and posted at Mumbai and therefore, the same may be dismissed in limine. Since the applicant could not leave Mumbai and wanted his promotion at Mumbai itself, he was debarred for further promotion for a period of one year i.e. upto 08.02.1996. In the earlier D.P.C., the applicant could not be considered because of his refusal to go to Siliguri on promotion and debarment of one year upto 08.02.1996. In the review D.P.C. held in December 1996, also, the applicant was not considered. Accordingly, in the D.P.C. held in January 1997, the applicant was not considered and posted in Mumbai.

4. The Learned Counsel for the applicant relies upon the decision of the Tribunal in O.A. No. 720/90 decided on 09.03.1993 in the case of A.V. Bendre V/s. Union Of India & Others. In that case, the Tribunal after considering the rival contentions of the parties, observed as follows :-

"In view of the above, we find merit in the contention of the applicant that he should have been promoted and posted to the vacancy which had occurred in Bombay on 02.01.1989 before being considered again by a subsequent D.P.C. Although in the original application a number of reliefs were claimed by the applicant including qua-shing and setting

aside the transfer orders, the learned counsel for the applicant has not pressed for those reliefs at this stage, since the applicant had been already promoted and posted at Bombay. His claim for seniority does not stand in the absence of impleadment of the persons affected as additional respondents in this application. In our view, therefore, he will be only entitled to monetary benefits for notional promotion to the post of Circle Office Superintendent w.e.f. 02.01.1989. He would be entitled to arrears for the difference in salary for the period from 02.01.1989 to the date he was actually promoted as Circle Office Superintendent, including the benefits of increments during this period. He will have, however, no claim for any ante-dating of seniority in the post of Circle Office Superintendent except the benefit of pay fixation and arrears."

In the light of the above decision, the learned counsel for the applicant submits that the ratio laid down in the aforesaid case would squarely apply to the facts of the present case. Though the vacancy arose on 01.05.1996, the a-pplicant was promoted only on 27.02.1997, thereby, he should be granted monetary benefit though not seniority.

5. Considering the rival contentions of the parties, we are inclined to accept the contention of the learned counsel for the applicant and the ratio laid down in A.V. Bendre's case would squarely apply to the facts of this case. It is <sup>evident</sup> that the debarment of one year was over by 08.02.1996, thereafter, a vacancy arose on 01.05.1996, therefore, the applicant should be given the monetary benefit w.e.f. 01.05.1996 to 27.02.1997, i.e. till the date he was promoted as Office Superintendent.

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Just because the applicant refused to accept transfer on promotion to Siliguri, that cannot be a bar for the subsequent promotion. The bar is restricted to only one year. Thereafter, if any vacancy arises, promotion should be granted to the persons who are eligible <sup>according</sup> to the seniority list. It is not the case of the respondents that the applicant was not otherwise eligible to be promoted as Office Superintendent. The only contention raised by the respondents is <sup>that</sup> due to the applicant's refusal to go to Siliguri on promotion, he was debarred ~~for~~ further promotion for a period of one year. After the completion of one year, the applicant should have been considered for further promotion as and when the vacancy arose. Since a vacancy arose on 01.05.1996, we hereby grant the monetary benefit to the applicant from 01.05.1996 till 27.02.1997 <sup>but not seniority.</sup> The monetary benefit should be paid within a period of two months from the date of receipt of a copy of this order.

6. The O.A. is disposed of with the above directions. There will be no order as to costs.



(M. R. KOLHATKAR)  
MEMBER (A).



(B. S. HEGDE)  
MEMBER (J).