

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 382 of 1997.

Dated this Thursday, the 7th day of June, 2001.

Vikram Laxmanrao Bhosale, _____ Applicant.

Advocate for the
Applicant.

Shri D. V. Gangal, _____

VERSUS

Union of India & Another, _____ Respondents.

Advocate for the
Respondents.

Shri V. S. Masurkar, _____

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.

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.~~

B. Dikshit
(B. DIKSHIT)
VICE-CHAIRMAN.

OS*

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CORAM : Hon'ble Shri B. Dikshit, Vice-Chairman.

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

Vikram Laxmanrao Bhosale,
Dejure Security Officer,
but de-facto Watch & Ward
Inspector, Telecom Factory,
Deonar.

... Applicant.

(By Advocate Shri D. V. Gangal)

VERSUS

1. Union of India through
The Secretary,
Ministry of Telecommunication,
Sanchar Bhavan,
New Delhi.

2. The Chief General Manager,
Telecom Factory,
Deonar,
Mumbai - 400 088.

... Respondents.

(By Advocate Shri V. S. Masurkar).

OPEN COURT ORDER

PER : Shri Justice B. Dikshit, Vice-Chairman.

The applicant has filed this application for the following reliefs :

"(a) That this Honourable Tribunal may be graciously pleased to call for the records of the case and after examining the same direct the Respondents to promote the applicant as Security Officer in accordance with the

...2

B. Dikshit

decision of D.P.C. dated 26/9/91 in which the applicant has been found suitable for the post of Security Officer which decision has been affirmed and re-affirmed by this Honourable Tribunal in the order dated 3/1/92 and the order dated 7/1/97.

(b) To hold and declare that the promotion of Security Officer referred to in prayer above ought to be granted to the applicant retrospectively from 1989 when the vacancy occur and the applicant be granted pay fixation, arrears from the said back date in the pay scale of Rs. 1600-2660.

(c) To hold and declare that the non grant of promotion to the post of Security Officer to the Applicant from 26/7/1996 upto date is illegal, arbitrary and malafide.

(d) To hold and declare that the holding of the DPCs for promotion to the post of Security Officer subsequent to 26/9/91 are illegal and should be set aside and the respondents be directed not to act upon such DPCs.

(e) Grant exemplary cost with interest on arrears and grant such other and further relief in the nature and circumstances of the case and for which act of kindness the applicant as a duty bound shall ever pray."

2. The facts giving rise to this application are that the applicant was appointed as Watch and Ward Inspector in January, 1983. He was promoted on ad hoc basis as Security Officer. While he was working as Security Officer, disciplinary proceedings were drawn against him for an alleged misconduct to the effect that on 31.07.1991 at about 10.50 a.m. scrap garbage van No. MRR 7442 of a private contractor by name Mohammad Salim entered the premises of the factory, which was supposed to carry the scrap and garbage kept at tower post no. 8. The applicant was suspended during the pendency of said proceedings. After due enquiry, he was exonerated on 21.08.1996 and it was directed that he will be granted all consequential financial benefits

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including regularisation of suspension period for about three and a half years, which was to be treated as on duty for all purposes. Admittedly, he got all the financial benefits. The present controversy has arisen as a D.P.C. took place in 1991 at which the Committee did not consider the applicant ~~for the reason~~ due to one C.B.I. enquiry and one departmental case are in progress. As the applicant's name was not recommended by the said D.P.C. for said reason, the applicant after completion of the departmental enquiry moved a representation dated 03.09.1996 that in view of his exoneration by the Appellate Authority ^{and} ~~while~~ the D.P.C. having him found suitable for promotion for the post of Security Officer, he should be promoted. As the respondents did not accept the demand of applicant despite repeated representations dated 03.10.1996 and 09.10.1996, the applicant filed the present application seeking the reliefs mentioned.

3. The Learned Counsel for the applicant argued that the D.P.C. dated 26.09.1991 has recommended applicant for being promoted as Security Officer and, therefore, the applicant is entitled for promotion after being exonerated of the said charges. He further relied upon an observation in the order passed by this Tribunal in C.P. No. 85/96 and M.P. No. 831/96 in Original Application No. 122/91 : V.L. Bhosle V/s. Union of India & Others, decided on 07.01.1997 wherein it was observed that :

"We have gone through the DPC proceedings which took place thereafter on 26.9.1991. They were of the view that although it was a reserved post but in view of the

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direction given by the Tribunal it will be treated as unreserved post. Names of the three candidates including that of applicant were considered. According to the DPC, two of them were considered not suitable and it appears that the applicant is considered suitable but in view of the fact that disciplinary proceedings are pending against him his name has not been recommended. Thus the directions given by the Tribunal in that case has also been complied with and it cannot be said that any contempt has been committed by the Respondents."

4. The Learned Counsel for the respondents opposed the O.A. He contended that the applicant was not recommended for promotion by the D.P.C. of 26.09.1991. He further contended that subsequent D.P.Cs. were held on 18.08.1993, 20.05.1997 and 29.08.2000 at which the applicant was considered but he was found unfit for being promoted as Security Officer and, therefore, as subsequent D.P.Cs. did not recommend the case of the applicant, he is not entitled for any relief. According to Learned Counsel for respondents, a conscious decision has been taken by the D.P.C. before finding him unfit for promotion and, therefore, also the applicant is not entitled for any relief. We have also examined the original records of the D.P.Cs. produced by Shri V.S. Masurkar, the Learned Counsel for Respondents.

5. From the original record of D.P.C., proceedings dated 26.09.1991 produced before us, it is apparent that the applicant's case was not considered by D.P.C. The recommendation of the D.P.C. in respect of applicant was neither to the effect that he was unfit for promotion nor he was held to be fit. The D.P.C. on being informed that one C.B.I. enquiry and one

B. visit

departmental case was in progress against the applicant, the D.P.C. opined that "the name of Shri V.L. Bhosale also could not be recommended for promotion to the post of Security Officer for the present." On perusal of record we are of the opinion that the D.P.C. has not expressed itself positively either way. Normally, in a matter where the departmental disciplinary case is pending against an officer, the D.P.C. adopts a sealed cover procedure, which has not been done in this case. So far subsequent D.P.Cs. are concerned, they cannot take away the right of the applicant in respect of his consideration by the D.P.C. on 26.09.1991. In the case of applicant, the D.P.C. should have adopted the sealed cover procedure, which it did not adopt. In such circumstances, the only scope open for us is to direct the respondents to constitute a D.P.C. and consider the case of applicant with reference to the record of applicant as it stood on 26.09.1991 i.e. as if the D.P.C. is being conducted with reference to the record available on that date. This conclusion of ours is keeping in view the case of Union of India V/s. K. V. Jankiraman (AIR 1991 SC 2010).

6. Before parting with the case, we would like to observe that the reliance of Learned Counsel for the applicant on para 7 of the Tribunal's order dated 03.01.1992 on C.P. No. 41/91 in O.A. No. 122/91 (Vikram Laxmanrao Bhosale V/s. Union of India & Others) cannot be accepted. It appears that while considering C.P. and M.P., D.P.C. proceedings this Tribunal mis-read the record as it is not a correct observation as per original record. We are making this note after perusing the original record.

B. J. J.

7. For the aforesaid reason, the application is allowed to the extent that the Respondents will constitute a D.P.C. and consider the case of the applicant as directed above. It is made clear that if applicant is found fit by the D.P.C. with reference to record as stood on 26.09.1991, then he shall be entitled for all the benefits that might have accrued had the promotion been ordered at relevant time. This order will be implemented by the Respondents by constituting D.P.C. and taking a decision on the basis of its decision within three months from the date of receipt of a copy of this order. There shall be no order as to costs.

B.N. Bahadur

~~(B.N. BAHADUR)~~
MEMBER (A).

B. Dikshit

(B. DIKSHIT)
VICE-CHAIRMAN.

OS*

dt. 7/6/01
Order/Judgement despatched
to Applicant/Respondent (s)
on *13/8/01*

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