

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 518/97

Date of Decision: 19/1/98

K. Aruvelan

Applicant.

Shri G.S.Walia

Advocate for
Applicant.

Versus

Union of India & 5 Others

Respondent(s)

Shri S.C.Dhawan

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri, Justice R.G.Vaidyanatha, V.C.

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

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

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

app.

R. Vaidyanatha
(R.G. VAIDYANATHA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG. NO.6, PRESCOT RD.
4th FLOOR, FORT, MUMBAI-400 001.

ORIGINAL APPLICATION NO.518/97.
DATED THIS 19TH DAY OF JAN, 98.

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

K.Aruvelan,
Working as Foreman-III,
Central Railway Printing Press,
Byculla,
Mumbai - 400 027.

... Applicant.

By Shri G.S.Walia.

V/s.

1. Union of India, through
General Manager,
Central Railway,
Headquarters Office,
Mumbai - C.S.T.,
Mumbai - 400 001.
2. Chief Personnel Officer,
Central Railway,
Headquarters Office,
Mumbai - C.S.T.,
Mumbai - 400 001.
3. Manager,
Printing & Stationery,
Central Railway Printing Press,
Byculla,
Mumbai - 400 027.
4. M.E.Joshi,
Foreman - III,
Working as Foreman - III,
Central Railway Printing Press,
Byculla,
Mumbai - 400 027.
5. Mrs.P.Sudha,
Working as Foreman - III,
Central Railway Printing Press,
Byculla,
Mumbai - 400 027.
6. A.L.P.Sharma,
Working as Foreman-III,
Central Railway Printing Press,
Byculla,
Mumbai - 400 027.

... Respondents.

By Advocate Shri S.C.Dhawan.

I O R D E R
[Per Shri R. G. Vaidyanatha, V.C.]

This is an application filed by applicant under
section 19 of Administrative Tribunals Act. Reply has been

h.s.

filed on behalf of respondent Nos. 1 2 and 3. Private respondents 4, 5 and 6 have been duly served but they have not appeared before the Tribunal.

2. At the time of arguments, the learned counsel for applicant requested that he may be permitted to withdraw the petition so far as the seniority claim against respondent No. 4, Shri Joshi is concerned., with liberty to file fresh OA if necessary. We grant permission to counsel for applicant to withdraw the petition so far as claim against respondent No. 4 and liberty to file a fresh OA if need be. The point involved is a short one and ~~hence we dispose of OA as follows:-~~ ^{at the stage of admission.}

3. Heard both the sides. The applicant is working as Foreman-III in Central Railway Printing Press. His grievance ^{that} is respondent No. 5, Mrs. Sudha, who joined service later has been given seniority over him. Now the official respondents have conceded this point and they have issued a ~~fresh~~ seniority list showing Mrs. Sudha as junior to the applicant, therefore that dispute no longer ^{survives} ~~exists~~.

4. The applicant's Main grievance is ^{that} respondent No. 6, Shri Sharma has been punished by the order dated 14/2/97 and reverted to lower post for two years and till the expiry ^{of} of the punishment period, he cannot be considered for next promotion. Now selection is going on for the post of Assistant Manager(P & S) Group B. There is only one vacancy. Other than the respondents, 5 persons have been called for interview and out of them one person will be selected.

5. According to the applicant, his name is also to be included in the said 5 persons to be called for the post of Assistant Manager, he being senior to Mrs. Sudha and further Shri Sharma not being entitled for consideration since he is undergoing punishment.

6. Respondents have filed reply opposing the application. As far as the applicant's claim of seniority over Mrs. Sudha is

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concerned, the respondents have issued fresh seniority list and this dispute does not survive. As far as Shri Sharma is concerned, it is admitted that he has been punished by order dated 14/2/97 and imposed penalty of reversion in rank by two years. The question is whether Sharma can be considered for promotion within two years from 14/2/97 for promotion. The Learned counsel for respondents contended by placing reliance on Railway Board Circular dated 21/1/93, ^{that} Shri Sharma can be considered but his promotion can be postponed by two years, but the learned counsel for applicant stated that till the expiry of the punishment, Shri Sharma cannot be considered for promotion

7. In our view the circular dated 21/1/93 is not applicable to the present case. The circular is applicable to persons in respect of whom a chargesheet for major penalty is pending/prosecution for a criminal charge is pending/against whom disciplinary/court proceedings are pending. But in the present case Mr. Sharma has already been found guilty and he has been punished. Therefore, the said circular is not applicable as the disciplinary enquiry is no longer pending. The question is no longer res integra.

8. In 1996 SCC (L&S) 883, [L.Rajaiah v/s. Inspector General of Registration & Stamps, Hyderabad], where an identical question arose for consideration. The Supreme Court pointed out that/the appellant was undergoing punishment at the relevant time, he is not eligible for promotion and therefore there is nothing illegal in the juniors having stolen march over the appellant. It is however pointed out that the appellant cannot have any grievance and he is entitled to promotion as per rules after the expiry of the punishment.

by

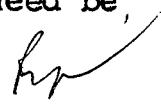
9. The same question came to be considered by the Apex Court in the case of State of Tamil Nadu v/s. Thiru K.S.Murugesan [1995(1)SC 483], where Supreme Court has observed in para-7 as follows:-

" It would thus be clear that when promotion is under consideration, the previous record forms basis and when the promotion is on merit and ability the currency of punishment based on previous record stands impediment. Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impermissible under the Rules and it would be a premium on misconduct. Under these circumstances we are of the opinion that the doctrine of double jeopardy is neither violative of Article 21 nor Article 14 read with 16 of the Constitution."

10. In view of the law declared by the Apex Court, Mr. Sharma cannot be considered till the expiry of punishment namely ^{14/2/99} ~~14/2/99~~. There is no allegation of any punishment or disciplinary enquiry pending against the applicant, therefore his case will have to be considered for the post of Assistant Manager(Group B).

11. In the result, the OA is disposed of with the following directions:-

- i. The case of the applicant be considered for promotion to the post of Assistant Manager (Group B) as per rules.
- ii. The applicant be held senior to Mrs. Sudha (respondent No.5) in this OA.
- iii. The DPC should not consider the case of Mr. Sharma (respondent No.6) till the expiry of the punishment.
- iv. The case of the applicant claiming seniority over respondent No.4, Shri Joshi, is left open with liberty to applicant to file a fresh OA if need be.



according to them.

(v) In the circumstances ~~of the~~ case, there is no orders as to costs.

M.R.Kolhatkar

(M.R. KOLHATKAR)

MEMBER (A)

R.G.Vaidyanatha

(R.G. VAIDYANATHA)

VICE CHAIRMAN

abp.