

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 816/97

Date of Decision: 05.11.2001

Shri Umakant Balachandra Parelkar

Applicant

Shri G.K. Masand.

Advocate for Applicant

Versus

Union of India & 3 others

.. Respondents

Shri R.K. Shetty.

Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. .. MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

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

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 816/97

THIS THE 5TH DAY OF NOVEMBER, 2001

CORAM: SHRI S.L. JAIN. . MEMBER (J)
SMT. SHANTA SHASTRY . MEMBER (A)

Umakant Balachandra Parelkar
working as Deputy Director,
(Construction Safety Division)
Directorate General Factory
Advice Service and Labour
Institutes, Sion, Mumbai-400 022. .. Applicant

By Advocate Shri G.K. Masand.

Versus

1. Union of India through the
Secretary in the Ministry of Labour
Sharm Shakti Bhavan, Rafi Marg,
New Delhi-110 001.
2. Director General, Factory
Advice Service and Labour
Institutes, Central labour
Institute Building, N.S. Mankikar Marg,
Sion, Mumbai-400 022.
3. Secretary, Department of Personnel &
Public Grievances, North Block,
New Delhi-110 001. ... Respondents

By Advocate Shri R.K. Shetty.

O R D E R

Smt. Shanta Shastry. Member (A)

The applicant in this case was initially appointed in 1974 as Inspector (Architecture). His designation was later on changed to Assistant Director (Archi). It was again redesignated as Assistant Director (Safety). The applicant got struck at this stage. Because the then prevalent recruitment rule did not provide for promotion of Assistant Director (Safety)

with Architecture qualification to the post of Deputy Director (Safety) and further post of Director (Safety), Deputy Director General and Director General (Safety). The applicant's post was thus isolated post at that particular time. Government of India had issued instructions from time to time to review the isolated posts and merge them in the general posts. The respondents after a review, amended the recruitment rules for the post of Deputy Director (Safety) etc., in 1989 vide notification dated 10.11.1989. Based on the amended recruitment rules, the applicant became eligible for promotion to the post of Deputy Director (Safety). He was actually promoted with effect from 12.01.1995 as Deputy Director (Safety). However, the recruitment rules were not amended to provide for promotion of Deputy Director (Safety) with the qualification of Architecture to the higher post of Director (Safety), Deputy Director General and Director General (Safety). Thus, none with the qualification of Architecture is made eligible for promotion to the higher post of Director (Safety) and above. The applicant is therefore, aggrieved with (1) instead of promoting him as Deputy Director (Safety) immediately as soon as the recruitment rules were amended in 1989, he was promoted six years later in 1995, thus, depriving him of the promotion due to him earlier (2) His further promotional prospects have been blocked by not including the qualification of Architecture in the list of essential qualification for higher posts of Director and above.

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The applicant has, therefore, prayed to treat his promotion to the post of Deputy Director (Safety) from 1989 onwards when the recruitment rules were amended and to hold him entitled for promotion to the post of Director (Safety) and to further higher posts.

2. The respondents state that they had reviewed the isolated posts including the post of the applicant and the recruitment rules were duly amended in 1989 as a result of which the applicant got his promotion. Though the recruitment rules were amended in 1989 a proposal for convening the DPC to promote the applicant could be sent to the UPSC only on 30.8.1991, because the posts had to be encadred in the safety cadre. And thereafter, the UPSC had sought the preparation of fresh seniority list after including the persons who were holding isolated post and had been encadred in the safety cadre and also after circulating the same amongst concerned officers before convening the DPC. The seniority list was thereafter, finalised on 19.4.1993 and the DPC was held on 08.3.1993 and the applicant was selected for the post of Deputy Director (Safety). However, he could not be granted the promotion immediately as there was a ban on filling up of posts, which had remained vacant for more than a year. Therefore, the respondents had to seek relaxation from the Ministry of Finance and after pursuing the same, got it relaxed on 29.12.1994 and thereafter, without any further delay, the applicant was appointed to the

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promoted post on 12.01.1995. There was therefore, no deliberate or wilful delay on the part of the respondents. The respondents submit further that whether to fill a vacant post or not is to be decided by the respondents. This cannot be interfered with by the courts or Tribunals. The prayer of the applicant is for creation of promotional avenue from the post of Deputy Director (Safety) to the post of Director (Safety), Deputy Director General and Director General (Safety) by adding the qualification of applicant namely, Architecture as one of the essential qualifications for promotional post. This according to the respondents is a pure question of policy. The respondents, in the written reply had also submitted that the question of cadre review was actively considered and the possibility of creating further promotional avenue for persons like the applicant would be explored and the applicant would be informed after decision. In regard to the delay in promoting the applicant, the respondents have further pleaded that the promotion to any post can be made only after following the prescribed procedure and therefore, the delay is not deliberate.

3. At the time of hearing, the respondents were asked whether there was any progress in regard to the purported cadre review. The respondents have now categorically stated vide their letter dated 19.10.2001 which has been taken on record, that no cadre review had been undertaken so far by the respondents.



4. The respondents have relied on the judgment of the Supreme Court in the case of Government of Tamil Nadu and another Vs. Arumugam & another reported in 1998 SCC (L&S) 493. Earlier the matter was decided by the Tribunal, wherein the Tribunal came to the conclusion that combining of the departments and having common seniority list was neither justified nor feasible and gave direction for a different kind of allocation and different scheme. These directions pertained to policy matters. The Supreme Court held that the Tribunal ought not to have directed the Government to change its policy. The Government has a right to frame policy to ensure efficiency and proper administration and to provide suitable channels of promotion to officers working in different departments and officers. The correctness of the policy should not be questioned by the Tribunal. Unless there is clear violation, the Tribunal ought not to have given direction for formulating a new policy under different footing. The Supreme Court set aside the Tribunal's order. According to the respondents, in the present case also it is a policy matter for the respondents to decide whether the qualification of Architecture is to be made essential qualification for promotion to higher post or not.

5. The learned counsel for the applicant argued that had he been promoted from the date of issue of the amendment notification i.e. from 10.11.1989 by now he

would have qualified or rather he would have gained five years experience for promotion to the next higher post. The respondents ought to have provided the qualification of Architecture for the higher post because Architecture is also an Engineering degree. Therefore, it should not have been isolated.

6. The respondents point out that the post of Deputy Director (Safety) cannot be said to be an isolated post, it is only the present qualification of the applicant, which is different than the requirement qualifications under the recruitment rules for the post of Director (Safety) and above. Further, the applicant's case was considered for promotion under the Assured Career Progression Scheme introduced by the Government of India in 1999 in pursuance of the recommendations of the 5th Pay Commission. However, since the applicant has been promoted once in 1995 the next promotion would be due only after putting in 12 years of service and thus, the applicant cannot be considered for the higher post for the present.

7. We have given careful consideration to the rival pleadings in this matter and have also perused the judgment relied upon by the respondents. We find that the applicant became eligible for promotion to the post of Deputy Director (Safety) after the recruitment rules were amended for the post of Deputy Director (Safety) by notification dated 10.11.1989. Perhaps he could have

been promoted earlier as claimed by the applicant. At the same time, the respondents also cannot be faulted as they have taken timely action by processing the matter and granting the applicant the promotion. We are satisfied by the explanation given by the respondents that there is no deliberate or wilful delay on their part. The applicant has approached this Tribunal only in 1997 whereas he was promoted on 12.11.1995. Thus, it is beyond the period of limitation also. That apart, as pointed out by the respondents, it is for the respondents to decide as to whether a particular post should be filled or not and if so when. Therefore also the applicant's claim for promotion with retrospective effect from 10.11.1989 cannot be agreed to.

8. In regard to amending of the recruitment rules to provide for the applicant's qualification to be included for the higher post, ^{or} _a is again a policy matter and it is not for this Tribunal to interfere and issue directions to the respondents to change their policy. It is entirely left to the respondents.

9. However, we do find that according to the recruitment rules for the post of Director (Safety), the post is to be filled by selection and method of recruitment is 33% and 1/3rd by promotion, failing which by direct recruitment and 66 and 2/3rd ^{or} _a by transfer on deputation (including short term contract), failing which by direct recruitment. There is scope for


promotion to the post. Under column 12 of the recruitment rules under the heading promotion what is laid down is "Deputy Director (Safety) with five years regular service in the grade", which means that a person occupying the post of Deputy Director (Safety) becomes eligible for promotion after putting in five years regular service in that grade. We agree with the respondents that the ACP scheme is not applicable at present to the applicant as he has already secured one promotion in 1995.

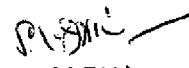
10. In view of the above discussion and for the reasons recorded above the applicant's prayer to grant him promotion with effect from 10.11.1989 to the post of Deputy Director (Safety) is not agreed to. Column No.8 and 9 read together makes it clear that even for a Deputy Director (Safety) with five years regular service in the grade; the essential qualification as mentioned in column No.8 are necessary one in view of mention in column No.9 - Educational Qualifications yes. However in view of Note No.1 below column No.8 "Qualifications are relaxable at the discretion of Union Public Service Commission in case of candidates otherwise well qualified". As such, we are of the considered view that the matter is left ~~to~~ the discretion of UPSC regarding educational qualification. Hence, it cannot be said that the applicant has no promotional avenue at all. Even if it is so, the matter is for consideration for change in recruitment rules

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and as discussed above it is a policy matter, not to be ^{interfered with} ~~entertained~~ by the Tribunal. In the result, OA is dismissed with no order as to costs.


(SMT. SHANTA SHASTRY)
MEMBER (A)


(S.L. JAIN)
MEMBER (J)

Gajan