

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.779/98.

Dated: 1.12.1999.

K.H.Mane

Applicant.

Mr.S.P.Saxena

Advocate
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr.R.R.Shetty on behalf of Mr.R.K.Shetty

Advocate for
Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

(1) To be referred to the Reporter or not? *W6*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *W6*

(3) Library? *yes*


(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B. *12/12/99*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.779/98.

Wednesday, this the 1st day of December, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

K.H.Mane,
Assistant,
National Defence Academy,
Khadakwasla,
Pune - 411 023.
(By Advocate Mr.S.P.Saxena)

...Applicant.

Vs.

1. Union of India,
through The Secretary,
Ministry of Defence,
New Delhi - 110 011.
2. Directorate of Military Training,
Army Headquarters,
Sena Bhavan,
New Delhi - 110 011.
3. The Commandant,
National Defence Academy,
Khadakwasla,
Pune - 411 023.
4. Shri A.K.Kanujia,
Office Superintendent,
National Defence Academy,
Khadakwasla,
Pune - 411 023.
5. Shri S.L.Nepali,
Office Superintendent,
National Defence Academy,
Khadakwasla,
Pune - 411 023.

...Respondents.

(By Advocate Mr.R.R.Shetty on behalf
of Mr.R.K.Shetty)

: ORDER : (ORAL)

✱ (Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicant challenging
the promotion of Respondents No.4 and 5 and for a direction to

...2.



hold a Review DPC and to promote the applicant from a retrospective date. The official respondents have filed reply opposing the application. We have heard Mr.S.P.Saxena, the learned counsel for the applicant and Mr.R.R.Shetty on behalf of Mr.R.K.Shetty, the learned counsel for official respondents regarding admission.

2. The applicant and Respondents No.4 and 5 were appointed as LDCs and later promoted as UDCs. Further, it is stated that R-4 was promoted as Office Superintendent in 1987 and R-5 was promoted as Office Superintendent in 1989 ignoring the claim of the applicant who is admittedly senior to R-4 and R-5. The applicant made number of representations, but with no success. Hence, he has approached this Tribunal for the relief mentioned above.

3. The official respondents in their reply have justified the promotions given to R-4 and R-5. While conceding that the applicant is senior to R-4 and R-5, it is stated in the reply that the applicant could not be promoted since R-4 and R-5 had a better grading and hence they were promoted on merits and not because of any dispute regarding seniority. They have also taken the stand that the application is barred by delay and limitation.

4. The learned counsel for the applicant contended that the delay, if any, has been explained by the applicant and that he has made number of representations, but with no success. He has also filed an M.P. (viz. M.P. No.431/99) for condonation of delay. He contended that injustice is caused to the applicant and therefore delay and limitation should not come in the way of granting relief to the applicant if he is otherwise entitled to

the same on merits. The learned counsel for the official respondents while contending that the application is hopelessly barred by limitation, delay and laches, has also challenged the impugned order on merits.

5. Admittedly, the Respondent No.4 was promoted in 1987 and we are told that he has since died. The Respondent No.5 was promoted in July, 1989 and now the present application is filed in 1998 challenging the validity of promotion of 1987 and 1989. That means the applicant has approached this Tribunal 11 years after one promotion and 9 years after another promotion. On the face of it, the application is beyond the period of limitation which is the period of one year prescribed under section 21 of the Administrative Tribunals Act, 1985. The only reason given by the applicant in the M.P. for condonation of delay is that he has been sending repeated representations, but he did not get any reply. It is well settled that sending repeated representations will not arrest limitation or save limitation as pointed out by the Supreme Court in the case of Administration of U.T. of Daman and Diu Vs. R.D.Valand (1996 SCC (L&S) 205). The respondents counsel also brought to our notice a recent decision of the Apex Court in B.V.Sivaiah and Ors. Vs. Addanki Babu and Ors. (1998 SCC (L&S) 1656), where in para 24 of the Judgment the Apex Court has observed that the promotions are being challenged after 5 years and the promoted officers have been working in the promoted posts for five years and they have acquired right of seniority on the basis of such promotion and they cannot be deprived of the said right. The Supreme Court, therefore, observed that the High Court rightly rejected the belated claim of the petitioners in that case. The learned counsel for the respondents ^{reliance} on



another Judgment of the Apex Court in B.S.Bajwa & Anr. Vs.State of Punjab and Ors. (JT 1998 (1) SC 57), where the Supreme Court as observed that in service matters, the question of seniority should not be re-opened after a lapse of reasonable delay and inordinate delay cannot be condoned and interference under Article 226 was rightly declined.

6. In view of the above discussion, we hold that the present application filed about 11 years and 9 years after the respective promotions cannot be admitted. Even on merits, we do not find that applicant has a better case.

Applicant's case has been considered by DPCs and because of the grading he could not get promotion and R-4 and R-5 who got a better grading came to be promoted. But, the learned counsel for the applicant submitted that at least the second DPC of July, 1989 may not be proper since they have gone by 'Selection Method' and not by 'Bench Mark Method' which was introduced by Government Circular dt. 10.3.1989. It is not disputed that earlier the selection was done on the basis of selection method viz. the best among the eligible candidates to be chosen for promotion. But, after 1989, a minimum bench mark was prescribed and all those who got the minimum bench mark would be promoted even though a junior officer may have a better grading. The learned counsel for the ^{respondents} ~~applicant~~ replied that in the present case R-5 was promoted against a 1987 vacancy and therefore the rule applicable in 1987 should not be applied as the DPC was held in 1989. The Apex Court has held in some cases that the law which was applicable at the time of vacancy must be applied and not the subsequent amendments or subsequent rules. Therefore, we find that even on merits, the applicant's case cannot be accepted



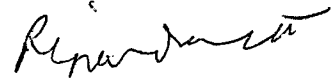
and hence it is not a fit case for admitting the application.

7. In the result, the application is rejected at the admission stage. M.P.431/99 is dismissed. No order as to costs.



(B.N. BAHADUR)

MEMBER(A)



(R.G. VAIDYANATHA)

VICE-CHAIRMAN

B.