

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.497/98

Dated: 4th February 2000.

V.Doraikkannan

Applicant.

Mr.G.K.Masand

Advocate for
.Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr. V.S.Masurkar

Advocate for
Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, 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?


(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.497/98.

FRIDAY this the 4th day of February 2000

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member (A).

V.Doraikkannan,
Type - IV, Flat No.257,
Wadala (E),
Mumbai - 400 031.
(By Advocate Mr.G.K.Masand)

...Applicant.

Vs.

1. Union of India, through
the Secretary, Ministry
of Defence,
New Delhi - 110 001.

2. Chief of Naval Staff,
Naval Headquarters,
New Delhi.

3. Commandant,
Western Naval Command,
Shahid Bhagat Singh Marg,
Mumbai - 400 001.

...Respondents.

(By Advocate Mr.V.S.Masurkar)

: O R D E R :

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

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the learned counsels appearing on both sides.

2. The applicant who was working as Assistant Director in the office of the Director of Supplies and Disposal was transferred on deputation to the office of R-3 viz. Naval Command at Mumbai in December, 1992. The applicant's case is that he is entitled to get seniority as Assistant Director from the date of his promotion on 24.12.1982 in the parent department. The

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applicant came to be absorbed in the Navy in May, 1997. Therefore, in the new department viz. Navy the applicant must get seniority on the basis of his promotion in 1982. This is the sum and substance of the applicant's case.

3. The respondents version is that applicant's promotion in 1982 in the parent department as Assistant Director was on ad hoc basis and that ad hoc promotion came to be regularised in 1995 and therefore, applicant is entitled to seniority as Assistant Director w.e.f. 22.2.1995 when his ad hoc promotion was regularised by the parent department.

4. Arguments were addressed at the bar on behalf of the applicant to say that applicant's entire service in the parent department should be taken into consideration for fixing seniority in the Naval Department on the basis of his promotion as Assistant Director in 1982. The respondents are not disputing that the applicant's service in the parent department should be taken into consideration for the purpose of fixing seniority in the Navy, but their only contention is that since applicant's promotion as Assistant Director was ad hoc from 1982 - 1995 that period cannot be taken into consideration, but his regular service as Assistant Director from 1995 and onwards will be taken into consideration for fixing seniority.

5. There is no adverse order passed by the Respondents against the applicant to make him to approach this Tribunal. He just made a representation to the respondents to give him seniority on the basis of his 1982 promotion as Assistant Director and since there was no reply, he has approached this Tribunal.

6. We do not know, under what terms and conditions the

...3.



applicant was promoted in the year 1982. The applicant has not produced his order of promotion of 1982 as Assistant Director. The seniority list issued by the parent department in 1998 (Ex.R-1) shows that applicant's regular promotion as Assistant Director was from 22.2.1995. It is true that the respondents have not stated as to how and why the applicant's 1982 promotion was ad hoc and how it came to be regularised. The reason is obvious. The respondents are the borrowing department and therefore, they do not know as to under what circumstances applicant's promotion of 1982 was ad hoc. The parent department is not made a party respondent in this case. The parent department would know as to why the 1982 promotion was ad hoc and how it came to be regularised in 1995. It may be a case of regular promotion in 1982, but called as ad hoc due to some litigation or due to some seniority dispute. Alternatively, it could be just an ad hoc promotion or a stop gap arrangement made without following DPC proceedings and without following the quota system etc. It is not disputed that the post of Assistant Director has both promotional quota and direct recruit quota. These are matters which are within the special knowledge of the parent department who is not a party in this case. If the parent department was a party, then we could have given a direction to the parent department to produce all records to show as to under what circumstances the earlier 1982 promotion was made ad hoc and how and why it was made regular in 1995. As already stated, the applicant himself has not produced the order of his promotion in the year 1982. He has also not produced the order of absorption passed by the Respondent No.3 in the year 1997, this also has some bearing because the applicant says that in his willingness

for absorption he had put a condition and he further says that since he has been absorbed on the face of that condition R-3 is now estopped from denying the previous service for the purpose of seniority. The concerned order is not before the Court.

7. In view of the above discussion, we find that the present application cannot be disposed of by this Tribunal in an effective manner. Relevant documents are not before this Tribunal. The parent department is not a party in this case. The Competent Authority has not taken a decision on the applicant's representation about seniority which is dt. 27.11.1997 (Ex.H at page 28 of the paper book). In the circumstances, we are disposing of this application by giving a direction to the Competent Authority in the Naval Department to apply his mind and take a decision on applicant's representation dt. 27.11.1997. Before taking a decision in that behalf, the Competent Authority should secure all the material facts from the parent department about nature of applicant's ad hoc promotion in the year 1982, the nature of regularisation and other circumstances and then decide whether the period from 1982 to 1995 should be taken into consideration for deciding applicant's seniority as Assistant Director in the Naval Department. We also give liberty to the applicant to produce additional material and additional representation to the Competent Authority of the Naval Department in support of his claim that his seniority as Assistant Director should be reckoned from 1982. After considering all the relevant facts, the Competent Authority in the Naval Department shall take a decision which shall be expressed by a speaking order. Needless to say that if an adverse decision is taken by the Competent Authority, the

applicant can challenge the same according to law. The Competent authority may also consider the alternative submission made on behalf of the applicant that even if it is a case of ad hoc promotion from 1982 to 1995, he is entitled for seniority for that period also on the ground that ad hoc promotion has gone on for 13 years without any break and hence should be treated as or deemed as regular service. All questions on merits are left open.

8. In the result, the OA is disposed of subject to the observations made in para 7 above. In the circumstances of the case, we direct the Competent Authority to take a decision as per the directions given in para ⁷ above within a period of four months from the date of receipt of copy of this order. In the circumstances of the case, there will be no order as to costs.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.