

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION: 817/1999
DATED 13TH OF JAN, 2003.

COROM: HON'BLE SHRI JUSTICE D.N. CHOWDHURY, VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A).

Mohd. Tauheed, residing at
47/9 D-9, Kurla Kamgar Co-op
Housing Society Ltde, N.S.S. Road
Narayan Nagar, Ghatkopar
Mumbai - 400 086.

. . . Applicant.

By Advocate Shri G.K. Masand.

V/s.

1. Union of India, through the
Secretary in the Ministry of Defence
North Block, New Delhi - 2.

2. The Director
Directorate of Quality Assurance (Naval)
West Block No.5, R.K. Puram
New Delhi - 110 066.

3. Quality Assurance Officer
Quality Assurance Establishment
(WE) 8, United Colony, SAMA Road
Baroda - 390 008.

. . . Respondents.

By Advocate Shri R.K. Shetty.

(ORAL) (ORDER)

Per Shri D.N. Chowdhury, Vice Chairman

The issue raised in this application pertains to
promotion to the post of Senior Technical Assistant in the
year 1994 in the following circumstances:

1. The applicant, a diploma holder in Mechanical
Engineering, was appointed on 24/9/1983 as a Technical
Assistant. His services had been confirmed. Subsequently,
he was transferred to Quality Assurance Establishment,
Mumbai on 2/2/1993. According to the applicant, in the
seniority list of Technical Assistant, TA (ENGG) and DGA

(WR) Cadre, the name of Shri S.K.Sarkar was shown above the applicant and the applicant was shown at Sr.No.2 of the seniority list. In the year 1994, the applicant states that he was fully qualified for promotion to the next higher post of Senior Technical Assistant (STA), a post in Group'B'. According to the applicant, there were two vacancies for the posts of STA in Engineering Discipline, for which two persons were selected. Select list was published on 11/10/1994 and Shri Sarkar was shown at serial No.2 below Shri Prem Raj. Shri Sarkar by order dated 14/11/1994 was posted at New Delhi and the other officer namely Shri Prem Raj was posted at Bhopal. There was another DPC held in the year 1997. Applicant was found suitable for promotion and accordingly the applicant was promoted to the grade of STA Group'B' alongwith tow others. The list also showed the name of Shri Sarkar who was promoted earlier in the year 1994. The applicant made representation before respondent No.2 dated 16/12/1997 wherein the applicant stated the fact of empanelment of Shri Sarkar was placed in the year 1994. He contended that as per the prevailing practice, the respondents should have considered the next person if any one of the empanelled candidate had difficulty in joining. Applicant accordingly submitted his representation through respondent No.2 and failing to get appropriate reply from the respondents, the applicant moved this application for giving him promotion retrospectively from 1994 since Shri Sarkar declined to

accept the promotion and therefore he should have been considered after one year from the date of refusal to accept his promotion. Hence this application assailing the action of the respondents in considering the promotion of Shri Sarkar in the year 1997 and when Shri Sarkar had refused the promotion, the applicant should have been given promotion in the post of STA in the 1994.

2. The respondents considered the claim of the applicant on various grounds and one objection raised is on the plea of limitation. The respondents in the written statement also stated that Shri Sarkar was posted at New Delhi on promotion but he did not go on promotion and made representation. Thereafter, he filed an OA before the CAT, Calcutta Bench. The CAT Calcutta Bench disposed of the OA with a direction to the respondents to consider the case of Shri Sarkar at the place of his posting and the same was also rejected. It was also mentioned that the entire process took about a year. The panel was also extended for a period of six months beyond the normal period of one year to enable Shri Sarkar to join the appointment at Vizag. It was also stated that Shri Sarkar did give an indication that he would not go on promotion and accordingly the case of applicant was not considered in the year 1994. It was also contended that at this stage if a review DPC was ordered to be held, it would be unsettling the settled position so much so that the applicant would become senior

to Shri Sarkar. The present OA was filed in 1998 against a cause of action which arose in 1994.

4. We have heard the learned counsel for the applicant at length. The learned counsel for the applicant submitted that the authority was under an obligation to prepare a panel against the vacancy so that in the event one of the selected person was not inclined to accept the promotion and on the refusal of promotion, the next person in the select list was to be promoted. The learned counsel though could not refer to any rule, he has referred to the OM in the Government instructions contained in Swamy's Manual of Establishment and Administration. Learned counsel further, in support of his contention, mentioned that in the Panel for promotion to the grade of Junior Scientific Officer which is one stage higher than the post of STA, the respondents have invariably been placing more number of officials than the actual number of vacancies so as to fill up the vacancies by additional numbers whenever there is a refusal on the part of the employees on the Panel to join the promotional post.

5. In the absence of any statutory rule it is difficult to hold that the respondents department faulted in the decision making process in considering the promotion of Shri Sarkar. Admittedly, Shri Sarkar was senior to the applicant. In the select list only two persons including Shri Sarkar were shown. If the applicant thought that the list ought to have been included more persons, he ought to have assailed the selection process at that time. Any

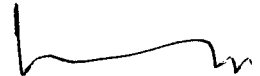
change in the list at this stage would no doubt bring a disarray affecting the settled position. The Administrative instructions and the practice are only guidelines which guide the department. It is only the rule that binds, no binding statutory rules are cited to find flaw in the action of the respondents in considering the case of Shri Sarkar in the year 1997.

6. The select list of 1994 was allowed to be expired after a year. The applicant also did not assail the action of the respondents in 1994 for creating a separate panel. In the circumstances, we do not find any merit in this application and accordingly the application is rejected.

There shall, however, be ^{no} order as to costs.



(SMT.SHANTA SHASTRY)
MEMBER(A)



(D.N.CHOWDHURY)
VICE CHAIRMAN

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