

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION OA 193/98

DATE OF DECISION: 12th feb, 2002

Shri Yeshodharan M.K. Applicant.

Shri S.S. Kerkara Advocate for
Applicant.

Verses

Union of India and 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? Yes

(2) Whether it needs to be circulated to ~~no~~ other Benches of the Tribunal?

(3) Library. yes

ASJ
(S.L.Jain)
Member (J)

NS

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 193/98

the 12th day of FEBRUARY 2002

CORAM: Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt. Shanta Shastry, Member (A)

Yeshodharan M.K.
Residing at
C/12/02, Sector IV
Shanti Nagar, Mira Road.

...Applicant

By Advocate Shri S.S. Karkera.

V/s

1. Union of India through
the Registrar General,
India, 2 A Mansingh Road,
Ministry of Home Affairs
New Delhi.
2. The Director
Office of the Director of Census
Operations, Exchange Bldg.,
2nd Floor, Shiv Sagar,
Ram Guiam Marg., Ballard
Estate, Mumbai.
3. Shri S.S. Dias
at present working as
Investigator, Office of
Census Operations, Exchange Building,
2nd floor, Shiv Sagar Marg.,
Ballard Estate, Mumbai.
4. Shri J.T. Gondukupe
Customs Officer,
Record Section, T-Ward Office
Building, Mulund (West),
Mumbai. ...Respondents.

By Advocate Shri R.K. Shetty.

O R D E R

{Per S.L.Jain, Member (J)}

This is an application under Section 19 of the
Administrative Tribunals Act 1985 seeking relief as under:

to quash and set aside (i) the order of
reversion dated 20.2.1995. (ii) seniority list dated
23.10.1989.

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to direct the respondents (iii) to fix his pay notionally for the period from 1.3.1995 to 15.10.1996 in the grade of Investigator. (iv) to count the intervening period of service of reversion for the purpose of counting of eligibility and fixing his seniority in the grade of Investigator.

Along with costs.

2. The applicant as per the notification No.4/40/72-RG(Ad.I) applied for selection and he was selected through the Staff Selection Commission under direct recruit quota as Statistical Assistant with effect from 26.4.1980. The method of recruitment of Statistical Assistant is that the posts are to be filled by (1) promotion 50% (2) Direct Recruitment 50%, failing which by transfer on deputation. The respondents circulated the provisional seniority list Exhibit A-1 and the final seniority list of Statistical Assistants as on 1.9.1987 vide their circular No. A-23011/1/87(188) dated 23.10.1989(Exhibit A -2). In the said final seniority list the applicant's name was shown at serial No. 17 while the name of Shri D.S. Gandhi, Shri S.S. Dias and Shri J.T. Gondukupe at a serial No. 14, 15 and 16 respectively. The seniority of the employees at serial No. 18, 19, 20 and 21 were fixed by taking into consideration 50% quota, whereas in the case of applicant i.e. from serial No.14 to 16 were shown above the applicant. The seniority was based on 50% rota quota.

5. Aggrieved by the said seniority list circulated on 23.10.1989, The applicant requested respondent No.2 to furnish copy of upto date Recruitment rules vide representation dated 13.2.1990 Exhibit A - 3. The respondents did not supply copy of

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the Recruitment Rules. The applicant again requested vide representation dated 17.12.1996 to supply copy of Recruitment Rules for the post of Statistical Assistant. The respondents supplied copy of the same vide their letter dated No A 61011/1/97 - Add.11(343) dated 14.1.1997. On perusal of the said Recruitment Rules the applicant came to know that the respondents have not properly fixed the seniority and therefore vide representation dated 17.2.1997 represented for seniority on the quota rota of 50%. No reply was received, he preferred further representations to the respondents on 7.5.1997, 2.7.1997, 21.8.1997 and 15.10.1997 to Respondent No.2. Due to the illegal and arbitrary fixation of his seniority the period between 20.11.1990 and 15.10.1997 was taken in the lower cadre.

6. The applicant has filed this OA on 23.2.1998 claiming that the OA is within the period prescribed under Section 21 of the Administrative Tribunals Act 1985 as abandant caution he also filed M.P. for condonation of delay. The cause for delay condonation as per the applicant is that he was not supplied with the copy of Recruitment Rules by the respondents. Suffice to state that Respondents are not duty bound to supply the copy of Recruitment Rules to the applicant. Assuming it for the sake of argument that the respondents are duty bound to supply the copy of Recruitment Rules to the applicant, even then the applicant has requested for the same on 13.2.1990. Thereafter the applicant slept over his right and thereafter preferred representation on 17.12.1996 after a lapse of nearly quarter to 7 years. The applicant received copy of the Recruitment Rules on 14.1.1997.

S.C.J.W -

7. As stated above the respondents are not duty bound to supply copy of the Recruitment Rules to the applicant. The applicant has slept over his right for about quarter to 7 years, and thereafter further represented. Thus there exists no sufficient cause, hence condoning the delay the grievance of the applicant cannot be considered in view of limitation prescribed under Section 21 of Administrative Tribunals Act 1985. Therefore the application for condonation of delay deserves to be rejected and is rejected and OA is held to be barred by time.

8. The perusal of reliefs mentioned in para 8 of the prayer shows that the applicant has claimed more than one relief which are distinct and do not arise from one / single cause of action. As such even in view of Rule 10 of CAT Procedure Rules 1987 the OA deserves to be dismissed on this count. However as the OA is pending since 1998 we think it proper to consider his grievance on merits.

9. The respondents were pleased to promote the applicant on regular basis in the same office with effect from 20.11.1990 to the post Investigator vide their order No. 11/2/90/Ad.IV dated 20.11.1990. Shri S.S. Dias and J.T. Gondukupe who were juniors to the applicant were also considered for promotion who performed duty and also completed probation period satisfactorily. Respondent No. 1 vide order No. 18/19/89-Ad.IV dated 20.2.1995 on the ground that due to completion of deputation to the post of Office Superintendent by Shri S.S. Dias, the applicant is reverted from the post of Statistical Assistant with effect from 28.2.1995 (AN). The order of reversion itself mentions the cause of reversion which is not disputed. As such we see no merit to quash and set aside the said order of reversion dated 20.2.1995.

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10. It is true that the applicant has worked on the post of Investigator with effect from 20.11.1990 till 28.2.1995. The applicant claims that he is entitled to count the intervening period of service of reversion for the purpose of eligibility and fixing seniority in the grade of Investigator

11. Regarding the order of reversion dated 20.2.1995 it is suffice to state that the applicant has filed this OA on 23.2.1998 almost after a period of three years.

12. On perusal of the pleadings we find that he preferred representation and the respondents vide their letter No. A-32015/01/90-1991(2630/Vo.II dated 13.7.1995 forwarded his case to the high authorities wherein the respondents clearly stated that one vacancy is lying vacant with effect from 1.6.1995. It is worth mentioning that the reversion order was dated 20.2.1995 effective on 28.2.1995. The reversion order deserves to be upheld as the grievence of the applicant cannot be considered as being barred by time and there was no vacancy on 1.3.1995 or thereafter till 31.5.1995. As such order cannot be said to be bad or illegal.

13. After reversion of the applicant from the post of Investigator to the post of Statistical Assistant, the applicant has also claimed to fix his pay notionally for the period from 1.3.1995 to 15.10.1996 in the grade of Investigator. The applicant has been promoted to the post of Investigator with effect from 16.10.1996 vide order No. 11/1/96-Ad.IV dated 9.10.1996. The applicant cannot claim his pay fixation in the post wherein he has not worked as he is not debarred to work due to any fault of the respondents.

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14. After a lapse of about 9 years unsettling the settled seniority cannot be permitted. The respondents have further stated that the appointment of the applicant has been one in short term posts created for 1981 Census alongwith other official as per instructions given by the Registrar General, India vide letter No.18/14/79/Ad.I dated 19.2.1980 and the applicant is assigned his due seniority position at the time of his actual appointment as per quota prescribed in the Recruitment Rules. Therefore the position assigned to the applicant in the seniority list of 1.9.1989 is correct and as per recruitment rules in force as on 25.8.1984 vide Notification No.4/44-84-Ad.I dated 25.8.1984 (Exhibit R-3).

15. In the result we do not find any merit in the OA it is liable to be dismissed and is dismissed accordingly. It is a fit case where the applicant deserves to saddled with cost amount to Rs. 650/- (Rs. 500/- as advocate fee + Rs. 150/- as other expenses) payable to the respondents within three months from the date of receipt of copy of the order.

Shanta S
(Smt. Shanta Shastry)
Member (A)

J.(S)J
(S.L.Jain)
Member (J)

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dt: 12.2.2002
order/Judgement despatched
to Applicant/Respondent (s)
on 12.2.2002

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