

27/9/2001. ✓

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

OPEN COURT/PRE DELIVERY JUDGEMENT IN OA 862/98

Hon'ble Vice ~~Chairman~~ / Member (J) /
Member(A) may kindly see the above judgement
for approval / signature.

hanta

~~V.C./MEMBER(J)/MEMBER(A)~~

Hon'ble Vice ~~Chairman~~

Hon'ble Member (J) *I agree sign -*

Hon'ble ~~Member (A)~~

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 862/1998

DATE OF DECISION: 10 / 9 / 2001

T.K.Vadhere & 5 Ors

Applicant

Shri Suresh Kumar

Advocate for
Applicant.

Versus

Union of India & 2 Ors.

Respondents.

Shri R.K.Shetty

Advocate for
Respondents.

Coram:

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

Hon'ble Smt. Shanta Shastri, 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 Shastri
(SMT.SHANTA SHASTRY)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.862/98
DATED THE 14 DAY OF SEPT, 2001
October

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

1. T.K.Vadnere,
Training Officer,
RDAT Staff Quarter Type-IV/3,
ATI Campus V.N.Purav Marg,
Chunabhati, Sion Mumbai-22.
2. G.R.Manaware,
Asstt Director of Training,
ATI Staff Quarter Type-IV/12,
ATI Campus V.N.Purav Marg,
Chunabhati, Sion Mumbai-22.
3. J.R.Choudhary,
Training Officer,
Bungalow No.39, Sector VII,
Lane-C Vashi, New Mumbai.
4. J.N.Burse, Training Officer,
ATI Staff Quarter Type IV/21,
ATI Campus, V.N.Purav Marg,
Chunabhati, Sion, Mumbai-22.
5. Deepak Dey, Training Officer,
ATI Staff Quarter Type IV/2,
ATI Campus V.N.Purav Marg,
Chunabhati, Sion Mumbai-22.
6. Shri S.P.Shetty,
Asstt Director of Training,
ATI Staff Quarter Type IV/9,
Chunabhati, Sion, Mumbai-22. ... Applicant

By Advocate Shri Suresh Kumar

V/s.

1. Union of India & Others,
Through Secretary to the Government
of India,
Ministry of Labour,
Shram Shakti Bhavan,
New Delhi.
2. The Director,
of Apprenticeship Training,
O/O.Director General of
Employment and Training,
Shram Shakti Bhavan,
Rafi Marg, New Delhi-1.

:2:

3. S.A.Juvekar,
Asstt. Director,
Advance Training Institute,
V.N.Parab Road, Sion,
Mumbai - 400 002.

... Respondents

By Advocate Shri R.K.shetty

(ORDER)

Per Smt.Shanta Shastry, Member(A)

This application is made against the order dated 18/12/97 containing the final seniority list of Training Officers appointed against the vacancies up to 1992.

2. The applicants are working at present as Training Officers/ - Assistant Director of Training with the Director General of Employment and Training. They belong to the cadre of Vocational Instructors created around 25/7/1970. The Vocational Instructors cadre is the feeder cadre to the Grades of Assistant Training Officer, Surveyor, Senior Technical Assistant, Store Officer, Group Instructor, Millwright Maintenance. The applicants were promoted to the above mentioned six grades depending on the vacancies prior to 1986. These six categories are the feeder posts for promotion to the posts of Training Officer according to the recruitment rules:

3. A decision was taken in 1987 ^Lpassed on the recommendations of the IVth Pay Commission to abolish 136 posts of Assistant Training Officers and to create corresponding number of posts in the grade of Training Officer. Accordingly a letter was issued on 10/12/87 conveying the sanction of the President to the same. All the posts of Assistant Training Officers were merged in the posts of Training Officers. Thereafter, however the Director of Apprentice Training, New Delhi i.e. Respondent No.3 issued a letter on 4/5/88 wherein it

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was stated that¹⁷ promotions vide order No.16/88 dated 12/4/88 are for the post of Training Officers lying vacant before 1/1/1986. The effect of IVth Pay Commission recommendations and consequent notification is an increase in the number of posts of Training Officers to the extent of the existing number of posts of Assistant Training Officers only excluding the posts with other designations like Senior Technical Assistants, Group Instructors, Surveyors, Storee Officers, etc. The additional posts of Training Officers are not to be given to the existing incumbents of the posts of Assistant Training Officers automatically. But they should be filled as per existing rules for appointment to the posts of Training Officer i.e. from the combined cadre of Assistant Training Officers / Senior Technical Assistant / Group Instructor / Store Officers / Millwright Maintenance Mechanic, etc. Further though posts of Assistant Training Officers are upgraded to that of Training Officer in the scale of Rs.2000-3500 they were to be kept in the payscale of 2000-3200 till regular promotions are ordered.¹⁷ The applicants were promoted on regular basis as Training Officers accordingly.

4. Subsequently a batch of OAs was filed in the Principal Bench of the Tribunal challenging the promotion to the post of Training Officers from all the categories including that of the Assistant Training Officers. The Principal Bench decided the matter vide judgement and order dated 9/7/91. In that judgement, the Tribunal held that the expression, 'the existing Assistant Training Officers will continue to draw their present pay against the upgraded post according to the order dated 10/12/87, Annexure A-1 and the note in the endorsement of the order dated 10/12/87

Annexure A-1' is not sustainable. The same was struck down. It was also held that the promotion to the upgraded post of Assistant Training Officers should be confined to only Assistant Training Officers who were in service as on 1/1/86 for promotion to Training Officer. However, the Principal Bench also observed in OA 1167/89, 1901/1988 as follows:-

"The plea of the respondents that the promotion to the posts of Training Officers is to be regulated in accordance devoid of merit but the fact remains that there was no post of Assistant Training Officers in existence w.e.f. 1/1/1986 in view of the presidential order dated 10/12/1987 abolishing 136 posts of Assistant Training Officers. In case the respondents stand by their plea that the promotion to the post of Training Officers is to be made on the basis of recruitment rules the needful has to be done w.e.f. 1/1/1986."

5. One of the OAs before the Principal Bench was OA 373/88 filed by Shri J.R.Choudhary and Ors. Shri J.R.Choudhary is one of the applicants in the present case also. In that OA the main plea raised by the applicants therein was that they were belonging to the feeder posts alongwith the Assistant Training Officer and were entitled to be promoted to the post of Training Officers, w.e.f. 1/1/86, their posts should also have been upgraded to the post of Training Officers. According to them, the Ministry of Labour misled the Pay Commission. However, the Tribunal held the aforesaid OA to be bereft of merit and dismissed the same.

6. Based on the aforesaid order dated 9/7/91 of the Principal Bench, a review DPC was held on 15/3/92 and fresh orders were passed promoting Officers to the post of Training Officer on the basis of the combined seniority list of Senior Technical Assistants, Group Instructors, Store Officers, Millwright Maintenance Mechanic, etc w.e.f. 1/1/86 against the available vacancies. This resulted in some incumbents holding the post of Assistant Training Officers being not promoted and appointed as Training Officers. They were subsequently promoted as Training Officers against available vacancies. Some of them were promoted as late as 1995. Shri S.G.Chatterji of Calcutta was one of them. He filed OA No.1422/90 in the Calcutta Bench. He also made a supplementary application and raised the point of continuing him as Assistant Training Officer beyond 1/1/1986 despite the Tribunal's order of 9/7/91. After considering the order dated 9/7/91 of the Principal Bench, the Calcutta Bench disposed of the OA by their order dated 25/1/97 observing that "with the Presidential Order dated 10/12/87, the posts of Assistant Training Officers have been abolished as soon as they were upgraded to the post of Training Officers in the scale of 2000-3500. Obviously, all these Assistant Training Officers will get the benefit of Training Officers w.e.f. 1/1/86 and the present applicant is one of them." The respondents were accordingly directed to give the benefit to the applicant accordingly.

Thereafter the respondents accordingly held review DPCs in 1996 by following the guidelines mentioned below:-

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- (i) Promotion from combined cadre of ATOs and STAs etc. for vacancies of TOs occurring prior to 1/1/86.
- (ii) Appointment of all incumbents holding the post of ATOs as ~~on~~ 31/12/85 as TOs w.e.f. 1/1/86.
- (iii) Promotion from the residual cadre of STAs etc. to the post of TOs for the vacancies occurring after 1/1/86.

Accordingly the revised seniority list dated 18/12/87 was issued after consulting the DOP&T and the Ministry of Law and Justice.

7. Prior to this, based on the review DPCs held earlier on 5/3/92 in consequence of the judgement of the Principal Bench dated 9/7/91 seniority list of Training Officers was issued vide President's order dated 24/7/93. In this list the names of applicants nos. 2, 4 and 6 appeared at Serial Nos. 67, 126 and 66 respectively. They were promoted as Training Officers. Further promotions to the post of Assistant Director, Training were made in November, 94 based on the seniority list of the Training Officers and applicants no. 6 and 2 were also promoted.

8. As already mentioned, the revised seniority list of 18/12/97 was issued on the basis of review DPC held in 1996 in pursuance of the judgement of the Calcutta Bench. This changed the relative seniority position of different persons in the seniority list. The seniority of the applicants nos. 2, 4 and 6 changed to 74, 180, 181 and 210 respectively in the seniority list. This seniority list superseded the earlier seniority list of 27/4/93 whereby the applicants had received their promotions,

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some of them to the post of Assistant Director of Training. The applicants promotions granted in 1988 were revised by order dated 27/9/96. The applicants are aggrieved by this action.

9. It is the contention of the applicants that the new seniority list issued on 18/12/97 was said to be in pursuance of the judgement delivered by the Calcutta Bench of the Tribunal. According to the applicants, the issue of promotions granted to the applicants was not challenged before the Calcutta Bench. It was a judgement in personam in regard to only Shri Chatterji as he was exonerated from the charge levelled against him and he sought promotion as training officer w.e.f. 30/6/88. Shri Chatterji had never questioned the action of the respondents in granting promotion to the applicants herein in the year 1988.

The action of the respondents in revising the entire promotions on the basis of judgement of Calcutta Bench is illegal and it was never directed by the Calcutta Bench.

10. The applicants are entitled to the seniority and promotion in the grade of Training Officer and thereafter on the basis of the promotion order issued in the year 1988 onwards till 1995 after the judgement of the Principal Bench, The applicants also have expressed apprehension that if the seniority list of 18/12/97 were to be operated upon, the juniors of the applicants would get promoted to the higher grade and they would then be writing the ACRs of the applicants who would be reverted to the lower grades. This is very humiliating. In the Calcutta Bench, according them the applicant had never contested the principle which was decided by the Principal Bench vide their order dated 9/7/91. The communication dated 4/5/1988 was never challenged or

impugned in the OA before Calcutta Bench. The judgement of the Principal Bench also was not referred to by the Calcutta Bench.

11. The respondents have contested the OA and have stated that they had given effect to the order of the Principal Bench dated 9/7/91 in OA Nos.1167/89, 530/88, 1901/88 and 373/88. As soon as the judgement of the Calcutta Bench of the Tribunal in OA-4122/90 was pronounced, after holding the review DPCs, the appropriate seniority list was issued on 18/12/97. According to the respondents, there is no conflict between the judgements of 9/7/91 and 25/1/95. Consequent on the judgement dated 25/1/95 of Calcutta Bench it became necessary to hold a review DPC on the basis of the revised seniority list of Training Officers. There were others also like Shri Chatterji and therefore their cases also were considered by the review DPC. The respondents have acted in a fair manner and have justified their action in issuing the revised seniority list of 18/12/97 as well as of February, 1998.

12. One of the contentions of the applicants is that the judgement given by the Principal Bench in a batch of OAs and the judgement as given by the Calcutta Bench of this Tribunal are different. The Principal Bench of the Tribunal according to them has enunciated that promotion to the post of Training Officer in the upgraded post has to be given, taking into consideration the combined seniority list of Stores Officer, Group Instructors, etc. If this direction is borne in mind then the seniority list issued upto recruitment year 1988 holds good, whereas the Calcutta Bench of the Tribunal restricted the promotions to the post of Training Officers only to Assistant Training Officers who

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were in service as on 1/1/86 and thus the judgement is contrary to the earlier judgement. According to the applicants, the earlier judgement of the Principal Bench is in order and therefore the issue of the seniority list of Training Officers up to the recruitment year 1988 and on that basis the promotion to the higher post of Assistant Director Training is to follow proper. Since the two Benches have differed the proper course would have been to refer the matter to a larger Bench and not change the seniority list on the basis of the judgement of Calcutta Bench.

13. The respondents contested the same and have pointed out that there is no variation in the direction given by the Principal Bench and the Calcutta Bench and therefore the revised seniority list of 18/12/97 is quite in order and the applicants can be promoted only on that basis.

14. We have given careful consideration to the rival contentions and have perused the judgements of the Principal Bench as well as Calcutta bench. We find that Principal Bench struck down the expression that "the existing Assistant Training Officers will continue to draw the present pay against the upgraded post" and directed the respondents to make a fresh order in accordance with the law in respect of the Assistant Training Officers in OA Nos.1167/89 and 1901/88.

15. A reading of the judgement of the Principal Bench in the aforementioned OA shows that the Principal Bench held that only the Assistant Training Officers who were in position prior to 1/1/86 were entitled to be upgraded as Training Officers from 1/1/86 as the post of Assistant Training Officers were abolished and merged in the post of Training Officers from 1/1/86. The

feeder categories such as those of the applicants in the present OA were not to be upgraded automatically. Their promotions were to be regulated according to recruitment rules from 1/1/86 onwards. In our considered view there is no scope for interpretation otherwise than as this. In fact, this view is strengthened by the fact that the very Principal Bench in another OA No.378/88 which was also heard alongwith OA Nos.1167/89 and 1901/88 and filed by Shri J.R.Choudhary, one of the applicants in the present case, held the contention of Shri J.R.Choudhary who belongs to the feeder category other than that of Assistant Training Officers category for promotion to the post of Training Officer was bereft of merit and the same was dismissed. The Calcutta Bench of the Tribunal has only further clarified that the upgraded post of Training Officers should only be filled by Assistant Training Officers and not by the other feeder categories. What the Principal Bench meant was that as far as the remaining feeder categories such as Surveyors, Senior Technical Assistants and Stores Officers are concerned, they could be promoted to the post of Training Officer after 1/1/86 according to the recruitment rules. The Assistant Training Officers were excluded from this as they were already merged in the post of Training Officers. The position emerging after these judgements is that the Assistant Training Officers who were in position prior to 1/1/86 shall get promoted as Training Officers w.e.f. 1/1/86 on the abolition of the post of Assistant Training Officers and their merger in the additional post of Training Officers created for the purpose. Those who had already been promoted as Training Officers prior to 1/1/86 would continue to

be promoted. The other feeder categories not merged in the post of Training Officers shall be eligible for promotion to the post of Training Officers as before in accordance with the recruitment rules w.e.f. 1/1/86. The respondents in pursuance of the judgement of the Principal Bench and the Calcutta Bench therefore rightly followed these guidelines and held review DPCs and recast the seniority list. We do not find any conflict or contradiction in the judgement of the Principal Bench and Calcutta Bench and therefore if the respondents in pursuance of these two judgements have issued the revised seniority list of 18/12/97, the same cannot be faulted. Our view is further fortified by another judgement of the Hyderabad Bench of this Tribunal in OA 502/90 and 504/90 delivered on 7/1/2000. A copy of the same has been produced. In this judgement, the judgements of the Principal Bench and the Calcutta Bench have been discussed at length and it has been held that these judgements are not contrary to each other but they are in keeping with the spirit of sanction conveyed by the President dated 10/12/87, which is merger of post of Assistant Training Officers in the post of Training Officers.

16. In view of this we are satisfied that the respondents, we are justified in issuing revised seniority list of 18/12/97. In our considered view, the applicants have no case. They have failed to produce any material to substantiate their claim. Accordingly, the OA is dismissed. No costs.

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(SMT. SHANTA SHASTRY)
MEMBER(A)

S. L. Jain
(S.L. JAIN)
MEMBER(J)

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