

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1051/1998
Dated this 28th day of November,2002

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Smt.Shanta Shastry, Member(A)

Shri U.O.Surwade,
Office of the Executive Engineer,
Bombay Central Dn II, CPWD,
Antop Hill, Mumbai -400 037. ... Applicant

By Advocate Shri B.Ranganathan

V/s.

1. Union of India & Others,
Director General of Works,
Central Public Works Department,
Nirman Bhavan, New Delhi.
2. The Chief Engineer (Western Zone),
Central Public Works Department,
New CGO Building, New Marine Lines,
Mumbai - 400 020.
3. Superintending Engineer
Co-ordination Circle,
New CGO Building, New Marine Lines,
III Floor, Mumbai - 400 020. ... Respondents

By Advocate Shri V.S.Masurkar

ORAL ORDER

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)

This application has been filed in which the applicant has prayed for calling the records relating to reservation of posts for physically handicapped candidates as well as Scheduled Castes/Scheduled Tribe candidates and to hold that he was entitled to be considered to the post of Upper Division Clerk on 12/1/1990 on the basis of reservation for physically handicapped candidates with reference to OM dated 20/11/1989.

2. We have heard Shri B.Ranganathan, learned counsel for applicant and Shri V.S.Masurkar, learned counsel for respondents and have perused the pleadings and relevant documents on record.

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3. The brief relevant facts of the case are the applicant belongs to Scheduled Caste community and is also orthopaedically handicapped. He has been working with the respondents in the post of Lower Division Clerk (LDC) with effect from 23/8/1973.

4. He has submitted that Government ought to have reserved 3% of the post in various categories in Group 'C' and Group 'D' which they have not done for physically handicapped candidates. The learned counsel for applicant has relied on Annexure A-1 document, which is chapter-2 of Swamy's book on Establishment. In this chapter, it is provided inter alia that reservation for physically handicapped candidates, i.e. the Blind, Deaf and Orthopaedically Handicapped should be given 1% each.

5. In para-3 of the OA, in the first instance the applicant has stated that the applicant is within the period of limitation prescribed under Section 21 of the Administrative Tribunal Act, 1985 but at the same time has submitted that delay may be condoned as the applicant belongs to the Scheduled Caste community and is also physically handicapped. A preliminary objection has been taken by respondents that the OA is hopelessly time barred as the main relief prayed for by the ~~of~~ applicant ^{is} for consideration for promotion to the post of Upper Division Clerk as on 12/1/1990 as a physically handicapped candidate. They have also relied on a number of judgements of the Hon'ble Supreme Court in paragraph 7 of the written statement. Admittedly, there is no separate MP filed by the applicant with sufficient reasons to condone the delay and all that has been stated is in paragraph-3 of the OA. The reasons given by the applicant in

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this paragraph can hardly be considered as sufficient reasons under Section 21(3) of the Administrative Tribunals Act, 1985 to condone the delay having regard to the aforesaid judgements of the Hon'ble Supreme Court relied upon by the respondents. In this case, if the applicant was aggrieved as far back as in 1990, the cause of action has arisen at that time, whereas we note that this OA has been filed on 30/9/1998. Therefore, on this ground of limitation alone, this application is liable to be dismissed.

6. Shri V.S.Masurkar, learned counsel for respondents has drawn our attention to paragraph-13 of the written statement which has been filed by them on 2/8/1999. In this, it has been stated that the applicant has been promoted as a S.C. candidate vide letter dated 28/7/1997. It is also relevant to note from the reply filed by respondents that it is stated that they have provided the points for reservation in Physically Handicapped for Direct Recruitment but no points have been fixed for promotion. They have also given a statement showing the vacancies of Upper Division Clerks which had occurred or anticipated from 1990 to 1997 (Annexure R-1). The applicant's case is for promotion to the post of Upper Division Clerk in 1990 whereas as per the statement, it is noticed that in that year there was no vacant post. From the pleadings on record and particularly the documents relied upon by the applicant, no averment has been made that there was a vacant post of Upper Division Clerk in the year 1990 against which the applicant has claimed reservation as a physically handicapped person.

7. It is also relevant to note that in para-8 of the OA, the applicant claims the reliefs for promotion as a scheduled caste

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candidate as well as a physically handicapped candidate. As per the promotion order issued by the respondents, dated 28/7/1997, they have already promoted him in the reserved quota to the post of Upper Division Clerk.

8. In the result, for the reasons given above, the OA fails and is accordingly dismissed. No costs.

Shanta Shastri

(SMT. SHANTA SHASTRY)
MEMBER(A)

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN

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