

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 538 OF 2014

Mukhtyar Singh Jaswant Singh	.. Petitioner
Vs.	
Union of India	.. Respondent

Mr. Akhilesh Singh a/w Mr.Manish Dubey, for the Petitioner.
Mr.Suresh Kumar, for Respondent.

**CORAM : SMT. V.K.TAHILRAMANI &
M.S.KARNIK, JJ.**

06th NOVEMBER, 2017

ORDER (PER M.S.KARNIK, J.) :

1. Rule. Mr. Suresh Kumar waives service for the respondent. At the request and by consent of the parties, rule is made returnable forthwith and the Petition is taken up for final hearing.

2. The challenge in this Petition is to an order dated 08/03/2013 passed by the Central Administrative Tribunal, Mumbai (for short 'Tribunal'). The order impugned is passed in

Misc. Application No. 838 of 2011 filed by the petitioner for execution of the order in OA No. 4/1993 on the file of the Tribunal.

3. The OA No. 4/1993 filed by the petitioner before the Tribunal was disposed of on 02/05/2001 where following directions were issued in the concluding part of the order :-

“The Applicant Shri Mukhtyar Singh shall be considered for promotion as if considered at the 1992 selection – after the stage of written test (since he cleared such a test then). If he is found fit, he will be provided seniority as per 1992 selection with all consequential benefits including arrears, since O.A. was filed in January, 1993. we are however, not making any orders for changing the promotions already granted to others selected in the panel, so that there is no unsettling of the settled position and to avoid administrative complications at this point of time. No order as to cost.”

4. The respondent – Union of India challenged the order dated 02/05/2001 before this Court by filing WP/1980/2001. By the order dated 04/06/2008, this Court was pleased to dispose of WP/1980/2001 by passing following order.

“Learned counsel appearing on behalf of the Petitioner contends that candidate in question had passed written test but failed in interview/viva-voce. In the light of judgment of the Central Administrative Tribunal, direction

given is that concerned authority shall consider case of the Petitioner and if he is found to be fit then promotion will be given with effect from 1992. If for whatever reason, he was not found to be fit, Petitioner herein was at liberty to pass appropriate order and inform the Petitioner of that order. Needless to notice that direction issued by the Central Administrative Tribunal in the impugned judgment is clearly a direction for consideration and not for granting promotion actually. With this direction, we do not see any reason to interfere in the impugned order. Writ Petition is disposed of with no order as to costs.”

5. This Court thus had clearly observed that the Tribunal had given the direction to the concerned authority to consider the case of the petitioner and if he is found to be fit, then promotion will be given with effect from 1992. It is further observed that for whatever reason, if he is not found fit, the Competent Authority is at liberty to pass appropriate order and inform the petitioner of that order. It is also material to note that this Court categorically observed that the directions issued by the Tribunal in OA No. 4/1993 vide order dated 02/05/2001 is clearly a direction for consideration and not for granting promotion actually.

6. Pursuant to the above order passed by this Court on

04/06/2008 in WP/1980/2001, the petitioner was directed to appear for viva-voce on 2 occasions viz. 07/01/2009 and 04/02/2009, but he had failed to appear. On both occasions, the petitioner had informed the administration that he was sick. The Selection Committee therefore was constrained to finalise the selection process after duly considering the relevant criteria and it was found that the petitioner was unfit for promotion to the grade of Section Engineer as against the vacancy that existed in 1992.

7. It is further pointed out by the respondent that the petitioner was duly promoted to the grade of Section Engineer in 1999 and thereafter senior Section Engineer in 2007 and that he has been granted 2nd and 3rd Financial Upgradation under the Modified Assured Career Progression Scheme.

8. The petitioner filed Misc. Application No. 838 of 2011 for execution of the order in OA 4/1993 before the Tribunal. The Tribunal on merits found that it was incumbent

for the petitioner to have appeared for viva-voce and having failed to do so, the respondent is justified in proceeding with the selection process after taking into consideration other relevant criteria like the petitioner's service record etc. Though the Tribunal in paragraph 10 has observed that the petitioner had in fact failed in written test, however, the same appears to have been a typographical error in as much as it is not disputed that the petitioner has passed the written test. Apart from rejecting the Misc. Application on merits, the Tribunal has also rejected the same on the ground of delay.

9. We have heard learned Counsel for the petitioner as well as learned Counsel for the respondent. In our opinion, the order passed by this Court on 04/06/2008 in WP/1980/2001 is very clear and categorical. This Court has clearly observed that the Tribunal had directed to consider the case of the petitioner and if he is found fit, then promotion will be given with effect from 1992. The respondent having considered the case of the petitioner for promotion and upon consideration, having found

him unfit for promotion in the grade of Section Engineer as against vacancy that existed in 1992, the orders passed by the Tribunal on 02/05/2001 and this Court on 04/06/2008 stand complied with. Having regard to the stand set out by the respondent in paragraph 5 of the impugned order dated 08/03/2013 that the petitioner's case has been duly considered and he was found unfit for promotion, this affords a separate cause of action to the petitioner, which issue in our opinion should not have been dealt with by the Tribunal in the Misc. Application in the O.A. which was disposed. At the cost of repetition, we may mention that the order in O.A. as well as the order of this Court was complied with.

10. In the interest of justice, in our opinion, an opportunity needs to be given to the petitioner to challenge the decision of the respondent declaring him unfit for promotion in appropriate proceedings that the petitioner may initiate. If such proceedings are filed by the petitioner challenging the decision of the respondent consequent to the compliance of the order

dated 04/06/2008 passed by this Court and the order dated 02/05/2001 passed by the Tribunal, the same may be dealt with by the Tribunal on its own merit without being influenced by any of the observations made by the Tribunal in its order dated 08/03/2013 in Misc. Application No. 838 of 2011.

11. We are inclined to take this view in the light of the fact that the Tribunal has also rejected the Misc. Application on the ground of delay. We may also note that in the very first part of the impugned order, the Tribunal has mentioned that the Misc. Application is filed for execution of order in OA No. 4/1993. This being the position, once the order passed by the Tribunal in OA No. 4/1993 has been duly complied with, the Tribunal ought not to have entertained the Misc. Application No. 838 of 2011. Hence, we are inclined to pass the following order.

ORDER

- i) The impugned order dated 08/03/2013 in Misc. Application No. 838 of 2011 is quashed and set aside.
- ii) The petitioner is at liberty to file appropriate proceedings

challenging the decision of the respondent declaring him unfit for promotion to the grade of Section Engineer as against vacancy that existed in 1992. If such an application is filed before the Tribunal by preferring appropriate proceedings, the same may be dealt with by the Tribunal on its own merits and in accordance with law without being influenced by the observations made in the impugned order dated 08/03/2013.

- iii) The Tribunal may sympathetically consider the period spent in pursuing Misc. Application and this Petition while considering the application for condoning the delay in filing appropriate proceedings. Needless to mention that the Tribunal is free to decide the question of delay and laches on its own merits subject to what is indicated earlier.
- iv) All the contentions of the parties on merits and on the question of limitation are kept open.

12. Rule is made partly absolute with no order as to costs.

(M.S.KARNIK, J.)

(SMT. V.K.TAHILRAMANI, J.)