

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 672 OF 2002
WITH
CIVIL APPLICATION (STAMP) NO. 23744 OF 2009
IN
WRIT PETITION NO. 672 OF 2002**

Union of India &Ors.	...Petitioners
Versus	
Shri K. Krishnamurthy & Ors.	...Respondents

Mr. Vinod Joshi for Petitioners.
None for Respondents.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 15th MARCH 2018

ORAL JUDGMENT :

1] Heard Mr. Vinod Joshi along with Mr. D. A. Dube for the petitioners. None for the respondents, though served.

2] Mr. K. Krishnamurthy, the respondent no. 1 had however appeared earlier and submitted a written note dated 3rd March 2018, encapsulating his submissions.

3] The challenge in this petition is to the judgment and order dated 18th June 2001 made by the Central

Administrative Tribunal (CAT) in Original Application No. 30 of 2000 instituted by Mr. K. Krishnamurthy & others. In this case, consequent upon restructuring of cadres in the Indian Audit & Accounts Department in 1992, 80% post of Audit Officers (Commercial) were created for Senior Audit Officers (Commercial) carrying higher pay scales while 20% were for Audit Officers (Commercial) carrying lower pay scales. Promotion to the post of Senior Audit Officer (Commercial) at that time was on the basis of eligibility, that is to say, 3 years continuous service in Audit Officer Cadre subject to fitness and availability of posts.

4] Mr. K. Krishnamurthy & two others were promoted as Assistant Audit Officers between the years 1988-1990, as Audit Officers between the years 1998-1999 and Senior Audit Officers in the year 2002. Their juniors, who came to be impleaded as respondents in OA 30 of 2000 instituted by Mr. K. Krishnamurthy & others and who belonged to SC / ST categories were promoted as Assistant Audit Officers between 1992-1995, Audit Officers between the years 1995-1997 and Senior Audit Officers between the years 1998-2001 on the basis of reservation quota at the stage of

promotions. Since, Mr. K. Krishnamurthy & others were promoted in the cadre of Audit Officer and Senior Audit Officers later than their juniors, they filed OA 30 of 2000 before the CAT seeking *inter alia* their placement in the seniority list above the respondent officers in the cadre of Audit Officer and Senior Audit Officers and further, for a direction that they be promoted before such respondent officers.

5] The CAT by the impugned judgment and order dated 18th June 2001 has partly allowed the OA 30 of 2000 and directed the respondents i.e. Department of Personnel Training, C&AG and MAB-I, Mumbai to reconsider the case of the applicants in the light of paragraph 6 of the letter dated 16th August 1988 (C&AG's Circular) in regard to the recruitment rules for Group 'C' & 'D' for promotion and seniority.

6] Mr. Joshi, the learned counsel for the petitioners - Union of India submits that even though, Mr. K. Krishnamurthy & others may have had a claim to rank as seniors to the respondents before the CAT, that by itself,

does not render Mr. K. Krishnamurthy & others eligible for promotion to the next higher post unless they fulfill the eligibility condition of experience for the requisite period in the feeder cadre. He submits that the seniority is relevant only amongst eligibles and on basis of seniority alone, no party can claim promotion, even though, such party, may not be eligible for promotion as per the recruitment rules. Mr. Joshi submits that Mr. K. Krishnamurthy & others, at the relevant time, did not fulfill the eligibility requirement of service in the feeder cadre for prescribed number of years and therefore, the CAT was not at all justified in directing the respondents to consider the case of Mr. K. Krishnamurthy & others for promotion to the next higher post.

7] Mr. Joshi submits that subsequent to the institution of the present petition, Article 16 of the Constitution of India was amended and Article 16(4-A) was introduced. In terms of this provision, the Union of India is entitled to make provisions for reservations at the stage of promotion in favour of members of SC/ST and such promotees are entitled to retain their consequential seniority. Mr. Joshi

submits that this subsequent development completely takes away the base of the contentions of Mr. K. Krishnamurthy & others in OA 30 of 2000. Mr. Joshi submits that the decision of the Hon'ble Supreme Court in the case of ***Union of India vs. Virpal Singh Chauhan***¹ and ***Ajit Singh II vs. State of Punjab***² no longer operate consequent upon the introduction of Article 16(4-A) in the Constitution of India.

8] Mr. Joshi submits that on the basis of the aforesaid two grounds, the impugned judgment and order dated 18th June 2001 made by the CAT is liable to be set aside.

9] Upon due consideration of Mr. Joshi's submission and upon perusal of the impugned judgment and order as well as the records, at this point of time, we see no good reason to interfere with the impugned judgment and order. By now, the original applicants in OA 30 of 2000 as also most of the respondents have retired from service. This petition already stands dismissed against several of the respondents on account of failure on the part of the petitioner to take steps

1 (1995) 2 SCC 684

2 (1999) 7 SCC 209

to either serve them or to take steps consequent upon their demise.

10] Secondly, the view taken by the CAT promotes substantial justice and therefore, need not be interfered with under Articles 226 and 227 of the Constitution of India at this point of time.

11] Admittedly, the respondents in OA 30 of 2000 may have been promoted earlier than the applicants in OA 30 of 2000. However, the Union of India, by applying the law in the case of *Virpal Singh Chauhan* (supra) and *Ajit Singh II* (supra) had placed the applicants senior to such respondents. Therefore, an anomalous situation has arisen whereby, the applicants, who were indicated as seniors, were found not to be completing the prescribed services in the feeder cadre so as to render them eligible for promotion and the respondents, who were admittedly ranked as junior, and fortitiously promoted earlier, fulfilled the requirement of prescribed service in the feeder cadre. In the light of such an extra ordinary situation, the CAT, granted relief to the original applicants in OA 30 of 2000 in

order to redress the obvious anomaly.

12] From the record, it is seen that the shortfall was not substantial but only marginal. Further, the CAT merely directed the respondents to consider the case of the applicants in OA 30 of 2000. By the time the direction could be complied with, there is no serious dispute that the applicants must have fulfilled the requirement of prescribed service in the feeder cadre. If the impugned judgment and order is construed in this perspective, then, it is quite clear that the CAT, by its impugned order has promoted substantial justice and there is no case therefore made out to interfere with the impugned judgment and order at this length of time.

13] In ***Roshan Deen vs. Preeti Lal***³, the Hon'ble Supreme Court has held that the purpose of powers conferred on High Court under Articles 226 and 227 of the Constitution of India is to advance justice and not to thwart it. Even where the justice is the by-product of an erroneous interpretation of law, High Court ought not to wipe out such justice in the name of correcting the error of

³ (2002) 1 SCC 100

law.

14] In ***Municipal Board, Pratabgarh & Anr. vs. Mahendra Singh Chawla & Ors.***⁴, the Hon'ble Supreme Court held that legal formulations cannot be enforced *de hors* from the realities of the fact situation of the case and the effect of the laws on the human beings for whom the laws are meant. In the context of exercise of discretionary jurisdiction under Article 136, the Hon'ble Supreme Court has held that the law is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the Supreme Court would be failing in its duty if it does not notice equitable considerations and mould the final order. In exercise of the extra ordinary jurisdiction under Article 136 the discretion should be so exercised by the court that justice may be rendered to both the parties. Similar considerations apply in the matter of exercise of extra ordinary and discretionary jurisdiction under Articles 226 and 227 of the Constitution of India.

15] There is yet another reason which dissuades us from

⁴ (1982) 3 SCC 331

interfering with the impugned judgment and order at this length of time. The Hon'ble Supreme Court in series of judgments beginning from ***M. Nagaraj & Ors. vs. Union of India & Ors.***⁵ has held that the provisions of Article 16 (4-A) are only enabling in nature. Further, before actual promotions can be granted by relying upon the provisions of Article 16(4-A) there are certain preconditions which the State or the Union of India is obliged to comply with including collection of quantifiable data as regards adequacy of representation. Mr. Joshi was unable to say whether the promotions granted to the respondents in OA 30 of 2000 were preceded by the fulfillment of the preconditions prescribed by the Hon'ble Supreme Court in the case of *M. Nagaraj* (supra). There is no material on record to suggest that such preconditions had indeed been complied with.

16] From this, it is quite clear that there was injustice upon Mr. K. Krishnamurthy & others i.e. original applicants in OA 30 of 2000 before the CAT. Now that, the impugned judgment and order of the CAT has redressed this injustice and promoted substantial justice without any serious

5 (2006) 8 SCC 212

prejudice to any of the respondents before the CAT, we see no reason to interfere with the impugned judgment and order at the behest of the Union of India and that too, at this length of time. This is despite the fact that we agree with the general proposition put-forth by Mr. Joshi that on basis of mere seniority, no officer, can be considered for promotion unless, such officer fulfills the eligibility conditions prescribed in the recruitment rules for such promotion. Taking into consideration the peculiar facts of the present case, such a situation does not arise and therefore, and based upon the same, there is no case made out to interfere with the impugned judgment and order.

17] For all the aforesaid reasons, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

18] In view of disposal of the petition, civil application does not survive and is disposed of accordingly.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)