

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

WRIT PETITION NO. 2469 OF 2006

Union of India and ors. ...Petitioners
Versus
Virupaksh S. Bandi and anr. ...Respondents

Mr. G. Hariharan a/w. Mrs. N.V. Masurkar and Mr. S.G.
Thakur for the Petitioners / UOI.
None present for the Respondents.

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

DATE : 15th MARCH 2018

ORAL JUDGMENT:

1] Heard Mr. G. Hariharan a/w. Mrs. N.V. Masurkar and
Mr. S.G. Thakur, learned counsel for the Petitioners / UOI.

2] The challenge in this petition is to the judgment and
order dated 15th December 2005 made by the Central
Administrative Tribunal (CAT) in Original Application No.
429 of 2005. The O.A. No. 429 of 2005 was instituted by
the respondents seeking *inter alia* the relief of restoration
of the respondents' names in the list of successful
candidates for appointment in the LSG Supervisory cadre
and in pursuance thereof, for grant of proforma promotions

to the respondents.

3] The CAT by the impugned judgment and order dated 15th December 2005 has partly allowed O.A. No. 429 of 2005 and issued the following directions.

“Therefore, if there are existing vacancies of LSG they be adjusted and their seniority shown along with those who are included in the subsequent merit list and appointed viz. S/Shri S.B. Bandgar and V.A. Jadhav irrespective of the fact as to whether they are promoted to the post LSG against any existing vacancy or any future vacancy. In the absence of any existing vacancy, the present applicants be promoted against future vacancies, i.e., in subsequent years with seniority to be protected as above. As it is, they are already drawing the same scale under TBOP and they are not incurring any financial loss. This process be completed by the respondents within a period of three months from the date of receipt of copy of this order.

9. OA is partly allowed as above. No costs.”

4] In this petition, Rule was granted on 11th July 2006, however, there was no specific order either granting or rejecting interim relief. Therefore, the petitioners took out Civil Application No. 2072 of 2006 seeking a stay on the directions issued by the CAT in the impugned judgment and order. This Civil Application No. 2072 of 2006 was disposed of by this Court by order dated 22nd August 2006, reads as follows:

- “1. Heard learned Counsel for the petitioners and learned Counsel for the respondents no.1 and 2.*
- 2. in the above matter, Rule was granted on 11th July, 2006, however, nothing was mentioned with regard to interim relief.*
- 3. After hearing both the parties, we make it clear that the petitioners shall comply with the order of Central Administrative Tribunal, Mumbai, dated 15th December, 2005. However, it is made clear that this will be subject to the final result of this petition and this compliance is without prejudice to the rights and contentions of the petitioners.*
- 4. Civil Application stands disposed of, accordingly”.*

5] In pursuance of the aforesaid order dated 22nd August 2006, the petitioners have already implemented the impugned judgment and order dated 15th December 2005, though, without prejudice to their rights and contentions urged in the present petition. Upon our query, Mr.Hariharan, learned counsel for the petitioners, on the basis of instructions from the petitioners has stated that the respondents were not only promoted to the LSG cadre, but they have secured two further promotions in the meanwhile. Mr. Hariharan also stated that the respondents are presently on the verge of retirement.

6] In this case, there is no dispute that the respondents participated in the selection process for the fast-track promotions to the Lower Selection Grade (LSG) - Norm

Based post which were conducted between 27th May 2003 and 29th May 2003. In the results which were declared on 19th November 2003, the respondents were declared as successful and were accordingly empaneled. However, later on, i.e., vide order dated 8th April 2004, without even minimum compliance with principles of natural justice and fair play, such results and empanelment were unilaterally varied and the names of the respondents were deleted. This was allegedly on the basis that there was some error in calculating the number of vacancies and taking into consideration the correct position of vacancies, the respondents were not entitled to be empaneled, even though, they may have been successful in the selection process, which comprised a departmental examination.

7] From the record, it does appear that the respondents were successful in the selection process which included a departmental examination. Accordingly, the respondents were placed in the select list panel. Merely because later on, it was realised that there was some confusion with regard to the precise vacancy position, it was not proper to delete the names of the respondents without even

minimum compliance with principles of natural justice and fair play. As a result of such deletion, the candidates, who were declared successful in the subsequent selection process secured a march over the respondents.

8] The CAT has relied upon the judgment and order dated 23rd June 2005 in O.A. NO. 510 of 2004 (***Vinay V. Parab vs. Union of India and ors***) delivered by the Bombay Bench of CAT and the Full Bench judgment in case of ***Udai Shanker Meena vs. Union of India and ors - 1997 (1) ATJ 4***, delivered by the Allahabad Bench of the CAT, in which, it has been held that for appointment to the LSG, a person, who passed the LSG examination earlier is entitled to higher seniority on the basis of date/year of the passing of the examination over the person, who passes examination on a subsequent date/year. In case of *Vinay Parab* the position similar to that which prevailed in the present case had arisen and the CAT, had directed proforma promotion , so that the seniority was duly protected. The CAT has ultimately followed the decisions in the case of *Vinay Parab and Uday Shanker Meera* and granted limited relief as aforesaid to the respondents.

9] We find no jurisdictional error of perversity in the impugned judgment and order made by the CAT. Besides, as noted earlier, the impugned judgment and order has already been implemented. Thereafter, the two further promotions have also been granted to the respondents. The persons who may have been affected by the seniority accorded to the respondents have not bothered to challenge the impugned judgment and order possibly because the same did not seriously affect them. Taking into consideration all these circumstances, we see no reason to interfere with the impugned judgment and order.

10] Accordingly, Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)