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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 702 OF 2002

Union of India ...Petitioner

Vs.

Janardhan B. Mane & ors. ...Respondents

.....

Mr. Suresh Kumar, Advocate for the petitioner.

None for the respondents.

.....

**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 18th JANUARY, 2018.

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

The petitioner – Union of India by this petition challenges the order dated 4/9/2001 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai ('the Tribunal' for short) in O.A. No.1111 of 1992.

2. This Court while hearing the petition for admission had passed the following order at the interim stage :-

“ Heard.

2. In para 9 of the impugned order the Central Administrative Tribunal has held thus ;

“9. The grievance of the applicant is limited that his training period is extended on account of the fact that the concerned official was not available which resulted in his suppression by private respondent nos. 3 to 9. The learned counsel for the applicant relied on 1989 SCC (L&S) 417, State of Maharashtra Vs. Jagannath Achyut Karandikar which lays down the proposition that lowering of seniority in promotional post of Superintendents because of late passing of departmental examination for promotion Incumbents should not be penalised for Government's lapse to hold the examination in certain years though rules enjoining government to hold examination every year. Similar is the situation in the present case. The applicant was posted as Senior Draftsman on 31.7.1989 and after completion of one year of succession training, the appointment was to be regularized. The applicant alleges that respondents failed to take the test of the applicant immediately on completion of training period as the concerned officer was on leave. The official respondents defended the case on the ground that the private respondent nos. 4 to 9 have passed the requisite selection earlier while the applicant passed thereafter. As it is not the fault of the applicant when he was not examined after the training – as fixed by the order and timely. The delay is on the part of the official respondents to conduct the said test. The applicant cannot be penalised.”

3. We find no reason to disagree with the aforesaid reason.

4. The learned counsel for the petitioner then contended that atleast the petitioner was not entitled to back wages even if he is given promotion with retrospective effect. He referred to rule 228 of the Indian Railways Establishment Manual which reads thus ;

“228. - Erroneous Promotions : - (I) Sometimes due to administrative errors, staff are overlooked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types :

- (i) Where a person has not been promoted at all because of administrative error and
- (ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts.”

- 5. Issue notice to the first respondent alone only with regard to the aspect of payment of backwages.”

It is thus clear that the notice was issued only with regard to the aspect of payment of back-wages.

- 3. The respondents do not appear despite service of notice and even after issuance of 'Rule' on 2/12/2002. Shri Suresh Kumar – learned Counsel appearing for the

petitioner - Union of India submits that the petitioner is interested in contesting the matter on the issues decided by the Tribunal.

4. In the light of the order dated 9/9/2002 passed by this Court, it is not possible for us to consider any other aspect except that of back-wages. Faced with this situation Shri Suresh Kumar in all fairness submitted that he may not be able to assail the order passed by the Tribunal on this count. Even in so far as the aspect of back-wages is concerned, we find no reason to interfere with the order passed by the Tribunal. Shri Suresh Kumar in all fairness has also submitted that the petitioner - Union of India was more interested in pursuing the contentions other than the back-wages part of the Tribunal's order.

5. In view of what is stated hereinafter and particularly in the light of the interim order passed by this Court on 9/9/2002 which is reproduced hereinabove, we see no merit in this petition.

6. The Writ Petition is accordingly dismissed.
7. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)