

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 577 OF 2007

1. Union of India
through the Secretary of Government of India,
Ministry of Agriculture,
Krishi Bhavan,
New Delhi 110 001
 2. The Director General
Indian Council of Agricultural Research,
Krishi Bhavan,
Dr. Rajendra Prasad Road,
New Delhi – 110 001
 3. The Director,
Indian Council of Agricultural Research
Complex for Goa,
Ela, Old Goa.
North Goa, Goa 403 402.
 4. Dr. V. S. Korikanthimath
Director,
ICAR Research Complex for Goa
Ela, Old Goa, North Goa,
Goa 403 402.
- ... Petitioners

Versus

1. Dr. Vilas S. Sakharkar
Subject Matter Specialist
(Agricultural Extension)
Krishi Vigyan Kendra,
ICAR Research Complex for Goa.
Ela, Old Goa, North Goa,
Goa 403 402.

2. The Hon'ble Central Administrative Tribunal,
Mumbai Bench at Mumbai constituted under
the provisions of Administrative Tribunals Act, 1985
having office at 3rd and 4th floors,
Gulestan Building,
Prescot Road,
(now known as Mahashi Dadhich Marg)
Fort, Mumbai 400 001.

... Respondents

AND

WRIT PETITION NO. 578 OF 2007

1. Union of India
through the Secretary of Government of India,
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New Delhi 110 001
2. The Director General
Indian Council of Agricultural Research,
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North Goa, Goa 403 402.
4. Dr. V. S. Korikanthimath
Director,
ICAR Research Complex for Goa
Ela, Old Goa, North Goa,
Goa 403 402.

... Petitioners

Versus

1. Dr. Vilas S. Sakharkar,
Programme coordinator
(Extension Education)
KVK Hirwara,
Dr. Panjabrao Deshmukh Krishi Vidyapeeth,
P.O. Krishi Nagar,
Akola, Maharashtra Pin.444104
2. The Hon'ble Central Administrative Tribunal,
Mumbai Bench at Mumbai constituted under
the provisions of Administrative Tribunals Act, 1985
having office at 3rd and 4th floors,
Gulestan Building,
Prescot Road,
(now known as Mahashi Dadhich Marg)
Fort, Mumbai 400 001. ... Respondents

Mr. M. Amonkar, Central Government Standing Counsel for the
Petitioners.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date:- 17th July 2019

ORAL JUDGMENT (Per M. S. Sonak, J)

Heard Mr. M. Amonkar, learned Standing Counsel on
behalf of the Petitioners – Union of India. He points out that though
service is complete upon the Respondents, including by way of
substituted service, the Respondents choose not to appear. The records

does indicate that the service is complete. Since these petitions relate to the year 2007 and have been adjourned earlier on several occasions in order to enable the Respondents to appear in the matter, it is not possible to adjourn these petitions any further.

2. The challenge in both these petitions is to the common judgment and order dated 19th July, 2007 made by the Central Administrative Tribunal (CAT) in original Application Nos.482/2006 and 483/2006 instituted by Respondent No.1 seeking promotion from grade T6 to grade T(7-8) with all consequential benefits.

3. The CAT in the impugned judgment and order has ordered the expungement of adverse remarks in the annual confidential reports of Respondent No.1 and thereafter directed the Petitioners to promote the Respondent No.1 to grade T(7-8) along with all consequential benefits.

4. Mr. M. Amonkar, learned Standing counsel for the Petitioners submits that to the best of knowledge of the officer instructing him, the Respondent No.1 has long ago resigned from the services, in order to secure an alternate employment. He therefore, submits that the reliefs granted by the CAT in the impugned judgment and order have been rendered infructuous and this position may be accordingly clarified.

5. Mr. Amonkar even otherwise submits that on merits the CAT was not justified in ordering the expungement of the adverse remarks. At the highest, the CAT could have granted an opportunity to the Respondent No.1 to represent against the adverse remarks and depending upon the outcome of such representation, the directions could have been issued, not to directly promote the Respondent No.1 but to consider the case of Respondent No.1 for promotion. Mr. Amonkar relies upon the *State of M.P. V/s Srikant Chaphekar*¹ to submit that the CAT could not have assumed the function of the competent authority and directed the promotion of Respondent No.1. He submits that at the highest the direction which could have been issued was for reconsideration of the case of Respondent No.1 for promotion. For these reasons, Mr. Amonkar submits that the impugned judgment and order warrants interference.

6. The facts in these cases are really not in serious dispute and have been set out in the impugned judgment and order made by the CAT. There is no point in restating the facts in this order.

7. The contention that since the Respondent No.1 has allegedly resigned from the services and, therefore, the reliefs granted by the CAT have been rendered infructuous cannot be accepted. The Respondent No.1, in terms of the impugned judgment and order was required to be promoted from a retrospective date and also awarded

1 (1992) 4 SCC 689

consequential benefits. Therefore, if the view taken by the CAT is to be upheld, then, Respondent No.1, will be entitled for promotion from retrospective date along with all consequential benefits, at least until the date on which he allegedly resigned from his services. Therefore, Mr. Amonkar's plea that the reliefs granted by the CAT have been rendered infructuous cannot be accepted.

8. In the facts of the present case, we are also not inclined to interfere with the expungement of adverse remarks since, the record indicates that such adverse remarks were never communicated to the Respondent No.1 and the Respondent No.1 was consequentially deprived of an opportunity to represent against the same. At this point of time no useful purpose would be served if the Respondent No.1 is required to make a representation against the adverse remarks. Besides, the CAT has observed in the impugned judgment and order that despite ample opportunity, no material was placed on record by the Petitioners to justify the adverse remarks.

9. The CAT, in the impugned judgment and order, however, has observed that the DPC has already recommended the promotion of Respondent No.1 and on such basis directed the Petitioners to straightaway promote the Respondent No.1. In doing so, the CAT, has itself noted that normally, such an order is not supposed to be made by the Courts or Tribunals. However, the CAT, has observed that in order

to do “*complete justice in the matter*”, the directions are issued to straightaway promote the Respondent No.1 to grade T (7-8).

10. According to us, the CAT, with respect, was not justified in departing from the normal mode of directing the competent authority to consider or reconsider the case of the officer for promotion rather than directing the competent authority to straightaway promote the officer. Incidentally, there are no cogent reasons as to why this normal mode was departed from. Only observing that the order was being made to do “*complete justice*” is certainly not sufficient to depart from the normal mode, which in fact flows from several decisions of the Apex Court on the subject. The power to do complete justice is only vested in Hon'ble Supreme Court under Article 142 of the Constitution of India and such power is not vested in the CAT, which is expected to follow the binding precedent emanating from the Hon'ble Apex Court.

11. In *State of M.P. V/s Srikant Chaphekar* (supra), the Hon'ble Supreme Court has held that the Tribunal fell into patent error in substituting itself for the DPC. It was observed that it was not the function of the Tribunal to assess the service record of a Government servant and order his promotion on that basis. It is for the DPC to evaluate the same and make recommendations based on such evaluation. Thereafter, it is for the competent authority to act on the basis of such recommendations. In this case it is categorically held that where the

Court/Tribunal comes to the conclusion that a person was not considered for promotion or consideration was illegal then the only direction which can be given is to reconsider the case in accordance with law. It was not within the competence of the Tribunal to have ordered deemed promotion.

12. Accordingly, the direction of the CAT to straightaway promote the Respondent No.1 warrants interference. This direction is accordingly substituted with a direction that the case of the Respondent No.1 be considered for promotion in accordance with law as expeditiously as possible and in any case within a period of four months from today. Such consideration, as directed by the CAT, will have to be from the date on which the right to be considered for promotion accrued in favour of Respondent No.1. If ultimately, the competent authority finds that the Respondent No.1 was entitled to be promoted from the said date, then, needless to state that Respondent No.1 will be entitled to all consequential benefits on the said basis.

13. The impugned judgment and order of the CAT is thus modified to the aforesaid extent only. The direction to the Petitioners to straightaway promote the Respondent No.1 to grade T (7-8) is set aside and substituted with a direction that the Petitioners to consider the case of Respondent No.1 for promotion to grade T(7-8) in accordance with law as expeditiously as possible and in any case within a period of four

months from today. If the competent authority finds that the Respondent No.1 was entitled to be promoted from retrospective date, then, all consequential benefits will have to be given to Respondent No.1.

14. Rule is made partly absolute to the aforesaid extent only. There shall be no order as to costs.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

at*