

Central Administrtative Tribunal
Principal Bench: New Delhi

O.A. No. 1863/2002

This the 30th day of January, 2003

Hon'ble Shri Govindan S. Tamai, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Smt. Indu Bala Naswa
Stenographer Grade III,
Bureau of Police Research &
Development,
Ministry of Home Affairs,
Government of India,
Block No.11, 3rd & 4th Floor,
CGO Complex, Lodhi Road,
New Delhi-110 003.

-Applicant

(By Advocate: Shri V.S.R. Krishna)

Versus

1. The Union of India,
Through the Secretary,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi.
2. The Director General,
Bureau of Police Research & Development
Ministry of Home Affairs,
Government of India,
Block No.11, 3rd & 4th Floor,
CGO Complex, Lodhi Road,
New Delhi-110 003.
3. The Assistant Director (Adm)
Bureau of Police Research &
Development,
Government of India,
Block No.11, 3rd & 4th Floor,
CGO Complex, Lodhi Road,
New Delhi-110 003.
4. Smt. Rita Roy,
Stenographer Grade II(Officiating)
Bureau of Police Research &
Development,
Government of India,
Block No.11, 3rd & 4th Floor,
CGO Complex, Lodhi Road,
New Delhi-110 003.

-Respondents

(By Advocate: Shri B.S. Jain)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

In this OA applicant impugns respondent No.4
promotion as Grade-II Stenographer at New Delhi



resorted to vide order dated 10.5.2002. He has sought quashment of the same with further direction to promote him as Stenographer Grade-II against available vacancy at Delhi w.e.f. 29.10.1999 after one year ban ends with all consequential benefits.

2. Applicant in September, 1998 was offered promotion to the post of SG-II and was to be posted at Shimla. On account of serious family problems promotion was refused and her request for adjusting her at Delhi office was rejected. On her request to to forego promotion as per DOPT guidelines her fresh consideration would take place not before one year and against next vacancy at New Delhi. Accordingly on 6.11.98 respondents have debarred her for promotion for one year or till next vacancy arises whichever is later. The next vacancy sought to arise was in April, 1999 and as such one year debarment expired on 28.10.99. Another candidate in the seniority also refused promotion and as a result respondent No.4 was next in turn to be offered promotion to respondent No.4 Instead of considering her for promotion to be posted at Shimla, considered her request for promotion against a subsequent vacancy which arose in July, 1999.

3. One Harjeet Singh, who was No.2 in the select list filed OA-1169/99, which was dismissed on 4.11.99.

4. Respondent No.4 filed OA-231/2000 to consider her for promotion to SG-II on the strength of having third in the panel prepared by the DPC. OA was dismissed against which CWP-2378/2001 was disposed of by the High Court of Delhi to challenge the order of official respondents before the Tribunal again and further holding that in a non-selection post life of the panel is indefinite. As directed R-4 did not file any OA before this Tribunal.

5. As the ban imposed for promotion had expired and applicant became eligible for promotion for next vacancy to arise in July, 1999 representations have been filed, but instead of consider her request rather R-4 was promoted against vacancy arisen in July, superseding her claim who was senior to R-4.

6. Sh. V.S.R. Krishna, learned counsel appearing for applicant contended that the order dated 10.5.2002 is malafide and has been passed by the respondents as an act of nepotism, favouring R-4. It is stated that as applicant has refused promotion at Shimla and ban of one year was imposed and on refusal by another selectee the same should have been offered to R-4 as per rules but had it been done R-4 would have been promoted against a post at Shimla and if refused applicant on expiry of the band and on a vacancy which has arisen later on should have been offered promotion as per seniority. By not offering the post at Delhi to applicant who is at No.1

in the panel applicant has been arbitrarily discriminated, which is violative of Articles 14 and 16 of the Constitution of India.

7. Shri Krishan further stated that respondents have deliberately not offered the post of SG-II to R-4 with a view to favour her to help her to supersede applicant by not imposing similar ban upon R-4.

8. On the other hand, respondents' counsel Sh. B.S. Jain, strongly rebutted the contentions and stated that as a result of the recommendations of the DPC promotion was offered to applicant who was seniormost, at Shimla where the vacancy was available. As she refused the promotion, same was offered to the next person Harjit Singh in the panel but he too refused. Accordingly R-4 who was next in the seniority represented for her promotion and as the High Court has observed that the panel is indefinite in a non-selection post, after consideration of the matter it was decided to hold fresh selection for the post disregarding panel and in the absence of any challenge to the decision of R-2 to hold a fresh selection applicant claim cannot be acceded to.

9. Moreover, Sh. Jain further stated that on receipt of the clarification by the DOPT as to the validity of the panel which is not applicable in non-selection post the appointing authority decided to post R-4 on promotion to Delhi where a vacancy was available.

10. It is stated that post at Shimla was not offered to R-4 is well within the rights of the appointing authority to post any one against the available vacancy.

11. Respondent No.4 has not filed any separate reply despite notice.

12. We have carefully considered the rival contentions of the parties and perused the material on record. In view of the DOPT instructions dated 1.10.81 applicant incurred disability of promotion for a period of one year from the date of refusal i.e. 29.10.98 or till the next vacancy arose whichever was later, disability came to an end on 28.10.99 and by that time next vacancy was available at Delhi. Being senior in the panel respondent No.4 placed below applicant should have been offered the post at Shimla and if she refused the same ban would have been operated against her.

13. In that event any subsequent vacancy which has arisen after completion of the ban should have been offered to applicant at New Delhi as per her seniority. As the post in question is a non-selection post where validity of panel has been held by the High Court of Delhi as indefinite the decision of respondents to hold a fresh selection cannot be countenanced and is not sustainable in law. The question remains if applicant is senior to R-4 and R-4 has not been offered the post at Shimla respondents

(6)

have arbitrarily discriminated between the equals, which cannot be sustained, as is violative of Articles 14 and 16 of the Constitution of India. We are of the considered view that despite being senior and lifting of ban of one year for claiming promotion on the vacancy in question which has arisen at New Delhi should have been offered by way of seniority to applicant. Respondents' action offering promotion to R-4 at Delhi smacks of nepotism and arbitrariness and it has been done to favour R-4, who has no legal right to claim this promotional post in preference to applicant, who is undisputedly senior.

14. In the result, promotion order of 10.5.2002 is not justifiable and as no tenable reasons have been putforth by respondents in their reply to justify their action promotion of R-4 effected through order dated 10.5.2002 is quashed and set aside. Respondents are directed to promote applicant to the post of Stenographer Grade-II against a vacancy at Delhi with effect from the date one year ban had ended and the vacancy had arisen and in that event she would be entitled to all consequential benefits.

15. With these directions the OA is allowed.
No costs.

S. Raju
(Shanker Raju)
Member (J)

'San.'

(Govindan S. Tampli)
Member (A)