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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

O/ No.560/2002

Date of decision: 11.03.003

M.A. Ansari

.. Applicants

(By Advocate: Shri Ajit Puddiserry)

versus

Union of India & Ors.

.. Respondents

(By Advocate: Shri N.S. Mehta)

CORAM:

Hon'ble Shri Justice V.S. Aggarwal, Chairman

Hon'ble Shri A.P.Nagarath, Member (A)

To be referred to the Reporter or not?

YES

*[Handwritten signature]*

(A.P.Nagarath)

Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 560/2002

NEW DELHI THIS 11<sup>th</sup> DAY OF MARCH 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SHRI A.P. NAGRATH, MEMBER (A)

M.A. Ansari S/o Late Rahmatullah  
Deputy Director (E)  
National Plant Quarantine Station,  
(Near Vasant Kunj Police Station)  
Rangpuri, New Delhi - 100037.

.....Applicant

(By Shri Ajit Puddissery, Advocate)

VERSUS

Union of India  
through the Secretary,  
Ministry of Agriculture,  
Department of Agriculture and Cooperation,  
Government of India, Krishi Bhawan, New Delhi

.....Respondent


(By Shri N S Mehta, Advocate)

O R D E R

BY HON'BLE SHRI A P NAGRATH, MEMBER (A)

The applicant, who initially joined as a Surveillance Officer w.e.f. 24.2.78, was appointed after selection by UPSC as Entomologist w.e.f. 27.9.82. This post of Entomologist was re-designated as Assistant Director (Entomology) vide notification dated 2.6.87. He was further promoted to the post of Dy. Director vide order dated 12.2.96 and he continues to hold that post till date. By filing this OA, he seeks ante-dating of his promotion to the earliest date when the vacancy, against which he was entitled to be considered, had occurred with all consequential benefits.

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2. Heard Shri Ajit Puddisserry and Shri N S Mehta, learned counsel for the applicant and the respondents respectively.

3. The learned counsel for the respondent raised preliminary objection about the maintainability of this OA on the ground of limitation. He has submitted that earlier, the applicant had represented to the department on 29.5.91 claiming promotion against the vacancies which had occurred in the year 1990 and earlier. The said representation was rejected by order dated 07.8.1991. He has also referred to the OA No. 2247/2000 filed by the applicant claiming back dating of his promotion. The claim in respect of back dating of promotion was not considered by the Tribunal for the reason that applicant had sought plural remedies. The learned counsel contended that since the applicant actually had been promoted in the year 1996 he cannot be permitted to agitate the matter of his promotion before the Tribunal at such a belated stage, as Section 21 of Administrative Tribunal Act 1985 puts embargo against entertaining such a delayed application, more so when no application has been filed for condonation of delay.

4. Learned counsel for the applicant asserted that the applicant was not claiming benefit prior to the year 1991 but only from the date when his immediate next senior got promoted and another vacancy remained available to be filled up. He has submitted that such a vacancy had arisen

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in the year 1993 but the respondents delayed the process abnormally and promoted the applicant in 1996, thereby injuring his legitimate aspirations for further advancement in the cadre. He contended that the applicant had submitted various representations claiming ante - dating of this E.B. and promotion and the same were finally disposed of by letter dated 6.10.99. He challenged the same by filing OA No. 2247/2000 which was decided on 04.10.2001. By their order the Tribunal granted him liberty to raise the issue of promotion to the post of Dy. Director (Entomology) from back date by filing fresh OA. In the background of this order he has moved the present OA which cannot be treated to be barred by limitation.

5. On facts, the case of the applicant is that when his immediate next senior Dr. Jagdish Prasad was promoted on 7/9/93 and vacancies were still available and he should also been promoted in the same year. To establish the case of the applicant, the learned counsel on his behalf referred to the Recruitment Rules which lay down the policy for filling up the vacancies for the post of Dy. Director. 75% of the posts are to be filled up by promotion failing which by transfer on deputation and remaining 25% by transfer on deputation failing which by direct recruitment. The length of qualifying service for Assistant Director to be considered for this post is 5 years regular service in the grade. The applicant contends that he has fulfilled these requirements and there was no reason for the respondents for not promoting him w.e.f. 1993. The learned counsel brought

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to our notice the fact that the penalty had been imposed on the applicant earlier in the year 1989 by which his pay was reduced by 2 stages in the time scale for the period of 2 years with further directions that he would not earn increments during that period. This was, however modified by order dated 28.4.1994 and the penalty of reduction by 2 stages from Rs.2800 to Rs. 2650 in the time scale of Rs. 2200-75-2850-EB-100-4000 for a period of one year with further direction that Shri Ansari will earn increment of pay during the period of reduction, was imposed on him. Notwithstanding this development, the learned counsel stressed, that this punishment would not come in the way of applicant getting promoted in the year 1993 when there was nothing adverse against him. The learned counsel vehemently argued that the respondents were under duty to report correctly all the vacancies, which were available at the relevant time, to UPSC which they had failed to do. He produced before us a chart showing the yearwise vacancies of Dy. Directors Entomology available and filled up till 1996 to emphasise that even after filling up the post by Dr. Jagdish Prasad in July 1993 one vacancy still remained further two vacancies remained to be filled in the year 1994 and yet again in the year 1995. Having not promoted the applicant in 1993, the learned counsel contends that a serious adversity has been caused to the applicant for his further advancement. The learned counsel drew our attention to the Recruitment Rules for the post of Director which are

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brought on record by the applicant by way of filing additional affidavit. As per the Recruitment Rules post of Director is to be filled up by promotion failing which by deputation failing both by direct recruitment. This promotion is from the cadres of Joint Director (Plant Pathology) and Joint Director (Entomology) with three years regular service in the grade. Plea of the applicant is that while regular DPCs have been held in the cadre of Plant Pathology similar treatment has not been meted out to the cadre of Entomology. This has resulted into the officers of Entomology Cadre suffering while determining the inter - se - seniority for the purpose of promotion to the post of Director.

6. To re-inforce the claim of the applicant for promotion from the date of occurrence of vacancy the learned counsel placed reliance on the decision of the Apex Court in the case of Dr. N.D. Mitra and Another Vs Union of India & Others [(1994) SCC 474] and Union of India & Others Vs N R Banerjee and Others [(1997) 9 SCC 287].

7. Learned counsel for the respondents Shri N S Mehta stated that prima facie there is no case in favour of the applicant and his grievance is misconceived. While referring to the reply of the respondents Shri Mehta stated that after promotion of Dr. Jagdish Prasad the next vacancy according to the recruitment rules was to be filled up by deputation. This process could be completed only in the

year 1996 when Dr. C.S. Prasad joined. The vacancy against which the applicant was promoted had occurred on 26.1.94 on promotion of Shri S N Gaur. When the process was initiated it was noted that in respect of the disciplinary proceedings against the applicant, which had culminated into imposition of penalty by order 17.4.89, the applicant had appealed. This matter was finally decided and amended orders were issued on 7.4.94. The proposal for the applicant's promotion was forwarded to UPSC on 3.7.95 and their final recommendations were received on 20.12.95. The applicant took charge of Dy. Director (Entomology) on promotion w.e.f. forenoon of 12.2.96. Thus, learned counsel contended that if at all any delay was caused the same was attributable to the conduct of the applicant. Under such circumstances he has no right to claim any retrospective promotion. On the question whether an employee has right to be promoted from the date of occurrence of vacancy Shri Mehta referred to the judgement of Hon'ble Supreme Court in the case of Union of India and Others Vs. Jangammayya [AIR 1977 SC 757] wherein it has been held that "no employee has any right to have a vacancy in the higher post filled as soon as the vacancy occurs. The promotions are to be made on the basis of 'select' list only prospectively and not retrospectively.

8. We have given our anxious consideration to the rival contentions, the documents brought on record and the case law relied upon by either side.

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9. We first propose to take up the issue of limitation. Indisputably, the applicant was promoted as Dy. Director (Entomology) w.e.f 12.2.96. He claims ante dating of his promotion from the year 1993, though we hasten to add that in the relief clause no specific date, from which applicant seeks such a promotion, has been indicated. We agree with the learned counsel for the respondent to the extent that the prayer made in the relief cause is vague. However, the learned counsel for the applicant stated at the bar that the applicant was claiming relief w.e.f. the year 1993 and from the date soon after Dr. Jagdish Prasad was promoted. It is patent from these facts that this OA is barred by limitation. If the applicant had not been promoted in the year 1993 it was open to him to seek legal remedy within the time provided by law. He failed to do that. Even after he was promoted in 1996, he failed to move the appropriate forum seeking redressal of his claim. The plea of the applicant that the period of limitation is to be reckoned from the date of decision on OA 2247/2000 is meritless. We have perused the order of the Tribunal carefully. There is no doubt that the applicant's claim on ante-dating promotion was not entertained by the Tribunal on the ground of plural remedies and he was permitted to raise issue by filing a separate OA. This order by itself does not extend the period of limitation which is necessarily to be reckoned from the date of order of which he was aggrieved. This OA had filed in the year 2000 while the applicant is claiming promotion w.e.f. the year 1993. Filing such a belated OA or making belated representation

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does not extend the period of limitation. Considering it from any angle, we find that this OA is not maintainable as it is hit by the provisions of Section 21 of the Act.

10. On merits, primarily the claim of the applicant is that his promotion should take effect from the year 1993 when the vacancy of Dy. Director (Entomology) was available and he was the next senior most person for promotion. In support of his contention, reliance has been placed on the case of N.D. Mitra and Another Vs. Union of India and Others (referred supra).

11. We have carefully gone through the contents of these decisions and we do not find anything in these orders to support the claim of the applicant. In fact it is not necessary for us to consider the aspect of the matter which relates to promotion to the post of Director. The applicant is only holding the post of Dy. Director and there is an intermediate grade/ rank before the post of Dy. Director and that of Joint Director (Entomology). It is only Joint Director with 3 years regular service who can be considered for promotion to the post of Director. In the present context the applicant has no locus standi to question the promotion to the post of Director. So we are not inclined to dwell further on this issue.

11. In so far as in the case of Union of India and Others Vs. N R Banerjee and Others is concerned Hon'ble

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Supreme Court had observed that DPCs must meet regularly and the zone of consideration should be determined with respect to particular year to which the vacancy pertains. The issue involved in this OA is not about determining the zone of consideration but for ante-dating the date of promotion. We are not able to decipher any direction from the Apex Court in this case that the promotions must be given from the date of occurrence of vacancy. In fact the legal position has been set at rest by the judgement of Apex Court in the case of Union of India Vs Majji Jangamavva [1977 SCC 765] to which our attention was drawn by the learned counsel for the respondent. We reiterate relevant part of the order "No employee has any right to have a vacancy in the higher post filled as soon as the vacancy occurs. Government has the right to keep the vacancy unfilled as long as it chooses".

12. The delays are, unfortunately inherent in the system of functioning of the Government departments and have to be accepted a part of exigencies of service. This do at time adversely affect the beneficiaries but no legal right is created in their favour to claim benefit of promotion from an earlier date. The right of promotion could be claimed only from the date one actually holds the post on regular basis after due process. There is no indefeasible right of promotion from the date of occurrence of vacancy.

13. In the circumstances, this application fails both on the grounds of limitation as also on merit. The same is dismissed. No costs.



(A.P. Nagrath)  
Member (A)



(V.S. Aggarwal)  
Chairman

Patwari