

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 3006/2002

New Delhi this the 23rd day of May, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri R.K. Maheshwari
S/o Shri G. Singh
R/o 69/E Yadav Nagar
Delhi-42.

... Applicant

(By Mrs. Rani Chhabra, Advocate)

vs.

1. Department of Personnel & Training
Through its Secretary
North Block, New Delhi.

2. Union Public Service Commission
Through its Secretary
Dholpur House, Shahjahan Road
New Delhi-110001. Respondents

(By Shri S.K. Gupta, Advocate)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

Applicant had joined as an Assistant in September 1986. In the hierarchy, the next promotion from Assistant is to the post of Section Officer. The post is to be filled by two modes. Firstly on basis of the Limited Departmental Competitive Examination held by the Union Public Service Commission and secondly by promotion on the recommendations of the Departmental Promotion Committee. The Limited Departmental Competitive Examination was held in July 1992. The applicant

(SAG)

was declared successful. His name was not cleared because a departmental proceeding had been initiated against him. He had been censured.

According to the applicant, in July 1993, the persons junior to him were promoted and at that time there was no disciplinary proceeding pending against him. The applicant was promoted subsequently as a departmental promotee. Ultimately, he was censured in the departmental proceedings.

2. The applicant prays for inclusion of his name in the select list of 1992 of Section Officers' grade. His claim was rejected on 12.7.2002 by virtue of the following order:-

"With reference to the representation of Shri R.K.Maheshwari dated 8/2/2002, he is hereby informed that his request for inclusion of his name in the Select List-1992 of Section Officers' grade on the basis of Limited Departmental Competitive Examination, 1992 has been examined in consultation with DOP&T.

In view of the DOP&T OM No.22011/4/91-Estt.(A) dated 14.9.92, the inclusion of Shri Maheshwari in the Select List of Section Officer's grade for the year 1992 on the basis of LDCE-1992 is not admissible since disciplinary proceedings were pending against him and the penalty of 'Censure' was imposed on him as a result thereof. The DPC for Select List 1997 met after the imposition of the penalty, the inclusion of his name in the Select List of Section Officer's grade for the year 1997 is in accordance with the rules."

Applicant seeks quashing of the same and contend that a direction should be issued to include his

MS Ag

name in the Select List of 1992 of the Section Officers' grade in the vacancy that arose in July 1992.

3. The application has been contested. It is not disputed that the applicant had taken the Section Officers' Combined Limited Departmental Competitive Examination, 1992. His name was recommended. However, before the actual appointment, the vigilance clearance could not be given because the disciplinary proceeding was pending against him.

4. The respondents took up a preliminary objection that the application is time barred because the applicant claims the benefit from the year 1992. However, this particular contention of the respondents necessarily must be rejected because applicant's representation disallowing his request after the disciplinary proceeding was over is dated 12.7.2002. The present application has been filed within a year of the same. It must, therefore, be held that the application is within time.

5. On merits of the matter, the controversy is limited. The applicant had passed the Limited Departmental Competitive Examination 1992 for Section Officers conducted by the Union Public Service Commission held in July 1992. Before he

MS Ag

could be actually promoted, disciplinary proceedings had been initiated and were pending. In this regard OM No. 22011/4/91-Estt. (A) dated 14.9.1992 issued by the Ministry of Personnel, Public Grievances and Pensions is being pressed into service. It had been issued keeping in view the decision of the Supreme Court in the case of Union of India etc. v.K.V.Jankiraman etc., AIR 1991 SC 2010. Paragraph 7 of the said Office Memorandum reads as under:-

"7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also."

5. Presently once the disciplinary proceedings had come to an end and the applicant had been censured, it is directed that the claim of the applicant should be considered in accordance with the said rules and instructions from the previous date. With these directions, the present application is disposed of. No costs.

Announced.

(Govindan S Tampi)
Member (A)

/sns/

(V. S. Aggarwal)
Chairman

