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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 1640/2002

NEW DELHI THIS...16th DAY OF JANUARY 2004

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

M.S. Ashokan,
Deputy Director (ad-hoc)
Department of Consumer Affairs,
M/o Cons. Affairs, Food and P.D.
12-A Jam Nagar House,
Akbar Road, New Delhi

.....Applicant
(By: applicant in person)

VERSUS

1. Union of India
(through Secretary to Govt. of India)
Department of Consumer Affairs,
Ministry of Consumer Affairs, food & P.D.
Krishi Bhawan, New Delhi - 110001.
2. Dr. A K Mishra, Director (Cooperative Liquidator)
Super Bazar (Cooperative Store Ltd.)
Connaught Place, New Delhi - 110001.
3. Shri Ziley Singh, ITEC Expert,
Min. of Commerce and Coperative Division,
LIC Centre, 3rd Floor,
John Kennedy Street, Port Louis,
Mauritius.

Address in India:

Shri Ziley Singh,
WZ-454, Basai Dara Pur,
New Delhi - 110015.

4. Shri D Nandi,
Deputy Director (Cooperation)
Department of Consumer Affairs,
12-A Jam Nagar House (Room No.6)
New Delhi - 110001.

.....Respondents

(By : Sh H K Gangwani, counsel for respondents 1 & 3 &
Ms. Monika Arora, counsel for respondent 2 & 4)

O_R_D_E_R

By Hon'ble Shri S.A. Singh, Member (A)

Heard applicant M.S. Ashokan who appeared in person
and Shri H K Gangwani , counsel for respondents 1 & 3 and
Ms. Monika Arora counsel for respondent 2 & 4 appeared and
argued the matter.

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2. Applicant was directly recruited as Assistant Director (Coop.) in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food & PD through UPSC. UPSC held the interview for the post of Asstt. Director on 6.7.88 and forwarded its recommendations on 20.7.88. Offer of appointment was given on 28.7.89. The applicant joined the department on 23.8.89.

3. Respondent No. 3 (Shri Ziley Singh) and respondent No. 4 (Shri D Nandi) were STAs in the Department and were promoted as Assistant Directors against fortuitous vacancies w.e.f. 6.8.1987. The claim of the applicant is that he is senior to respondent No. 3 and 4 as he was selected against a vacancy which arose because of the creation of 2 additional posts of Assistant Director (coop.) in the Consumer(coop) division of the department w.e.f. 23.12.86 (Annexure-XVIII), whereas respondents No. 3 and 4 were promoted in the chain of vacancies arising on promotion of Shri M K Chakrvorty to Dy. Director w.e.f. 21.7.87 and the deputation of Shri M.M. Singh to SMIS Division of the department as Dy. Director. Respondent 3 and 4 were promoted on ad hoc basis as Assistant Directors w.e.f. 6.8.87. According to the applicant (Annexure XVIII) the inter se seniority should be as under:-

Name of Official	Direct or promotion	Date of apptt.	Remark
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1. Sh M M Singh Promotion 10.7.85 retired on
30.4.94.

2. Sh M S Ashokan , Direct 26.12.86

3. Sh Ziley Singh, Promotion 6.8.87 On deputation

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to DAC as
Dir. (Coop.).

5. Sh B K Aggarwal Promotion

4. The grievance of the applicant is that seniority lists issued on 7.2.91 and 5.4.94 by Respondent No. 1 are erroneous as applicant has been shown junior to respondents 3 and 4 whereas in actual fact he is senior. Consequently respondent 3 and 4 have been promoted before the applicant. The applicant made representations for corrections in the seniority list and respondent No. 1 issued a revised seniority list dated 20.8.2001 wherein he has been correctly shown senior to respondent 3 and 4. However, the respondent No. 1 after issue of the revised seniority list dated 20.8.2001, issued a new seniority list called final seniority list on 14.6.2002. The applicant has been once again shown junior to respondent No. 4 in this final list. The applicant prays that Tribunal should issue interim direction to the respondent to maintain status quo of the seniority list dated 20 .8.2001 in the MA No. 1731/2002 filed by him.

5. The applicant prays that as he is senior to respondents No. 3 and 4 he should be deemed to have been promoted as DD (Coop.) w.e.f. 1.10.92 i.e. the date the second post of DD (coop.) fell vacant due to repatriation of Shri T K Sengupta to his parent department, Government of West Bengal with consequential benefits like pay, arrears, seniority etc. And that he should be promoted as Dy. Director (Coop.) w.e.f. 26.11.2001 i.e. the date a

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post of Dy. Director (coop.) fell vacant on further promotion of Respondent 3 as director (coop.). The applicant also prays for direction to the respondent 1 to consider the applicant for promotion to the post of Director as and when the post falls vacant, consequent upon the incumbent Director (coop.) taking on the foreign assignment. Finally the applicant prays that the Tribunal should issue directions to respondent No. 1 to defer its intention of giving benefits to respondent No. 2 (A K Mishra) till the revised seniority position in the grade of DD (coop) is settled.

6. The respondents in their reply and oral submissions state that the final seniority list dated 14.6.2002 has been prepared as per the DoPT guide-lines and as such the applicant has no claim to the reliefs prayed for . The final seniority list dated 14.6.2002 has been issued after taking into consideration representations received from concerned officers including the applicant . In the revised seniority list issued on 20.8.2001 the applicant was erroneously shown senior to respondents 3 and 4 by considering point 3 of the vacancy roster as a vacancy that was required to be filled up by deputation failing which by direct recruitment. The applicant was appointed against this point and was thus shown senior to the promotee officers. However , this was an error. DoPT clarified vide their U.O. No.III/Estt.(D)/02 dated 31.3.2002 that for direct recruits recruited through interviews conducted by UPSC or any other authority the date of selection would be the date of Commissions's letter containing the recommendations. For promotions where UPSC is not associated, the last date of DPC meeting is the date

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of completion of selection process. The relevant portion of DoPT letter dated 31.3.2002 is reproduced below:

"3. Regarding relative seniority of promotees and direct recruits, a copy of this Department's instructions No.28011/5/76-Estt.D dated 24.6.78 is placed on the file. The starting point in the recruitment roster for the purpose of seniority should be that mode of recruitment prescribed in the RRs for which the selection process has been completed. For direct recruits recruited through interviews conducted by UPSC or any other authority, the date of completion of selection process would be date of Commissions' Letter containing the recommendations. For promotions, where UPSC is associated, the date of UPSC's Letter containing their recommendations ratifying the promotions is the date of completion of selection process and where UPSC is not associated, the last date of DPC meeting is the date of completion of selection process.

4. In the instant case, it is noted that in the case of Shri M S Ashokan ...though his name was recommended by the UPSC vide their letter dated 20.7.88, his date of appointment to the post was 23.8.89. Therefore, it may please be examined whether the delay of more than 13 months between the issue of UPSC's recommendations and the date of appointment was attributable to the appointee or it was done due to administrative reasons. If, the delay was attributable on the part of the officer and it was beyond the period prescribed vide this Department's OM No. 35015/2/93-Estt. D dated 9.8.95, then action is to be taken accordingly. Similarly, in the case of Shri B K Aggarwal, the relevant date is the last date of DPC Meeting.

5. The case may be examined in this light and if any further clarifications are required, the same may be sought from this Department after furnishing the above information."

7. A further prayer of the applicant is for withholding benefits to respondent No. 2 on the ground that the seniority list of the DD (coop.) is still to be decided. His claim is based around the category to which the vacancy of DD (coop.) belongs i.e. whether the vacancy should have been filled through promotion or through deputation/transfer or direct recruitment as per Recruitment Rules. According to the applicant it should have been filled by promotion as the vacancy roster point is No. 9 and not No.8, as claimed by respondents.

8. During oral submissions and in the rejoinder filed on 12.9.2003 the applicant stated that the count should have started with Shri Karunanidhi who was promoted on 9.4.84 whereas the respondent has erroneously commenced the count from Shri M K Charoborty (Annexure R/3) who was promoted as DD w.e. f. 21.7.87. The respondents 3 & 4 have put forward that Recruitment Rules were notified on 25.12.84. Accordingly Shri M K Chakrvorty was the first person promoted after notification of the Recruitment Rules hence the roster point count is to be taken from Shri M K Chakrvorty , therefore the roster point is 8 and not 9 , as claimed by the applicant.

9. The applicant also alleges discrimination and malafide in denying him promotion by the respondent. The respondents claim that there has been no malafide or unfairness against the applicant. He has been given benefits due to him in his turn. He was given Financial Upgradation on completion of 12 years of service on 23.8.2001 under AC Scheme and also promoted as Dy Director



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(coop.) w.e.f. 26.12.2002 in his turn. Further Respondent No. 4 being senior to the applicant has been correctly, promoted against the vacancy claimed by the applicant.

10. There is only one issue in the present OA . What is the correct inter-se seniority position of the applicant?

11. The applicant has not challenged DoPT's advice referred to at para 6 above, and also not challenged the date of promotions of respondents No. 3 and 4 as AD(coop.). His case is based around his claim that the relevant date, in his case for determining inter se seniority is 23.12.86, for reasons spelt out in para 3 earlier.

12. From the plain reading of DoPT UO referred in para 6 earlier, it is clear that the relevant date in the case of applicant is the date when UPSC gave its recommendations for appointment of the applicant. These recommendations were issued on 20.7.88 . For respondent No. 3 and 4 the date of promotion (also accepted by applicant) is 6.8.87. Hence the final seniority list dated 14.6.2002 correctly places the applicant below respondents 3 and 4. We can see no infirmity in the final seniority list dated 14.6.2002, prepared by respondent No.1, after consultation with DoPT.

13. With regard to the question of the recruitment of Respondent No. 2 the roster point appears to be correctly calculated as the Recruitment Rules were notified on 29.2.84 and came into effect thereafter. The first

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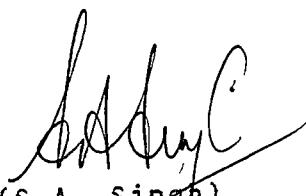
30.

promotion after Notification of the Rules was of Shri M K Chakravorty on 21.7.97 in which case the roster point is 8 and not as claimed by applicant No. 9.

14. Now we take up the question of relief. All the reliefs sought by the applicant flow from his claim that he is senior to the respondents no. 3 and 4. He has, accordingly, prayed for maintenance of status quo of the revised seniority list dated 20.8.2001 as interim relief. However, he has not challenged the final seniority list issued by the respondents on 14.6.2002.

15. For the reasons recorded earlier, we have held that the final seniority list dated 14.6.2002 issued by the respondents has correctly placed the applicant, junior to respondent no.4. Hence, his claim for promotion w.e.f. 26.11.2001 as Deputy Director (Cooperation) (relief-i) and deemed promotion as Deputy Director (Cooperation) w.e.f. 01.10.2002 (relief-ii) and also consideration for promotion to Director (Cooperation) (relief-iii) on the vacation of the post by respondent no. 3 fail. In addition for reasons shown in para 13, relief sought at SL.No.-iv is also found to be without merit.

16. In view of the above we find no merit in the case of the applicant. Thus the OA fails and is accordingly dismissed. No costs.



(S.A. Singh)
Member (A)

18 Aug
(V S Aggarwal)
Chairman

Patwal/