

Central Administrative Tribunal
Principal Bench

O.A.No.1198/2002

(6)

Hon'ble Shri M.P.Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 3rd day of December, 2002

Mr. S.C.Anand
Sector II/127, Sadiq Nagar
New Delhi - 110 049. ... Applicant

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

Vs.

1. Union of India through
The Cabinet Secretary
Cabinet Secretariat
Govt. of India
Rashtrapati Bhawan
New Delhi.
2. The Secretary
Ministry of Home Affairs
North Block
New Delhi - 110 001.
3. The Director General
Special Service Bureau
Block V (East), R.K.Puram
New Delhi - 110 066.
4. Shri G.Sethi
Asst. Director (Admn.)
Special Service Bureau
Block V (East) R.K.Puram
New Delhi - 110 066.
5. Shri Kamal Ram
Asst. Director (Admn.)
Special Service Bureau
Block V(East) R.K.Puram
New Delhi - 110 066. ... Respondents

(By Advocate: Sh. M.M.Sudan)

O R D E R

By Shri Shanker Raju, M(J):

Applicant, a retired Section Officer, assails promotion of Respondents No.4 and 5 as Assistant Director (Administration), and has sought review DPC for consideration of his case for promotion as Assistant Director with all consequential benefits, including revised pensionary benefits.

2. Applicant was promoted as Section Officer in Group 'B' Gazetted on 3.8.1990. As per the recruitment rules, the next promotional post is Assistant Director (Administration), Group 'A' Gazetted to be filled 100% by promotion from amongst the Section Officer/Private Secretary having eligibility condition of eight years regular service in the grade of Section Officer/Private Secretary. The method of promotion is by selection. Respondents held the DPC on 4.10.2000 and as per seniority, a panel of 13 eligible candidates was prepared, including the applicant, on the recommendations of DPC but only seven have been promoted, which included Respondent No.4, G.Sethi.

3. Before promotion could be affected, one of the promoted incumbents, namely, K.N.Joshi, died which resulted in holding of another DPC on 8.1.2001 wherein the name of Sh. Kamal Ram, SC candidate was recommended and approved for promotion.

4. Applicant filed OA 352/2001 but had withdrawn with liberty to file a fresh OA.

5. Shri V.S.R.Krishna, learned counsel for applicant, contends that in the DPC held on 4.10.2000, seven posts were Unreserved since two posts have already been filled by SC candidates in earlier DPC. For being inducted from Group 'B' to Group 'A', the benchmark was 'Good' as per the DoPT's instructions contained in OM dated 10.4.1999 ^{40.10.1999} ~~40.10.1999~~ ^k _k but officers graded 'Verygood', 'Outstanding', etc. are to be arranged according to the grading without giving any

significance to the interse seniority. Moreover, it is stated that the relaxed standard for SC/ST cannot be adopted as the posts were meant for 'Unreserved'.

6. In so far as the DPC held on 8.1.2001, it is contended that consideration of ACRs should have been limited to five years irrespective of qualifying service of eight years prescribed for promotional posts and in this view of the matter, as the applicant has better record than Sh. Kamal Ram (supra), non-selection of the applicant is bad in law.

7. Learned counsel for applicant further states that as Respondent No.4 was to be considered at par with Unreserved candidate as per the guidelines at Para 6.3.2(i) of the DPC contained in OM dated 10.4.1989 which is applicable in the case of promotion even to Group 'A'. In the present case, the guidelines contained in 6.3.1 would hold good and as per this the applicant, who admittedly has better grading than Respondent No.4, should have been promoted as Assistant Director.

8. Respondents, in their reply, through Sh. M.M.Sudan vehemently denied the contentions and stated that seven vacancies in the DPC held on 4.10.2000 pertained to the year 2000-2001 and the crucial date for determining their eligibility was 1.1.2000. As per the DPC guidelines in Para 5 of OM dated 10.4.1989, the DPC is to device its own method and procedure for objective assessment. It is further stated that the SC candidate, (Respondent No.4) has satisfied the prescribed benchmark of 'Good' and was

found fit to be promoted being senior in the zone of consideration and covered within the number of vacancies in the DPC held on 4.10.2000.

9. Regarding the DPC held on 8.1.2001, it is stated that the rules/instructions in force on 1.10.2000 had been made applicable and the promotion has been made as per Para 3.1. of OM of 1989.

10. Learned counsel for respondents stated that as per OM dated 3.10.2000, the relaxed standard has been applied as per 85th Constitutional amendment and the DPC has to declare candidates fit or unfit as per the OM dated 8.2.2002, and their names have to be arranged in the selected panel in order of their interse seniority, and as Respondent No.5 was senior to the applicant, he was rightly promoted.

11. We have carefully considered the rival contentions of the parties and perused the material on record. Consequent upon the constitutional amendment, DoPT's OM dated 3.10.2000 restoring relaxed standard in the matter of promotion for SC/ST, is to be implemented with immediate effect. But the aforesaid instructions would not apply in this case as admittedly, the quota meant for SC category has already been exhausted and all the seven posts of Assistant Directors were to be filled up by Unreserved candidates applying the general standards.

12. The subsequent clarification in OM dated 10.4.1989 effected in 2002 would not apply retrospectively. As the promotion was from Group 'B'

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and for induction to Group 'A' the benchmark would be 'Good' and the DoPT guidelines contained in 6.3.2 would not apply and rather para 6.3.1 of OM of 1989 would have application which stipulates that promotion made for induction to Group 'A' from lower Group the benchmark continues to be 'Good' but officers graded 'Outstanding' would en bloc be senior to those who are graded as 'Verygood'.

13. We have seen the DPC proceedings of 4.10.2000 and we find that whereas the applicant was graded as 'Verygood', as the private respondents were graded 'Good' from the assessment on the basis of ACRs, the aforesaid conclusion has been derived at. As such by placing reliance on para 6.3.1, applicant, who had 'Verygood' grading, should have been ranked above Respondent No.4 and would have been considered for promotion to the post of Assistant Director. As this has not been done, we are of the considered view that the DPC has acted in derogation of the guidelines prevalent and applicable, i.e., DoPT's OM of 1989. As the DPC had acted contrary to the guidelines, the action of the respondents, superseding the applicant, cannot be countenanced.

14. However, we find that in the relief clause, applicant has not prayed for quashing the promotion of Respondent No.4. Having regard to the reasons recorded above, we feel that ends of justice would be duly met if the present OA is disposed of with the direction to the respondents to hold a review DPC strictly in accordance with the relevant rules and DoPT instructions prevalent at the time of holding of

DPC on 4.10.2000 and consider the case of the applicant for promotion as Assistant Director (Administration). In the event the applicant is declared fit, he would be awarded all the consequential benefits such as notional seniority, including revision of pension. We order accordingly. The above directions shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

M.P. Singh
(M.P. Singh)
Member(A)

/rao/