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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.1317/2001

New Delhi this the 4th day of December, 2001

HON'BLE MR. V.K. MAJOTRA. MEMBER (A)
HON'BLE MR. KULDIP SINGH. MEMBER (J)

Shri M.S. Tewari.
S/o Shri R.S. Tewari.
R/o J-347, Sarojini Nagar.
New Delhi-110023.

-Applicant

(By Advocate: Shri M.K. Gupta)

Versus

1. Union of India.
through its Secretary.
Ministry of Commerce.
Udyog Bhawan.
New Delhi-110011.
2. The Directorate General of Supplies
& Disposals.
5, Sansad Marg.
New Delhi-110001.
3. The Secretary.
Ministry of Defence.
South Block.
New Delhi-110001.
4. The Secretary.
Deptt. of Personnel and Training.
North Block. New Delhi-110001

-Respondents

(By Advocate: Mrs. Meenu Mainee)

ORDER (Oral)

Hon'ble Mr. V.K. Majotra. Member (A)

The applicant is aggrieved by the alleged arbitrary action on the part of the respondents in not assigning him seniority in the post of Assistant Director-II from the date when he was promoted on ad hoc basis in the year 1987. ~~or when he~~ He joined on 4.1.1988 or at least from the date when the regular vacancies became available for his regularisation in the year 1991. According to the applicant, he has been

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working in the said post since 1988 without any interruption. It is stated that no DPCs were held on yearwise basis from 1991 to 1994 and again from 1996 to 1998 which is against the provisions of rules and settled law. This action of the respondents has resulted in making the applicant ineligible for promotion to the next higher post of Asstt. Director-I from the due date. The learned counsel of the applicant pointed out that as per Annexure A-8 dated 15.11.99, the applicant was regularised in the post of Asstt. Director (Gr.II) w.e.f. 12.10.99. The learned counsel drew our attention to details of vacancies arising in the cadre of Assistant Director Grade-II since 1990 submitted by the applicant in the OA. ~~as there were b~~ per which ~~2~~ two vacancies on retirement of S/Shri A. Basak and Surender Singh in 1995, five vacancies during 1997 on retirement of S/Shri K.K. Malhotra, Hukam Singh, S.R.Das, M.P. Saxena and K.S. Samran and four vacancies during 1998 on retirement of Shri K.M. Raian, Shri G.D. Sharma, Shri K.P. Unikrishnan and Shri L.R. Mandu. The learned counsel pointed out that vide Annexure A-5 and Annexure A-6 dated 31.3.95 and 1.5.95 respectively, the respondents promoted six officers and three officers respectively, to the post of Asstt. Director Grade-II in order to fill up seven vacancies of 1992 and two vacancies of 1994. The learned counsel contended that as there were 2 vacancies in 1995, 5 in 1997, 4 in 1998, he should have been considered for regularisation against these vacancies but the respondents did not hold any yearwise

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DPCs during the said period. The learned counsel relied on Union of India and Others Vs. N.R. Banerjee and others 1997 (9) SCC 287 and Rudra Kumar Sain & Ors. Vs. Union of India & Ors. 2000 (8) SCC 25 to contend that it is obligatory on the part of the respondents to prepare year-wise panels for promotion and that appointment of employee possessing requisite qualification to the promotional post after following due procedure and on approval of the competent authority if continued for a fairly long period, is not ad hoc fortuitous or stood gap and has to be taken into consideration for regularisation.

2. The learned counsel of the respondents stated that DPC meetings were held in the year 1989, 1990, 1995 & 1999 for the purpose of regular appointment to the post of ADS Grade II. He further stated that in the year 1995, DPC meeting was held for preparing a panel of seven departmental promotion quota vacancies of the year 1992 and two departmental promotion quota for the year 1994. The veracity of the statement has been verified from record produced by them. So far as the DPC meeting was held on 12.10.99 is concerned, it is found that among others it has taken into consideration, two vacancies in the year 1995-96 and the applicant was on top among two selected candidates for 1995-1996 vacancies. The learned counsel further stated that as per Annexure R-1 dated 5.8.96 and 2.7.87 (Colly.) in view of SIU work measurement studies, there was a ban on filling up of

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vacant posts. SIU study was undertaken in 1995 and, therefore, the vacancies in the years 1995 to 1998 were not filled up. The learned counsel of the respondents pointed out that Annexure R-1 dated 5.8.1996 related to non-filling up of the vacant posts in the cadre of Junior Analyst and Research Assistant only: it does not relate to the Assistant Director Gr.II.

3. We have read and re-read Annexure R-1 dated 2.7.87 and 5.8.96. Whereas OM dated 2.7.87 is a general circular stating that it is desirable that during the currency of the SIU study sanctioned posts which have been lying vacant for some time are not ordinarily filled up, circular dated 5.8.96, which was the latest on the subject, relates to non-filling up of the vacant post of Junior Analyst and Research Assistants only. This circular does not suggest that there was a general ban on filling up of the posts of Asstt. Director on promotion. In our considered view, the vacant posts of Asstt. Director Grade-II relating to the year 1995 could not have been kept vacant till 1999 and action for regularisation of those working on ad hoc basis on these posts could have been undertaken by convening a DPC at the appropriate time which was not done by the respondents.

4. The ratio of the above judgments as well as import of OM dated 5.8.96 is that vacancies in the grade of Asstt. Director Grade-II for the year 1995

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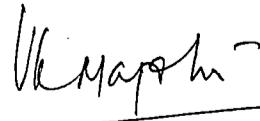
should have been filled up on convening a DPC meeting during 1995-96.

5. Applicant's representation dated 14.9.2000 (Annexure A-10) was rejected by the respondents vide Annexure A-11 dated 16.11.2000 without meeting the point raised by the applicant in his representation that on the basis of the ratio in the matter of Rudra Kumar Sain (supra), applicant should have been regularised taking into account his ad hoc service of long years.

6. In view of our finding that there was no ban in filling up the post of Asstt. Director Grade.II in respect of vacancies during 1995 and now that in the DPC held on 12.10.99, the applicant has been empanelled for promotion to the post of Asstt. Director Grade.II. Annexure A-11 dated 16.11.2000 rejecting applicant's representation dated 14.9.2000 is quashed and set aside. Respondents are directed to take into account the period of ad hoc service of the applicant in the grade of Asstt. Director Gr.II for regularising his services with effect from the vacancy in the grade of Asstt. Director Gr.II during 30.4.1995 as the applicant has already been empanelled vide DPC meeting held on 12.10.99 for 1995-96 vacancies. The applicant is also held entitled for allocation of seniority accordingly.

7. The OA is allowed in the above terms. No costs.


(Kuldeep Singh)
Member (J)


(V.K. Majotra)
Member (A)