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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1502/2001

New Delhi, this the 23rd day of October, 2001

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Shri B.K.Aalok
C/o Dr. Atul Aalok
Sr. Resident (Paed)
6/22, Men Hostel
AIIMS, New Delhi.

...Applicant

(By Advocate Shri V.S.R.Krishna)

V E R S U S

UNION OF INDIA : THROUGH .

1. The Secretary
Ministry of Mines & Minerals
Deptt. of Mines
Govt. of India
Shastri Bhawan, New Delhi.

2. The Director General
Geological Survey of India
27, Jawahar Lal Nehru Road
Kolkata - 16.

...Respondents

(By Advocate Shri S.M.Arif)

O R D E R

By Hon'ble Shri Govindan S. Tampi,

Heard S/Shri V.S.R.Krishna and S.M.Arif,
learned counsel for the applicant and the respondents
respectively.

2. Briefly stated the relevant facts of the
case are that the applicant who joined as a Geologist
in the organisation of the respondents in 1968 became
Director (Geology) on 10-5-1991, in which capacity he
worked till his retirement on superannuation on
31-1-2001. Promotion from the post of Director was to
the post of Deputy Director General, in the grade of
Rs. 18,400-22,400/-, which was to be filled up from
incumbent Directors, who have put in 8 years of

regular service in that grade. The applicant had become eligible for the said promotion in 1999 and he had been placed at Sl. No.6 in the gradation list of officers in the grade of Director (Geology). A meeting of the DPC was convened on 4-10-2000 for making recommendations for promotion to the post of DDG for the vacancies arising between April, 2000 and March 2001 and the applicant expected that the promotions would take place in the normal course and he would get his promotion in the normal course. However, on account of a stay granted by the Lucknow Bench of the Central Administrative Tribunal on 30-10-2001, the findings of the DPC were not given effect to. The stay was vacated on 8-1-2001. In spite of vacation of the stay, the respondents delayed the implementation of the DPC's recommendations with the result the applicant had to superannuate on 31-1-2001, without being promoted as D.D.G., a promotion he was looking forward to. This delay was caused only by the respondents, as they had not conducted the DPC in time in terms of the instructions of DOPT from time to time. As there were 9 vacancies in the grade of DDG to be exclusively filled by promotion, he was very much in the vacancy zone and entitled for the promotion, the delay has caused him irreparable damage at evening of his career. The respondents, who as model employers, should have finalised the selection in time had failed to do so. The relief sought by the applicant, therefore, is that he should be given the promotion on the basis of the recommendations of the DPC convened on 4-10-2000 from that date so that he

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would have the satisfaction of having retired as Dy. Director General and get the consequential pensionary benefits.

3. In the reply filed on behalf of the respondents, the facts are not disputed, but they state that proposals were sent in time to UPSC holding the meeting of the DPC for promotion to the posts of 7 DDG (Geology) in which among others the name of the applicant also was considered. Though, the minutes of the DPC were received by the respondents and were sent for approval, certain other intervening events caused the delay. In between stay of operation of the findings of the DPC was ordered on 31-10-2000 by Lucknow Bench of the Tribunal. It was vacated only on 4-1-2001. Immediately thereafter, the process was completed and the promotion orders came to be issued on 28-2-2001, by which time unfortunately the applicant, though he was recommended for promotion, had retired on superannuation. This is not a case where the respondents have been guilty of any misdemeanour, but were prevented from issuing the promotion orders due to circumstances beyond their control. There was no ground to hold them accountable for the above or to grant any relief to the applicant, as claimed by him, urge the respondents.

4. During the oral submissions, Shri V.S.R. Krishna, learned counsel very forcefully argued that had the respondents followed the model calendar prescribed by the DOPT, with regard to the holding of the DPC, after obtaining the vacancy position well in time, the applicant's cause would not have suffered.

He also refers to DOPT's OM No.22011/4/98-Estt(D) dated 12-10-1998, relevant portion of which reads as below:-

"According to legal opinion also it would not be in order if eligible employees, who were within the zone of consideration for the relevant year (s) but are not actually in service when the DPC is being held, are not considered while preparing year-wise zone of consideration panel and, consequently, their juniors are considered (in their places) who would not have been in the zone of consideration if the DPC (s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant year (s). Names of the retired officials may also be included in the panel (s). Such retired officials would, however, have no right for actual promotion. THE DPC (s) may, if need be, prepare extended panel (s) following the principles prescribed in the Deptt. of Personnel and Training Office Memorandum No. 22011/8/87-Estt (D) dated April 9, 1996."

In fact the applicant's case was much better than the instances referred above, as he was still in service when the DPC was convened and, therefore, there was no justification at all for not having granted him the promotion. He also refers to the decision of the Hon'ble Rajasthan High Court in the case of State of Rajasthan Vs. Shiv Kr. Sharma (CWP No.2627/2000) relating to the encadrement of a State Police Service Officers in Indian Police. In this view of the matter, the OA should be allowed by promoting the applicant from the date of DPC with full consequential benefits, pleads Shri Krishna. To a specific query from the Court as to whether this would not amount to granting the applicant deemed promotion over his natural seniors who were also promoted only on 22-8-2001/28-2-2001, the learned counsel states that this would not cause any difficulty as what is being sought is only notional promotion with pensionary benefits.

5. Contesting the above, Shri S.M.Arif, learned counsel states that the applicant cannot be given any retrospective promotion as prayed for and the reliance placed upon by the learned counsel for the applicant on the decision of the Hon'ble Rajasthan High Court was not correct as the facts were different. In the said case, the petitioner was correctly not considered for promotion for two to three years, but in the instant case, the applicant's case was infact considered and he was even recommended for promotion, but he could not be so appointed, as by the time, the process for promotion was completed, the applicant had retired on superannuation. There was no fault on the part of the respondents and nothing further remained to be done, argues Shri Arif.

6. We have carefully considered the matter. It is not disputed that the applicant was eligible for being promoted as DDG and he was in fact so considered by the DPC for the said promotion held on 4-10-2000, and was also recommended for promotion and placed at Sl.No.5 in the select panel, but the recommendations could not be given effect to as in between, a stay on the implementation of the recommendations was ordered by the Lucknow Bench of the Tribunal, which was vacated only on 4-1-2001. By the time, the approval of the competent authority for the promotions was obtained and the promotion were ordered on 28-2-2001, the applicant had retired on superannuation on 31-1-2001. The applicant thus has missed out his promotion by one month, for no fault of his, though he was eligible by all counts and when the promotion came even his juniors got the benefit which was denied to him. And this loss would have to be made good in the interest of justice. And it would only give an added increase in the pensionary benefits.

The OM dated 12-10-1998 referred to by the applicant and the decision of the Hon'ble Rajasthan High Court in the case of Shiv Kumar Sharma, relied upon by the applicant would squarely cover his case, as he was eligible and senior for being considered for promotion and was after consideration, placed at Sl.No.5 in the select panel. It is also evident that more than five vacancies in the grade of Dy. Director General did exist on the date of the DPC - i.e. 4-10-2000. In the circumstances, we are of the view that he is correctly entitled for promotion, to the post of DDG from that date, but as before the actual date of the promotion order i.e. 28-2-2001, he had retired, he would be entitled for only notional promotion, subject of course to his natural seniors, who are also placed above him getting the same. This would not cause any undue financial burden on the respondents.

7. In the result, the application succeeds and is allowed. The respondents are directed to promote the applicant to the post of Dy. Director General (Geology) from 5-10-2000 on notional basis and ^{and} fixation of pay accordingly, with consequential pensionary benefits. Needless to say the respondents shall grant the benefit of notional promotion to the four persons senior to the applicant and placed above him in the panel also, from the same day ~~notionally~~ to avoid heartburning ^{and} ~~and~~ discrimination. No costs.

S. Raju
(Shanker Raju)
Member (J)

(Govindan S. Tampi)
Member (A)

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