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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.1756/2001

New Delhi this the 13th day of March, 2002.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Nalini Nandana Nayak
S/o Shri Krishna Chandra Nayak
R/o K-9, Akash Bharati Housing Co-op. Society
I.P.Extension, Patpar Ganj
Delhi-24. Applicant

(By Shri K.B.S.Rajan, Advocate)

-versus-

1. Union of India
Through the Secretary
Ministry of Law, Justice & Company Affairs
Shastri Bhawan
New Delhi.
2. The President
Income Tax Appellate Tribunal
Old Central Govt. Officers Building
4th Floor, 101, Maharishi Karve Road
Mumbai-400 020.
3. Union Public Service Commission
Through its Chairman
Dholpur House
Shahjahan Road
New Delhi-110 001 ... Respondents

(By Shri M.M.Sudan, Advocate)

O R D E R (ORAL)

S.A.T.Rizvi:-

Having been appointed as Assistant Registrar in the Income Tax Appellate Tribunal (for short hereinafter referred to as the "ITAT") in 1973, the applicant became Deputy Registrar in September 1983. After completing three years' service as Deputy Registrar, he became eligible for promotion to the post of Registrar in September 1986 by which time he

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^{more than}
had completed 10 years of service both as Assistant Registrar and Deputy Registrar. The post of Registrar fell vacant in July 1992. The incumbent of the post was, however, granted extension for a period of one year which ended on 31.7.1993. Thus the post of Registrar finally fell vacant on 1.8.1993. In the absence of anyone being promoted to the post of Registrar, orders were passed by the ITAT authorities on 5.8.1993 directing the applicant to look after the general and routine administrative work of the ITAT. On 2.3.1994, a D.P.C. was held for the post of Registrar in which the applicant was considered along with another. Both were found unfit and, therefore, the post of Registrar continued to remain vacant. No D.P.C. was held thereafter during 1994- 1997. Next D.P.C. was held on 6.1.1998 by which ~~date~~², the applicant was promoted and he assumed charge of the post of Registrar with effect from 7.1.1998. The applicant's case is that had the respondents held meetings of the D.P.C. from 1994 onwards, there was every chance of the applicant being promoted much before 1998 having regard to his excellent performance not only as Deputy Registrar but also as incharge Registrar.

2. The learned counsel appearing on behalf of the respondents submits that the claim made by the applicant is not tenable for two reasons. Firstly the guide-lines issued by the DOP&T on 9.4.1996 would

2

stand in ~~his~~ way of ~~being~~ promoted from a date earlier than the date of the D.P.C held in January 1998. Secondly, according to the learned counsel, the applicant's claim is barred by limitation as he has failed to make a representation and finally approached this Tribunal within the period laid down in the Administrative Tribunals Act, 1985 after 7.1.1998 on which date he took over charge as Registrar.

3. We have considered the submissions made by the learned counsel on either side and are convinced that the meetings of the D.P.C. have been postponed time and again without any convincing reasons. The D.P.C. held on 2.3.1994 which rejected the applicant's claim had admittedly taken into account the material pertaining to the applicant's service record for the period upto 1992-93. The applicant earned another remark in his Annual Confidential Report a little after that for the period 1993-94. With this addition in the material relevant for D.P.C's consideration, a fresh opportunity for holding a fresh D.P.C. meeting had clearly arisen. Further the applicant has cogently argued that if the respondents had ultimately promoted him to the post of Registrar by considering the aforesaid material for the period upto ~~2.3.1994~~¹⁹⁹³⁻⁹⁴, the D.P.C. meeting itself instead of being held belatedly in January 1998 could as well have been held way back sometimes in 1994 itself soon/after the receipt of the applicant's Annual

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Confidential Report for the year 1993-94. As already stated, we are convinced that the respondents have not done so without any justification.

4. The learned counsel appearing on behalf of the applicant places reliance on the orders passed by this Tribunal in OA No.2258/1995 decided on 11.5.2000 which relates to the case of Shri J.S.Chhillar, a Deputy Registrar in the ITAT. The facts and circumstances in his case are by and large similar to the facts and circumstances obtaining in the case of the present applicant. In that case, the applicant was promoted as Deputy Registrar on 22.9.1998 but the Tribunal directed that he be considered and promoted instead with effect from 23.8.1994. We have considered the aforesaid submissions and find that owing to ~~the~~ substantial similarity between the facts and circumstances of the two cases, the present applicant's claim for promotion with effect from 1994 would also seem to be justified. This argument is materially strengthened by the fact that the respondents themselves have eventually promoted him by taking into account the service record for the period upto 1993-94 only.

5. For the reasons mentioned in the preceding two paragraphs, it becomes clear to us that while ^{the} D.P.C. which has promoted the applicant from January 1998 was actually held in January 1998, the same can

be deemed to have been held in 1994 itself and in that view of the matter it cannot be successfully argued that the guide-lines issued by the DOP&T to which a reference has been made above, can stand in the way. In that event, the applicant's promotion to the post of Registrar from 1994 would be deemed to be prospective.

6. In so far as the issue of limitation is concerned, the applicant's representation of November 2000 has been disposed of by the respondents by a letter of 29.1.2001 (At Annexure A1) which clearly shows that the applicant's claim has been duly examined by the respondents on merits and has been rejected on that basis. Viewed thus, the limitation plea is found by us to be without force.

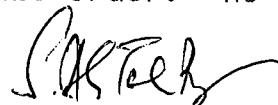
7. In the facts and circumstances set out in the preceding paragraphs, we have reached ~~the~~ conclusion that the respondents were in a position and should indeed have held a meeting of the D.P.C. again in 1994 itself based on the additional material in the form of 1993-94 ACR that had become available for that period. However, having regard to the fact that the respondents have proceeded to fix the next meeting of the D.P.C. on 20.4.1995, we are inclined to take the view that the applicant should be deemed to have been promoted with effect from the aforesaid date of 20.4.1995. The fact that the said meeting was not

(14)

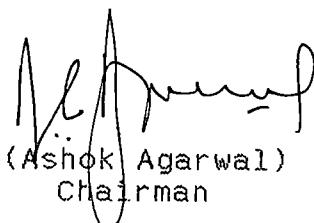
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held and no meetings were held for another two to three years will not alter the situation in this respect.

8. In the light of the foregoing, the OA is partly allowed by holding that the applicant should be deemed to have been promoted as Registrar with effect from 20.4.1995 on notional basis. The respondents are directed to give effect to this by passing an appropriate order. The applicant will, however, not be entitled to backwages. Consequential benefits, will, however, become available to him with effect from 7.1.1998 which is the date on which he actually assumed the charge of the post of Registrar. We further direct the respondents to grant consequential benefits including pensionary benefits to the applicant and pass orders as above within a period of three months from the date of receipt of a copy of this order. No costs.



(S.A.T.Rizvi)
Member (A)



(Ashok Agarwal)
Chairman

/sns/