

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 256/2001

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T.A.No.

DATE OF DECISION 19.11.2001

Shri Rajeev Sharma, JFO

....Petitioner

Shri K.B. S. Rajan

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Shri S.M. Arif

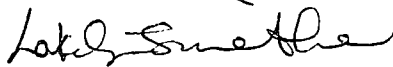
....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)

The Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.


(Smt. Lakshmi Swaminathan)
Member(J)

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.256/2001

New Delhi this the 19th day of November, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

Rajeev Sharma, JRO,
JS/SI Dte (SI-2),
Army HQ,
Ministry of Defence,
Sena Bhawan,
New Delhi-110011.

... Applicant.

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

Versus

1. Union of India through
its Secretary,
Ministry of Defence,
New Delhi.
 2. The Joint Secretary (Trg) & CAO,
Ministry of Defence,
C-II Hutments,
New Dehi-110011.
 3. Shri J.P.Mahato, JRO,
GS/SI Dte (SI-2),
Army Headquarter, Ministry of Defence,
Sena Bhawan,
New Delhi-110011.
- ... Respondents.

(By Advocate Shri S.M. Arif)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

This application has been filed by the applicant being aggrieved by the action of the respondents and rejection of his representation by their letter dated 7.6.2000.

2. The issues raised in this case fall within ^{the} ~~the~~ small compass. The admitted facts in this case are that the applicant had entered the service as Senior Technical Assistant (STA) on 27.1.1988. At that time, he had already

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possessed the Diploma in Foreign Language, i.e. Chinese and, according to him, on completion of 5 years regular service in the grade of STA, he became eligible for consideration for promotion to the post of Junior Research Officer (JRO) in 1993. He has submitted that he is, however, junior to Respondent 3 who has been promoted as JRO with effect from 28.9.1999 in pursuance of the recommendations of a Departmental Promotion Committee (DPC) which was held on 28.9.1999. According to the applicant, Respondent 3 acquired a Diploma in Tibetan much later on 21.1.1998, as ~~also seen~~^{also seen} from the facts mentioned by Respondent 3 in his reply. The respondents have not disputed the fact that a vacancy for the post of JRO arose in 1995-96 and another vacancy arose in the year 1996-97. Admittedly, a senior person who was eligible and found suitable by the DPC was promoted to the post of JRO on the vacant post which arose in 1995-96. The dispute is with regard to the post of JRO which had fallen vacant for the year 1996-97. These are the undisputed facts.

3. A preliminary objection has been taken by the respondents that the O.A. is barred by limitation. We are unable to agree with this contention, ^{is} ~~As~~ correctly pointed out by the learned counsel for applicant, ^{is} ~~that~~ no junior to the applicant had been promoted prior to the impugned promotion order of Respondent 3, who in any case was his senior, who was promoted in the DPC held in September, 1999. Apart from this, as noted above, Respondent 3 was also eligible for consideration for promotion to the post of JRO

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when the DPC met in Septemebr, 1999 and promoted him against a vacancy which arose in 1996-97 when admittedly he did not have the Diploma in any Foreign Language as prescribed in the Recruitment Rules. It is also relevant to note that the respondents have rejected the applicant's representation only on 7.6.2000 and he has then filed the O.A. on 29.1.2001. Therefore, in the facts and circumstances of the case, the preliminary objection taken by the respondents of bar of limitation is rejected.

4. According to the respondents, as they were seriously contemplating amendment of the Recruitment Rules, that is SRO 106 notified on 17.5.1995, which is titled as the Ministry of Defence, Army Headquarters, General Staff Branch, Signal Intelligence Directorate (Group 'A' and Group 'B' posts) Recruitment Rules, 1995 (hereinafter referred to as 'the 1995 Rules'), they had not held the DPC for the vacancy which arose in the year 1996-97. The 1995 Rules were amended on 16.10.2000, after lifting of the ban for such recruitment imposed by the Government of India, DOP&T O.M. dated 10.2.1997. However, it is seen from the facts submitted by the respondents themselves that they had convened the DPC in September, 1999 to fill up the 2 vacancies which arose in 1995-96 and 1996-97. The DPC had recommended the names of 2 seniors to the applicant, namely S/Shri H.O. Rastogi and J.P. Mahato/Respondent 3 for appointment as JROs. They have submitted frankly ^{that is} had they considered only those STAs who were eligible on the date of occurrence of the vacancies as per the 1995 Rules, it would

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have resulted in supersession of the seniors and consequent resentment in the cadre. This itself clearly shows that while the applicant was admittedly eligible for consideration for promotion as JRO much before his senior Respondent 3, in the vacancy of 1996-97, the respondents had not convened the DPC to consider his case. This had been done subsequently, in the DPC convened in September, 1999, by which time Respondent 3 had also acquired the Diploma in Tibetan which was one of the eligibility conditions prescribed in the 1995 Rules.

5. From the facts mentioned above, we are unable to agree with the contentions of Shri S.M. Arif, learned counsel that the action of the respondents is legal or in accordance with the provisions contained in the 1995 Rules for the post of JRO. The judgement of the Hon'ble Supreme Court in **Ramesh Kumar Choudha & Ors. Vs. State of M.P. & Ors.** (1996 (11) SCC 242) relied upon by Shri K.B.S. Rajan, learned counsel is also applicable to the facts in the present case. The judgement of the Supreme Court in **Y.V. Rangaiah Vs. J. Sreenivasarao** (1983 SCC (L&S) 382), would also be applicable to the facts in this case as the respondents should have considered the eligible STAs for promotion to the post of JRO in accordance with the Recruitment Rules then existing, that is the 1995 Rules. This has not been done. It is noted that Respondent 3 has been promoted on 28.9.1999 based on the recommendations of the DPC which met on that date. Admittedly, Respondent 3 has since assumed charge as JRO and functioned on that post from 28.9.1999 and has thereby discharged duties and

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responsibilities of the higher post. The respondents have not strictly followed the provisions of the Recruitment Rules while promoting him and ignoring the applicant who fulfil the eligibility conditions on the relevant date, that is when the vacancy arose in the year 1996-97. It is also not disputed by the respondents that Respondent 3 has been promoted against this vacancy.

5. Therefore, taking into account the facts and circumstances of the case, the O.A. succeeds and is allowed with the following directions:

(i) Respondents 1 and 2 shall hold a review DPC to consider the case of the eligible STAs, including the applicant, in terms of the 1995 Rules for the vacancy which arose in the year 1996-97. In case he is found eligible and is recommended by the DPC, he shall be granted seniority above Respondent 3 from the due date, i.e. 28.9.1999 when the latter was promoted by the earlier DPC. The applicant shall also be entitled to all the consequential benefits of the higher post, if he is found suitable and recommended by the review DPC from the same date, i.e. 28.9.1999.

(ii) The above action for convening the review DPC shall be taken by the official respondents within two months from the date of receipt of a copy of this order. Any due amounts, in case the applicant is found eligible for promotion by the DPC as JRO shall

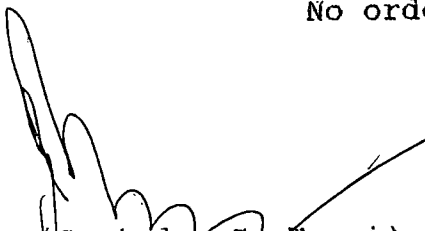
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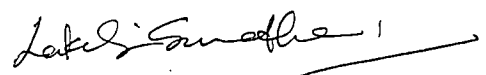
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be paid in accordance with law within one month thereafter.

(iii) In view of what has been stated above in paragraph 4 above, the higher emoluments paid to Respondent 3 as JRO shall not be withdrawn, as admittedly, he has discharged the functions and duties of the JRO.

No order as to costs.


(Govindan S. Tampi)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

'SRD'