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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.3408/2001

New Delhi, this the 3rd day of January, 2003

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. C.S. CHADHA, MEMBER (A)

Shri Malkhan Singh,
S/o Late Shri S.K. Singh,
R/o WZ-429, A/C-45,
Naraina, New Delhi-110 028

... Applicant

(By Advocate : Shri George Paracken)

Versus

1. Union of India
Through its Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan,
New Delhi-110001

2. Director,
Publication Division,
Ministry of Information & Broadcasting,
Patiala House Courts,
New Delhi

3. Jhirga Oraon,
Business Executive,
Publication Division,
Patiala House Courts,
New Delhi - 110 001

.... Respondents

(By Advocate : Shri A.K. Bhardwaj)

O R D E R

By Hon'ble Shri C.S. Chadha, Member (A):

The brief facts of this case are that the applicant Malkhan Singh was appointed as Sales Assistant in the Publication Division of the Ministry of Information and Broadcasting on 03.05.1980. He was promoted as Sales Representative against a clear vacancy, but the promotion was deemed to be on an ad-hoc basis vide an order dated 24.05.1985. The applicant continued to work uninterruptedly as Sales Representative from 24.05.1985 till he was regularised on the same post

C.S. Chadha

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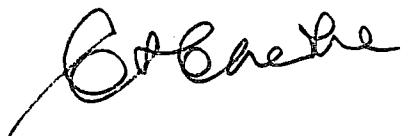
w.e.f. 01.04.1988 vide order dated 13.03.1995. After the applicant was promoted as a Sales Representative he also received his next promotion to the rank of Business Executive on an ad-hoc basis w.e.f. 19.09.1995. However, without assigning any reason, the applicant was reverted to the post of Sales Representative w.e.f. 23.11.1995. Apparently the reason for his reversion was that his seniority in the list of Sales Representatives was reduced from serial No.1 to serial No.3 in the seniority list circulated vide OM dated 25.05.1999 (Annexure P-XI). Earlier, on the basis of his promotion to the rank of Sales Representative w.e.f. 01.04.1988, a seniority list was issued on 01.11.1996 showing the applicant to be at serial No.1 and his regular appointment to that grade being w.e.f. 01.04.1988 (Annexure P-VIII). In the said OM it has been stated that the seniority list was corrected upto 30.10.1996 and objections, if any, were invited by 20.11.1996. The OM further added that if no representations are received by that date, the list would be treated as final. According to the applicant, and not controverted by the respondents, no representation was received during the laid down period. Although the said seniority list circulated on 01.11.1996 became final by virtue of non-receipt of any representation, yet another list was circulated on 28.05.1997 vide Annexure P-IX in which again the applicant was shown at serial No.1 and objections, if any; were invited by 09.06.1997. No objections were again received and obviously that list also became final. Yet again, another list was issued on 16.01.1998 on 16.01.1998 again showing the applicant at



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serial No.1 and inviting objections upto 29.01.1998. No objections were again received and therefore, there is nothing adverse against concluding that the applicant was the seniormost amongst the Sales Representatives and that his date of promotion as Sales Representative was 01.04.1988. The respondent No.2 then again issued an Order dated 08.01.1999 in which the date of promotion of the applicant was altered to 10.04.1995 without mentioning any reason therefor or without having given any show cause notice to the applicant. In fact, a revised seniority list was issued on 15.07.1999 in which the applicant has been shown at serial No.3 and the respondent No.3, who was earlier shown junior to the applicant, was shown at serial No.2, i.e., senior to the applicant. The applicant's claim that he has never been served any show cause notice or heard before both altering his date of promotion and his position in the seniority list of Sales Representatives. Aggrieved by both these orders, the applicant has filed this OA.

2. In their short reply, the respondents have averred that the promotion of the applicant was regularised w.e.f. 01.04.1988 by a DPC held in 1995. By then, the Government of India had issued an OM No.22011/1/90-Estt. (D) dated 12.10.1990, according to which all posts of Group 'C', Group 'D' and Group 'A' upto and excluding the level of Rs.3700-5000 (IV Pay Commission pay scale) the method of selection would be selection-cum-seniority and not selection by merit. According to the respondents, this mistake was realised and a review DPC was held on 17.12.1998 which considered



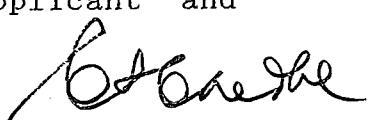
the cases of the applicant, respondent No.3 and others in terms of the above mentioned OM of 12.10.1990. By virtue of the changed method of selection, i.e. selection-cum-seniority rather than selection by merit, respondent No.3 and Shri P.G. Khakse, who has since retired, were found fit by the review DPC and they were promoted from an earlier date than the applicant because they were senior to the applicant in the seniority list of Sales Assistants. It has, therefore, been argued that a mistake once committed cannot be allowed to remain perpetually without being set right as it would cause undue harm to those senior to the applicant specially because both of them belong to the Scheduled Caste category.

3. The learned counsel for the applicant argued that the applicant had been promoted in 1985 against a clear vacancy though on an ad-hoc basis. In fact, the applicant was due for regular promotion from that date because a clear vacancy was available and he had completed five years of qualifying service as Sales Assistant on 03.05.1985. Be that as it may, he was promoted w.e.f. 01.04.1988 against the vacancy available in 1988. It was, therefore, argued that rules as obtaining in 1988 should have been applied in his case. It was argued by the learned counsel for the applicant that if the Department did not hold a DPC within six months from the date the post fell vacant, he could not be denied the promotion and it was no fault of his that the DPC came to be held nearly seven years later in 1995. Therefore, it was argued, that the Circular of the DOP&T

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dated 12.10.1990 could not be applied for a post which fell vacant in 1988 and for which the Department did not hold a DPC. Had such a DPC been held in 1988, the Recruitment Rules as at Annexure P-IV would have applied to him. The said Rules at Annexure P-IV clearly mention that the method of selection is by selection. It has, therefore, been inferred that it is not seniority-cum-merit but only merit that had to be seen. Further, it was also argued on behalf of the applicant that he had uninterruptedly held the post of Sales Representative from 24.05.1985 till 1999 and, therefore, changing his date of promotion from 01.04.1988 to 10.04.1995 without giving him any opportunity to be heard is absolutely illegal. Further it was also argued that the DPC of 1995 did not commit a mistake when it recommended the applicant for promotion in preference to the other two candidates on the ground of merit alone because the rules as applicable in 1988 had to be seen and the DPC could not go by the OM of 1990. It was also stressed by the learned counsel for the applicant that not only was he promoted correctly, he was also awarded the correct place in the seniority lists of his cadre on three different occasions between 1997 and 1999 and each time an opportunity was given to the others to represent against seniority lists but neither the respondent No.3 nor Shri Khakse ever represented within the time frame given for such representations. It has, therefore, been argued on behalf of the applicant that nearly three years and three seniority lists later the respondents No. 1 and 2 cannot suo moto take up the case and revise the seniority lists and change the date of promotion of the applicant and



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postpone it by more than 10 years without even hearing the applicant.

4. We are fully in agreement with the learned counsel for the applicant. First of all, no promotion given long back and confirmed later on by several repeated orders can be altered or withdrawn without even hearing the applicant. Secondly, we also agree with the applicant's argument that the OM dated 12.10.1990 cannot be applied to him because his selection was for a post which fell vacant in 1988. Further, we also agree with the argument that the uninterrupted promotion of the applicant right from 1985 to 1999 and his further promotion to the next higher rank cannot be altered by the Department at such a late stage. We cannot agree with the learned counsel for the respondents who stated that a mistake committed can always be corrected. There must be a reasonable time for correction of any mistake. As we have stated earlier, there was no mistake in using the principle of merit alone but even if it is argued that there was a mistake, the mistake was not only committed once in 1995 by the DPC but also repeated three times by the issuance of the seniority lists vide Annexures P-VIII, P-IX and P-X. Further, the seniority lists as circulated vide P-VIII, P-IX and P-X became final each time as no representation was received during the time period stipulated for the purpose. The department cannot sleep over this matter for several years and suddenly wake up and say that it made a mistake. Even though no mistake was committed, if the department think that it made a mistake it had time to

Enclosed

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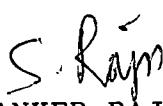
rectify the same when it gave opportunity to all similarly placed persons as the applicant when it circulated the seniority lists on 01.11.1996, 26.05.1997 and 16.01.1998. The department slept over the matter all these years and now claims to be doing justice. We cannot agree with this line of argument and it has been held by the apex Court as well that seniority list once finalised cannot be upset after many years in the case of P.S.N. Rao vs. State of Orissa reported at (2002) 6 SCC 478.

5. In view of the above discussions, we have come to the conclusion that the applicant was rightly granted promotion from 01.04.1988 and the same cannot be now withdrawn and altered to be from 10.04.1995 ~~more so~~ without hearing the applicant. The OA is, therefore, allowed. The impugned order dated 08.01.1999 and the impugned seniority list circulated on 15.07.1999 are both quashed. The applicant shall be considered to have been promoted w.e.f. 01.04.1985 to the rank of Sales Representative with all consequential benefits. This order is to be implemented within a period of one month from the date of a copy of this order is filed before the respondents.

No order as to costs.


(C.S. CHADHA)

Member (A)


(SHANKER RAJU)

Member (J)

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