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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3456/2001

New Delhi, this the 31st day of January, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Shankar Prasad, Member(A)

Manmohan Singh Grover
UDC, CSIR, Rafi Marg
New Delhi

.. Applicant

(Shri K.N.Bahuguna, Advocate)

versus

1. Council of Scientific & Industrial
Research, Anusandhan Bhawan
Rafi Marg, New Delhi

2. Smt. Sadhana Jain, UDC
CSIR, Rafi Marg, New Delhi

.. Respondents

(Shri V.K. Rao, Advocate)

ORDER

Shri Shankar Prasad

The instant OA has been preferred against the Office Memorandum dated 19.7.2001 (Annexure .1) by which the applicant has been informed that he could not have been promoted under cadre review scheme of 1994 at the relevant point of time as he was not senior enough.

2. The case in brief of the applicant is that he was appointed as LDC in CSIR Hqrs. on 9.1.1985 and as such after completion of 8 years of service he was eligible for promotion as UDC and also in terms of cadre review scheme of 1994. Aggrieved by the order dated 28.10.94 by which his juniors were promoted, he had submitted a representation dated 16.11.94. The said representation was declined on the ground that he had already been transferred to CSIO, Chandigarh. On his transfer back to

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CSIR Hqrs., he submitted another representation which has been finally replied to by the aforesaid impugned letter. He has argued that he was entitled to be promoted with effect from the date his junior has been promoted or under the cadre review scheme. He has relied on the decision of the Apex court in the case of Dwijen Chandra Sarkar Vs. UOI 1999 SCC(L&S) 486 and the decision of the Principal Bench in OA 16/99 in the case of N.K.Taneja decided on 9.1.2002. The Principal Bench in terms of the decision in the case of Renu Mullick Vs. UOI 1994(1) SCC 373 had allowed that application.

3. The case of CSIR in brief is that as per the Recruitment Rules, some of the cadres are locally recruited and seniority determined locally. Even while transferring the applicant to Chandigarh, it had been made clear that his seniority in CSIO, Chandigarh will be fixed from the date of joining in Chandigarh. Similarly at the time of transfer back to Hqrs. it had been stated that he will have to accept the bottom seniority. It is in this background that the applicant could not be considered for promotion as he was junior. The further case of the respondents is that by not challenging this order ^{in time} he has already acquiesced in the order and that the application is time barred.

4. We have heard the learned counsel for the parties and perused the documents on record.

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5. A perusal of Rules 6, 7 and 8 of the CSIR Administrative Service (Recruitment & Promotion) Rules, 1982 indicates that recruitment to the posts of Grade III (Assistant), Grade IV (UDC) and grade V(LDC) shall be made on local basis in the Central Office and in each of the national laboratory/Institutes.

6. OM dated 15.7.1994 of CSIO, Chandigarh indicates that "Seniority of Shri Manmohan Singh Grover in CSIO, will be fixed from the date of his joining in CSIO, Chandigarh". It was further indicated during the time of argument that even while transferring him back to hqrs. similar condition of bottom seniority has been imposed. Conditions in CSIR letter of 14.2.96 mentioned in OM March, 1996 (A-7) refer. Former is not controverted in the rejoinder.

7. As far as cadre review is concerned, OM dated 20.10.1994 indicates that there is no change in the cadre of UDC and the revised strength is the same as earlier existing strength at CSIR, Hqrs. i.e. 287. It has further been indicated that the posts will be filled up through DPC on the basis of seniority-cumm-fitness. Actually the promotions have been given on account of consequential vacancies arising out of the promotions to Assistant grade. The said OM is subsequent to his transfer to CSIO, Chandigarh.

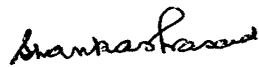
8. Renu Mullick's (supra) case has laid down two principles, namely that the transferee in the case of local cadre shall be treated as new entrant for the purpose of seniority and that he should be able to count


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past service for the purpose of eligibility of promotion i.e. of having put in the required years of service. Similarly, Dwijen Chandra Sarkar's (supra) case relates to Time-bound promotion scheme, whereby everybody is promoted after putting in certain years of service.

9. It would be seen that the instant case is not the case of Time-bound promotion but it is a case of normal promotion on the principle of seniority-cum-fitness. Even if applicant can count past service for the purpose of completing 8 years of qualified service, his seniority cannot be restored. If any person senior to him as per such seniority has been considered that could not be a ground for any grievance. The judgements cited are clearly distinguishable and are of no assistance to the applicant.

10. Under these circumstances, the OA is devoid of merit and is accordingly dismissed. No costs.


(Shankar Prasad)
Member(A)


(V.S. Aggarwal)
Chairman

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