

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO.1067 OF 1999

New Delhi, this 17th day of May, 2000

HON'BLE SHRI JUSTICE V.RAJAGOPALA REDDY, VC(J)
HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

1. Jawahar Lal Chakravarti
S/o Late Shri Lal Chand
R/o 1282, Sector-16
Faridabad.
 2. S.T. Raza
S/o Late Shri S. Munsif Raza
R/o 113-m, Sector IV
Pushp Vihar
New Delhi-110017.
 3. Mohd. Ishaq
S/o Late Shri Md. Ismail
R/o B-180, Nanak Pura
South Moti Bagh
New Delhi-110021.
- ... Applicants

(By Advocate: Shri Jog Singh)

versus

1. Union of India, through
Its Secretary
Ministry of Commerce
Udyog Bhawan
New Delhi.
2. Director General of Foreign Trade
Office of Directorate General of
Foreign Trade, Udyog Bhawan
New Delhi.
3. Ashutosh Mishra
S/o Dr. Lekhnath Mishra
R/o 157, Mittila Apartments
76, I.P. Extension, Patparganj
Delhi-110 092.
4. Rajan Sudesh Ratna
S/o Shri Lakshmi Shankar Prasad
R/o Y-3, Green Park
New Delhi-110016.
5. Satish Kumar
S/o Shri S. Sinha
R/o D-7, Flat.No.7162, Vasant Kunj
New Delhi.
6. Amiya Chandra
S/o Shri Chandrika Prasad
Working as Deputy Director
General of Foreign Trade
Ministry of Commerce
Udyog Bhawan, New Delhi.

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7. Satyan Sharda
S/o Shri Rajinder Sharda
Working as Deputy Director
General of Foreign Trade, DGFT
Ministry of Commerce
Udyog Bhawan, New Delhi.

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... Respondents

(By Advocates: Shri Rajeev Bansal for
official respondents 1&2 with
Shri K.B.S. Rajan for private
respondents 3-5 and Shri Sanjay Kumar
for private respondents 6 & 7.)

Order (oral)

By Reddy, J.

The applicants were promoted as Export promotion Officers during the years 1983 & 1984, in the Ministry of Commerce. In the year 1988, the Government merged the Export Promotion Cadre of the Ministry of Commerce with Indian Trade Service (ITS, for short). The next tier for promotion in the cadre, after merger, is to Grade-II of the ITS i.e. Deputy Director General of Foreign Trade. As per the recruitment rules, the promotion shall be as under:

"(i) 66-2/3% will be filled by promotion on the basis of non-selection of Grade III Officers of the Central Trade Service (Now I.T.S.) with 4 years' regular service in the grade;

(ii) 33-1/3% will be filled by promotion on the basis of selection of Controller/Enforcement Officer and Export Promotion Officer of the erstwhile Export Promotion Cadre with 8 years' regular service in the respective grade."

2. The applicants are thus entitled for consideration against 33 1/3% quota of vacancies. The grievance of the applicants is that though they were eligible for promotion from 1991



onwards, for consideration for promotion, the respondents have not considered a single officer for promotion from the cadre of Export Promotion Officers. It is also alleged that the respondents had filled up the posts from 66-2/3% quota by way of promotion. In spite of several representations to the respondents, no action has been taken. However, the applicants were promoted on ad hoc basis during the period 1993-94 though there were clear vacancies. The UPSC held the DPC on 6.4.1998 for the purpose of regularisation of the ad hoc promotions and promoted them with effect from 1.5.1998. The applicants' specific grievance is that in spite of the DPC's recommendations for promotion of the applicants with effect from the date of the availability of vacancies i.e., from 1993-1994, the respondents, contrary to the recommendations of the DPC, promoted them only with effect from 1.5.1998.

3. The official respondents submit that the proposals for convening of DPC to Grade-II of ITS on regular basis against the 33-1/3% quota earmarked for Export Promotion Officers etc. had been sent to the UPSC in 1992, but the UPSC turned down the proposal stating that they were unable to convene the DPC in view of the interim order of the Tribunal in OA.2115/90 directing not to make regular appointments pending the disposal

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of the case. Hence they were promoted on ad hoc basis in 1994. The UPSC was again requested to convene the DPC in 1998 and the DPC finally met on 6.4.1998 and promoted the applicants with effect from 1.5.1998.

4. The private respondents who have been impleaded in this case also filed the counter broadly supporting the stand of the official respondents.

5. We have given careful considerations to the pleadings as well as the arguments advanced by the learned counsel on either side.

6. We will first consider the question whether the promotion of the applicants in pursuance of the recommendations of the DPC held on 6.4.1998 are in accordance with the recommendations of the DPC. The critical grievance of the applicants in this regard is that though the DPC recommended promoting the applicants with retrospective effect from the date when vacancies were available, respondents have promoted only with prospective effect. For this purpose we had called for the relevant CRs and other record and the respondents' counsel have produced the same. A perusal of the DPC minutes held on 6.4.1998, however, falsifies the grievance of the applicants. Though they were

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considered ^{on} their eligibility on the date when the vacancies were available, the DPC has chosen to grant promotion only with effect from the date of the DPC. The vacancy positions for the years 1989-90 to 1995-96 have been placed before the DPC with regard to General/SC/ST quotas and applicants were duly considered for the said vacancies. The learned counsel for the applicants, therefore, contends that as the applicants were considered for promotion on the basis of the availability of vacancies from 1990 to 1996 and as the applicants were promoted on ad hoc basis with effect from 1993-94 they should have been given promotion retrospectively from that date. We do not agree. The applicants' eligibility for consideration for promotion has to be considered on the basis of the date when vacancies arose and against which the officers are considered and selected. But it is always in the discretion of the employer to grant promotion from the date of the DPC and it is not incumbent that invariably the promotion should be retrospectively granted. No decision is brought to our notice in support of the proposition made by the Learned Counsel. As we do not find any recommendation by the DPC to grant promotion with retrospective effect, promotion of the applicants cannot be faulted.

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7. The learned counsel for the applicants however contends that as the applicants have been working since 1993-94 on ad hoc basis, the ad hoc services should be counted for the purpose of seniority. It should not be forgotten that the rules enjoins selection by the UPSC after considering the eligibility and merit of all the eligible candidates. It is not brought to our notice that any such selection process has been made at the time the applicants were promoted in 1993-94 on ad hoc basis vide Shri M.K. Shanmugam and another vs. UOI & Ors. J.T. 2000. (5) S.C. F.601. The contention is devoid of merit and is rejected.

8. The next contention relates to the alleged discrimination of the applicants vis-a-vis their counterparts Grade-III officers of the ITS.

9. It is not in dispute that under the rules, the ^k promotion of officers in ITS are entitled to be promoted by way of non-selection against 66-2/3% quota of vacancies and the applicants however are to be promoted on the basis of selection against 33-1/3% quota of vacancies. The specific grievance of the applicants is that the respondents had considered and promoted the ITS officers in 1995 and the proceedings dated 4.12.1995 of promotion have

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been placed before us. The private respondents are the promoted officers belonging to the ITS. As seen already, the respondents have stated that they had sent the proposals in 1992 itself to the UPSC and they have been turned down because of interim order passed by the Tribunal not to proceed with the selection of the applicants. But it is seen from the proceedings dated 4.12.1995 that the private respondents were promoted after the OA has been disposed of by an order dated 8.6.1995. Thereafter the DPC was held and the private respondents were promoted. There is no mention however in the counter regarding the steps taken for promotion of the applicants alongwith the private respondents. The learned counsel for the official respondents has brought to our notice the proceedings dated 20.2.1996 wherein it is clearly seen that the official respondents had sent proposals to the UPSC for taking necessary action to hold DPC on "top priority basis". The delay in sending the proposals after the judgement was rendered appears to be the relaxation proposals of the recruitment rules in respect of K. Chandramati and others which could be sent to the UPSC on 4.12.1995. Thus it is not correct to say that the respondents have not taken any steps to fill up posts of the applicants. It should also be noted that the promotion of the private respondents was by the internal DPC whereas that

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✓ of the applicants being on selection basis should be done by the UPSC and the UPSC normally takes considerable time in holding the DPC and completing the selection process. In the circumstances, it cannot be said that the respondents have practised discrimination against the applicants. The learned counsel for the applicants however contends that the private respondents were promoted with retrospective effect from 1992-93 onwards though the DPC was held on 4.12.1995. We do not find any retrospectivity given to the promotion of the private respondents, except indicating against each promoted candidate the dates of ad hoc promotion. In para-i of the notification it is clearly stated that they were the dates of ad hoc promotion. However learned counsel for the applicants brings to our notice the seniority list of June 1990 showing the seniority of the Export Promotion Officers, Foreign Trade as on 1.4.1998. It is true that as against Shri S.K. Prasad it was shown that he was notionally promoted with effect from 5.6.1992 and that the actual promotion was given with effect from 23.5.1995. The name of Shri S.K. Prasad is not found in the proceedings dated 4.12.1995. Against the name of Shri A.K. Thareja, he was also shown to have ^{been} nationally promoted with retrospective date. Except these two officers, as far as the other candidates in the seniority

are concerned
list, the seniority was assigned only from the
date of regular promotion.

10. In the circumstances, we do not find any substance in this OA. The OA is dismissed. No costs.

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(Mrs. Shanta Shastry)
Member(A)

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(V. Rajagopala Reddy)
Vice Chairman(J)

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