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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

D.A.1145/99

New Delhi this the 17th day of November, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE SMT. SHANTA SHAstry, MEMBER (A).

K. V. Subramaniam
S/o Sh. K. N. Venkatachalam
R/o. 52-B/K, Sheikh Sarai,
Phase-II, New Delhi

..... Applicant

(By Advocate Shri S. K. Gupta)

Versus

1. Union of India, through
Secretary
Min. of Human Resources &
Development (Dept. of Culture)
Shastry Bhawan,
New Delhi.

2. Director General,
Archeological Survey of India,
Janpath, New Delhi-110011.

3. Superintending Archeologist
Archeological Survey of India
Delhi Circle,
Safdar Jung Tomb,
New Delhi-110003.

.... Respondents.

(By Advocate Gajender Giri)

ORDER (Oral)

By Reddy, J.-

Heard the learned counsel for the applicant
and the learned counsel for the respondents.

2. The applicant was working as Jr. Accounts
Officers in the Deptt. of Director General Archeological
Survey of India. He was promoted on ad hoc basis on
22.4.97 as Administrative Officer. Subsequently, other
officers who were junior to the applicant have also been
promoted on ad hoc basis. The juniors to the applicant
who have been promoted on ad hoc basis as Administrative
Officer were regularised. Since the applicant was not

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promoted he made representation dated 25.2.99 and requested for consideration of his case for regular appointment to the post of A.O. While the said representation was under consideration, the applicant has been reverted by the impugned order dated 11.5.99 (Annexure A-1) to his substantive post of Jr.Accounts Officer.

3. It is the grievance of the applicant that he was not considered for promotion by the DPC held on 6.1.99 or by any other subsequent DPC for promotion to the post of Administrative Officer. The OA is filed seeking regularisation with effect from the date of promotion of the applicant's juniors. It is contended by the Ld.counsel for the applicant that he was entitled to be considered for promotion under the Archeological Survey of India (Administrative Officer) Recruitment Rules, 1995(for short rules) promotion to the post of A.O. is by way of ^{selection} ~~selection~~ properly constituted by the DPC but he was not considered at all by the DPC.

4. Ld. counsel for the respondents have submitted that the applicant has been considered for promotion by the DPC on 6.1.99 but the case of the applicant could not be considered as ~~the~~ some of the ACRs. were not available and hence the competent authority has reviewed his promotion subsequently and he was not found fit. Hence it is contended that the applicant was reverted by impugned order to his substantive post.

5. We have carefully examined the contention of the learned counsel on either side. We have also perused the records. The short dispute in ~~the~~ question is whether the case of the applicant was considered for promotion according to the rules. Under the rules promotion to the post of Administrative Officer is by

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way of selection by the DPC. It is not in dispute that the applicant was eligible to be considered for promotion under the rules. The rules clearly lay down that the appointment for the post Administrative Officer is 100% by way of promotion. Hence, DPC has to consider all the candidates on the basis of merit-cum-seniority as the promotion is by way of selection.

6. We have perused the records particularly the minutes of DPC which met on 6.1.99. It reveals that on 6.1.99 the applicant could not be considered for promotion as his ACRs for the years 1994-95 and 1996-97 were not available. It was subsequently found that the ACRs for the years 1994-95 were written by an officer who has already been retired and for the ACR of 1996-97, could not be reviewed as the applicant was on leave. In the circumstances, the Director General took a decision on 10.5.99, to review the case of the applicant on the basis of available of ACRs. However, we find that Addl. Director General assuming himself as a competent authority reviewed the case and found the applicant was not fit for promotion only on the ground that the ACRs for the year 1994-95 and 1996-97 were declared as null and void.

7. Ld. counsel for the applicant submits that if ACRs, for the year 1994-95 and 1996-97 were not available for one reason or the other, the case of the applicant has to be considered by the DPC on the basis of the available ACRs for ~~five~~ years. The stand of the Ld. counsel for the respondents however is that the ACRs for the years 1994-95 and 1996-97 having been declared null and void, the applicant could not have been considered. There are clear instructions on the point that

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that DPC held for promotion of suitable officers on the basis of their service record particularly ACRs. for 5 proceeding years, if some ACRs. are not available or any of the C.Rs. have been found invalid as in this case, DPC has to consider the available C.Rs. for the proceeding 5 years in the same grade or even in the lower grade, if necessary. The present case there is no dispute that the ACRs. of the applicant are available for the proceeding 5 years leaving out the ACRs. for 1994-95 and 1996-97. Hence, the applicant has to be considered on the basis of proceeding available 5 years ACRs.

8. Moreover, there is another lacuna in this case. The case of the applicant was not reviewed by the DPC properly constituted as per rules. Only the Addl. Director General has reviewed the case and found the applicant unfit for promotion. This action is contrary to the rules. Under the rules the composition of the Departmental Promotion Committee is shown as comprising Additional Director General as Chairman, Joint Director General/ Director as Member and Director as another Member. The Director(Admn.) was also shown as a third member. All the above officers constitute the DPC. Either the Chairman or the Member individually cannot be called as DPC under the rules. Hence the review made by the Chairman is not valid in the eye of Law. The applicant is, therefore, entitled for consideration by a properly constituted DPC. Since the applicant has been reverted only on the ground that he was not found fit for promotion, and impugned order of reversion dated 11.5.99 is also liable to be set aside.

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9. In the circumstances, we direct the respondents to consider the case of the applicant for promotion by convening review DPC within a period of 3 months, on the basis of the available ACRs. for the preceding 5 years, as per rule and in the light of observations made by us in the judgment.

The DA is accordingly allowed. No costs.

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(SMT. SHANTA SHAstry)
M(A)

on behalf of

(V.RAJAGOPALA REDDY)
VC(J)

RB.