

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1169/99

New Delhi this the 4th day of November, 1999.

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.P. Biswas, Member(A)

Sh. Harjit Singh,
S/o Sh. Ram Krishan,
R/o A-1/73, Madan Gir,
New Delhi-62.

..... Applicant

(through Sh. B.B. Raval, Advocate)

versus

1. Union of India through
the Secretary,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi-1.
2. The Director-General,
Bureau of Police Research
& Development, Ministry of
Home Affairs, Govt. of
India, Block No.11, 3rd & 4th
Floor, CGO Complex,
Lodhi Road, New Delhi-3.
3. Sh. A.K. Sood,
Joint Assistant Director,
Mohan Lal,
Bureau of Police Research &
Development, Ministry of Home
Affairs, Govt. of India,
Block No. 11, 3rd & 4th Floor,
CGO Complex, Lodhi Road,
New Delhi-3.
4. Sh. S.P. Gupta,
Personal Assistant,
C/o Respondent No.3.
5. Sh. Sushil Kumar,
Personal Assistant,
C/o Respondent No.2.

..... Respondents

(through Sh. A.K. Bhardwaj, Advocate)

ORDER(ORAL)

Hon'ble Sh. S.P. Biswas, Member(A)

The fate of this original application
hinges on the determination of two legal issues.

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These are as under:-

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(i) The legality of applicant's challenge to communication at Annexure-A dated 13.05.99 issued by Respondent No.3 by which he has been debarred from promotion for a period of one year with retrospective effect.

(ii) The legality of applicant's claim for being posted/adjusted against a vacancy that arose soon after the orders of promotions/posting were issued.

2. The background facts that has given rise to the aforementioned controversy are as follows:-

Applicant, a Stenographer Grade-D was due for promotion to Grade-C. Accordingly, he was duly promoted and posted/transferred as per details as hereunder:-

S. No.	Date of orders of promotion as Gr. "C" Stenographer	Place of new posting/transfer on promotion	Remarks
1.	12.8.1994 (A-1)	GEQD/Simla	Representation against this dated 5.10.1994
2.	28.8.1994 (A-2)	CFSL/Chandi-garh	Debarred for promotion for one year w.e.f.5.10.94

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| 3. | 30.5.1997 (A-5) | CDTS/Chandi-
garh | Representation
dated 26.6.97.
Debarred for pro-
motion for one
year w.e.f.26.6.97 |
| 4. | 6.11.98 (A-8) | GEQD/Simla | Representation
dated 19.11.98.
Respondents accep-
ted applicant's
request for defer-
ment of promotion. |
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It is the case of the applicant that he could not avail the opportunity of promotional orders offered to him on account of difficulties in the family, particularly, sustained illness of his wife on several counts. Applicant would also submit that he belongs to S.C. community and both husband and wife being Government servants is entitled for a posting at Delhi, where his wife is also posted. Applicant would also claim that the respondents have not deliberately reoffered him the promotion after 31.03.99 when a vacancy arose consequent upon the transfer of Smt. Aruna Sharma promoted as Stenographer Gr.I. It is the applicant's claim that he could have been easily adjusted against the relevant vacancy in BPRD/New Delhi but the same was denied to him maliciously particularly on behalf of Respondent No.3.

3. We find that the applicant received the 4th offer of promotion on 06.11.98 and sought initially a period of three months time for the purpose of carrying out the orders. Unfortunately, as the applicant claims, his wife

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again fell ill and that stood in his way of carrying out the last order and, therefore, sought additional time which was not granted. This resulted in issue of the impugned order debaring him promotion for a period of one year with retrospective effect.

4. We shall now examine the two issues in terms of law and instructions on the subject. We find there are detailed instructions issued by Government of India (O.M. No. 22034/3/81-Estt.(D) dated 01.10.81 as to how such refusal or inabilities to carry out promotions are to be dealt with. The relevant portion which is applicable in the applicant's case herein is reproduced below:-

"If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. On the eventual promotion to the higher grade, such Government servant will lose seniority vis-a-vis his erstwhile juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above mentioned policy will not apply where ad hoc promotions against short-term vacancies are refused."

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It is evident from the details as aforesaid that the executive authorities have taken the decision to debar the applicant from promotion in terms of the instructions laid down by the Government of India.

5. Claim has been made that an official, belonging to Scheduled Caste Community and also having his spouse working in Government department, would have a preferential treatment for posting at the same place. The law is well settled in such matters and the judicial pronouncement in the case of U.O.I. & Ors. Vs. S.L. Abbas (AIR 1993 SC 2444) lays down that while transferring the Government employee, the authority must keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not confer upon the Government servant any legally enforceable rights. Transfer orders, on promotion or otherwise, do not get vitiated by personal inconvenience and circumstances requiring compassion. Even hardship pleaded by an applicant is not a matter which can enter legitimate considerations. If any authority is needed for this proposition, it is available in the case of State of M.P. Vs. S.S. Kaurav & Ors. (JT 1995(2) 498).

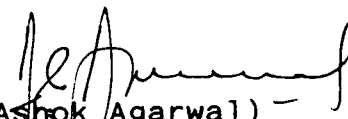
6. We also find that the applicant has taken a plea of belonging to a Scheduled Caste

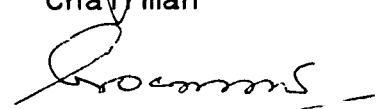
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having a spouse working in the Government. This Tribunal have had the opportunity of deciding such issues in the case of Shree Chand & Ors. Vs. U.O.I. & Ors. (1992) 20ATC 474). That was the case where the transferee was a Scheduled Caste candidate, the order was issued within a short span of time of his posting at a particular place, his wife was working at the same location and the family had several difficulties. The applicant therein took ^{also} the plea of discrimination. This Tribunal, for reasons ^{^ sent} recorded therein, refused to intervene in the transfer order. An official having a transfer liability cannot have a choice in respect of place of his posting even on promotion. We are bound by the order of the Co-ordinate Bench of this Tribunal.

7. In the background of the aforesaid details and the position of law, we do not find any reason ^{also}, much less convincing ones, warranting ^{our} intervention in the promotional order (Annexure A-1) issued by respondents.

8. The O.A. is devoid of merits and is accordingly dismissed. No costs.


(Ashok Agarwal) -
Chairman


(S.P. Biswas)
Member(A)