

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1261/1999

New Delhi, this 7th day of January, 2002

Honble Shri Justice Ashok Agarwal, Chairman
Honble Shri M.P.Singh, Member(A)

P.N. Jha
B-34, Dilshad Garden
Shahdara, Delhi-110032

.. Applicant

(By Shri G.D.Gupta, Advocate)

versus

Govt. of NCT of Delhi, through

1. Chief Secretary
5, Shamnath Marg, Delhi
2. Secretary
Deptt. of Social Welfare
5, Shamnath Marg, Delhi
3. Director of Social Welfare
Canning Lane, KG Marg, New Delhi
4. Miss Prabha Mathur)
5. Smt. Meera Mallick) All through R-3
6. Smt. C.P. Sharma)
7. Miss Raj Dulari) .. Respondents

(By Mrs. Meera Chhibber, Advocate)

ORDER(oral)

By Shri M.P. Singh, Member(A)

The applicant has filed this OA under section 19 of AT Act, 1985 challenging the order dated 9.7.98 whereby he has been placed at Sl.No.2 in the seniority list of Senior Superintendents (SS; for short).

2. The facts of the case in brief are that the applicant was appointed as Superintendent (Class II) in the pre-revised scale of Rs.2000-3500 in the year 1978. In the year 1995, the Departmental Promotion Committee (DPC) met to consider promotion to the post of SS (Rs.3000-4500). Name of the applicant in the zone of consideration was shown at Sl.No.8 while juniors to the applicant in the feeder cadre namely Miss Prabha Mathur,

Smt. Meera Mullick, Smt. Chanda Prabha, Smt. C.P. Sharma, R.C.Bhandari and Miss Raj Dulari have been shown at Sl.No.2 to 7 respectively. In August, 1995, the respondents issued a tentative seniority list of Group-A SS where the applicant's name was shown at Sl.No.18 instead of his rightful place at Sl.No.12. According to the applicant, some of the persons who had been working under him have been placed in the seniority list of SS above him. He has made representation to the respondents pointing out this mistake on 24.8.95. It is stated by him that he was due for promotion to the grade of SS from 1986, as he was in continuous service in the grade of Supdt. from 1978. He again represented on 4.10.95 reiterating the position stated by him earlier. Till now respondents have not decided his representation. Aggrieved by this, he has filed this OA seeking directions to the respondents to hold a review DPC for the post of SS and prepare year-wise panel from the date he became eligible for the post from 1.8.86 with all consequential benefits.

3. Respondents in their reply have stated that the applicant who was included in the seniority list of SS was promoted on ad hoc basis to the post of SS alongwith other officers, who were junior to him, on 21.8.85. A proposal to regularise their ad hoc service in the grade of SS was sent to UPSC to convene DPC to consider regularisation of the officers including the applicant. The post of SS is a selection post as per R/Rules notified in the year 1990. While sending the proposal, respondents have forwarded names of 9 officers for consideration for promotion to 9 posts of SS. According to the respondents, there were four vacancies of SS [3 +

1(SC)] in the year 1990-91. Against these vacancies, 7 persons were considered by the DPC. As per the assessment made by the DPC, four persons were assessed as 'very good' whereas the applicant was assessed as 'good'. Three persons junior to the applicant were promoted because of their higher grading to the post of SS in the year 1991.

4. As per our directions, respondents have produced the relevant records. A perusal of the same shows that there was only one vacancy in the year 1991-92 and against this vacancy, 5 persons were considered while the name of applicant was at Sl.No.1. The DPC has graded candidates at Sl.3 and 4 as 'very good' whereas the applicant was graded as 'good'. Since there was only vacancy, Shri C.P.Sharma was recommended for the vacancy of 1991-92. Thereafter, another DPC was held in 1992-93. Against 5 vacancies, there were only 4 persons eligible and they were considered. In this DPC, R.C.Bhandari and Ms. Dulari were assessed as 'very good' while the applicant was assessed as 'good'. Since there were 5 vacancies, applicant was also included in the panel at Sl.No.3.

5. According to the respondents, the DPC considered the question of selection of officers for promotion to the grade of SS in accordance with the DPC guidelines. The DPC examined the ACRs alongwith integrity certificate in respect of the officer recommended for promotion. On the basis of the assessment made, the DPC recommended the panel for promotion to the grade of SS which consisted of officers mentioned in Annexure-II. As per DPC guidelines, persons graded 'outstanding' are placed on top followed by persons graded 'very good' and those

graded 'good'. Keeping in view the gradings in that order, the DPC had recommended names of candidates for appointment to the post of SS. In view of these submissions, the OA has no merit and is liable to be dismissed.

6. Heard the learned counsel for the rival contesting parties and perused the records.

7. During the course of the arguments, the learned counsel for the applicant drew our attention to the additional affidavit filed by the respondents and pointed out that ten posts of SS were in existence prior to 1990. According to para 4 of the letter dated 23.4.93 (Annexure R-1 to the additional affidavit), year-wise vacancies have been shown and according to these, 3 vacancies were in existence in 1982, 2 in the year 1983, 1 each in the year 1985 and 1987, three in 1989, one in 1991 (wrongly typed as 3 in the reply and later on corrected as 1) and 5 in the year 1992 and in all there were 16 vacancies. Respondents have sent proposal to UPSC for filling up nine vacancies whereas they should have sent proposal for all the 16 vacancies. He also submitted that as per earlier R/Rules notified prior to 1990, only 3 years service in the grade of Supdt. was required to be promoted to the post of SS. But none of the parties has furnished a copy of the R/Rules notified prior to 1990.

8. On the other hand, the learned counsel for respondents has stated that R/Rules for the the post of SS have since been modified in 1990 which will have prospective effect. According to these R/Rules, 8 years service in the grade Superintendent is prescribed for

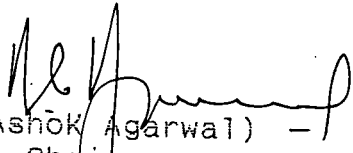
consideration of promotion to the post of SS. He also drew our attention to the notification dated 17.7.90 by which the R/Rules have been published. As per this notification dated 17.7.90, the post of SS has been classified as Group A and a Selection post.

9. The question for consideration before us is whether the applicant is entitled for being considered for promotion to the post of SS from 1986 when he became eligible after putting in 8 years of service in that grade. In the absence of R/Rules which were in existence prior to 1990, it is not clear as to whether this post was in Group A or a Selection post. R/Rules of 1990 provide for 8 years service in the grade of Supdt. to become eligible for promotion to the post of SS. However, the admitted facts are that no DPC has been held prior to 1990 and no junior to the applicant has been considered and selected or appointed to the post of SS prior to 1990. The first DPC was held by UPSC in the year 1991 in which the applicant was also considered as per his seniority in the grade of Supdt. It was because of his low grading that he could not be empanelled in that year. Subsequently in 1992 persons junior to him who obtained higher grading of 'very good' were promoted, while the applicant was assessed as 'good'. Hence he could not be included in the panel of 1992 also. It was only in the year 1993 when the applicant was considered alongwith other three persons against 5 vacancies despite his grading as 'good' he has been included in the panel of 1992-93. Therefore, we do not find any wrong committed by the DPC or by the respondents in not promoting the applicant to the post ^{prior to &} ~~earlier in~~ 1991-92. As per the DPC guidelines, even if the vacancy exists

earlier and once a panel has been prepared on the basis of 1990 R/Rules, promotion cannot be made with retrospective effect. As per para 6.4.4 of the DPC guidelines of 1989, promotion has to be made from the prospective date. We find that the DPC has been held in accordance with the guidelines issued by the Government in 1989 and the selection has been made by an independent body like UPSC on the basis of ACRs. The court/Tribunal cannot sit over the assessment made by the DPC and substitute itself as an appellate authority. In this view of the matter, we do not find any ground to interfere with the orders passed by the respondents on 9.7.1998.

10. For the reasons aforementioned, the present OA has no merit and the same is accordingly dismissed. No costs.


(M.P. Singh)
Member(A)


(Ashok Agarwal) -
Chairman

/gtv/