

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
O.A. No. 1615/99

New Delhi this the 20th Day of August, 1999

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE CHAIRMAN
HON'BLE MRS. SHANTA SHASTRY, MEMBER

Rajendra Prasad Sharma,
S/o Shri Shish Ram,
R/o House No. 64, Basant Gaon,
P.O. Vasant Vihar,
New Delhi-110 057.

... Applicant.

(By Advocate: Shri A.K. Behra)

Versus

1. Central Social Welfare Board,
Through its Executive Director,
B-12 Tara Crescent, Institutional Area,
South of IIT, New Delhi-110 016.
2. The Secretary,
Government of India,
Ministry of Human Resource Development,
Shastry Bhawan,
New Delhi-110 001.

... Respondents

(By Advocate: Shri E.X. Joseph, Sr. Counsel
with Shri S.S. Sabharwal and
Shri A.N. Dass)

O R D E R (Oral)

By Reddy, J.

Aggrieved by the threatened action of the respondents in disturbing the regular promotion made by the respondents to the post of Deputy Director, the applicant filed this OA seeking for a declaration that the recommendations made by the DPC held in June 1992 and August 1993 as having become final and settled, cannot be unsettled after a lapse of seven years, without notice.

2. The case of the applicant in brief is as follows:

3. The applicant was initially appointed in 1984 as Hindi Officer and subsequently promoted to the post of Assistant Director Grade-I. The next promotional post is

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the grade of Deputy Director. According to the recruitment rules, 100 per cent of the posts of Deputy Director are to be filled by promotion failing which by deputation. To acquire eligibility for promotion to the post of Deputy Director, the Assistant Director Grade-I should have minimum five years of regular service. By an order dated 22.4.93, (Annexure A-1) the applicant was promoted to the post of Deputy Director, on ad hoc basis. Subsequently, by an order dated 28.9.94, (Annexure A-2) his services were regularised with effect from 1.8.93. In the order it was, however, clarified that the said regularisation was subject to the outcome of OA 1186/92. Subsequently, the ^{said} OA filed by one Smt. Romila Chopra ended in dismissal. Even after the dismissal of the OA, no further order was passed in respect of the regular appointment of the applicant as Deputy Director. Several representations have been made by the employees who were left out from consideration complaining that the DPC meetings held in 1992 and 1993 were wholly irregular and regularly a review DPC has to be held. But the respondents have rejected the representations and justified their action in convening the DPC in 1992 and 1993.

4. When things stood thus, surprisingly, the respondents were taking proceedings in convening the DPC and disturbing the regular appointment of the applicant. Hence, the applicant approached this Tribunal by way of this OA.

5. The respondent filed a counter affidavit and annexed to the counter affidavit an order dated 20.7.99 passed by the respondents reverting the applicant to the

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post of Assistant Director Grade-I. Before proceeding further, it is useful to notice the order of reversion. It reads as follows:

Consequent upon the repatriation of Shri A. Anbarasu, Deputy Director from deputation and his rejoining duty in the Central Social Welfare Board on 16.7.1999, the existing strength of the cadre of Deputy Director has increased to 13 against the sanctioned strength of 12 and it has become necessary to revert the junior most officer holding the post of Deputy Director.

Shri Rajendra Prasad had been promoted to the post of Deputy Director on ad hoc basis vide this office letter No. F.4-9/87- Admn dated 2nd April, 1990 and subsequently regularised vide this office letter NO. F.4-9/87-Admn. dated 28th Sept., 1994 w.e.f. 1.8.1993.

Subsequently, however, this office had conducted various Review DPCs in which promotions effected between 1991 and 1993 to the post of Deputy Director had been reviewed. During the course of the review DPCs, it was found that Shri Rajendra Prasad had been wrongly empanelled and promoted as Deputy Director in April 1993 although he was not eligible for promotion. The review DPC had also empanelled other eligible officers for promotion to the post of Deputy Director, all of who were senior to Shri Rajendra Prasad. Although the promotion of Shri Rajendra Prasad in 1993 was deemed to be irregular, Shri Rajendra Prasad was not reverted immediately since this office had moved a case for creation of a supernumerary post to adjust him in the cadre on compassionate grounds. The Govt. of India have not yet conveyed their approval for this.

Meanwhile, there is now a need to revert the junior most incumbent in the cadre of Deputy Directors. By virtue of his original promotion itself having been irregular and his not having been included in subsequent panels for promotion, Shri Rajendra Prasad stands to be the junior most incumbent holding the post of Deputy Director.

In view of the need to revert the junior most incumbent to contain the strength of the cadre within the sanctioned number. Shri Rajendra Prasad is hereby reverted to the cadre of Asstt. Director Gr. I w.e.f. 16.7.1999".

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6. Two reasons are assigned in the above order of reversion: first, one Shri Anbarasu returned from deputation and to accommodate him the junior most Deputy Director to be reverted. Second: the applicant had been wrongly promoted as Deputy Director although he was not eligible for promotion, the applicant having been found junior most he was reverted. Now let us see the counter, in this respect. In the counter affidavit at para-3(iv) two wholly different reasons are given by the respondents for reversion; the first reason is that even though there were only four regular vacancies, 12 persons have been empanelled which was irregular. The second reason being that other eligible officers have not been considered by the DPC for promotion. It is also stated in the counter affidavit that in view of the decision of the Tribunal in OA 1455/87 dated 9.2.93 whereby clause 11(I) of the recruitment rules for post of Deputy Director was struck down, the applicant would become ineligible as he would not be completing five years of regular service in the post of Assistant Director in the scale of Rs. 700-1300/- as on June 1992. Hence, the applicant's promotion and the proceedings of the DPC were vitiated. The impugned action was taken only in view of several representations made by the affected officials. It was also averred that review DPC was convened on 17.4.98 and a review panel was drawn by the review DPC which, however, did not include the applicant's name. The reversion of the applicant from the post of Deputy Director was further necessitated by the return of Shri A. Anabarsu from deputation whose original post was Deputy Director in the respondent's department and the applicant being the junior most, was to be reverted to accommodate Shri Anabarsu who was senior to the applicant. It may not be necessary to

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refer several other averments made by the respondents in the counter affidavit as they are not germane for the purpose of disposal of the OA.

7. The only question before us is whether the reversion of the applicant was sustainable. The applicant was Assistant Director Grade-I who was promoted in April 1993 to the grade of Deputy Director and his services were subsequently regularised in September 1994 with effect from 1.8.93. The promotion was made in accordance with the recommendations made by the DPC, convened in June 1992. It is true that several representations have been received by the respondents from 1994 onwards. They were rejected on the ground that there was no irregularity in the promotion of the applicant or in the recommendations of the DPC. Thus, the respondents justified the promotion of the applicant. He continued to work as Deputy Director from 1993 to July 1999 when the impugned order of reversion was passed. As stated above, the impugned order of reversion was made mainly to accommodate Shri Anbarasu, Deputy Director who had been repatriated from deputation and who joined duty on 16.7.99.

8. Learned counsel for the respondents, however, raised a preliminary objection as to the maintainability of the OA. He contends that the OA is premature inasmuch as no order was passed by the respondents on the date of filing the OA. We do not agree. The OA was filed on 19.7.99, whereas the order of reversion was passed on 20.7.99. Hence, the respondents have already decided to revert the applicant on the date of filing the OA itself and the order has come in black and white on the next date. From the

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facts of this OA, we are not prepared to hold that the OA should be thrown out at the threshold on the ground that no impugned order was filed along with the OA. The OA was filed seeking a declaration not to disturb the promotion of the applicant. From the facts we also find that by the date of filing of OA, respondents had already taken action in reconvening the DPC and the promotion of the applicant was disturbed.

9. In order to support the case the applicant was ineligible for promotion, the learned counsel for the respondents has drawn our attention to the judgement of the Tribunal in OA 55/97. In this case the recruitment rules for promotion to the post of Deputy Director were questioned as violative of Article 14 of the Constitution. The Tribunal after considering the merits of the case, ultimately came to the conclusion that the officers carrying the pay scale of Rs. 650-1200 cannot be equated with the officers carrying the pay scale of Rs. 700-1300 for promotion to the posts of Deputy Directors and rightly struck down the recruitment rules whereby the officers carrying the lesser pay scale were equated and entitled for promotion to the post of Deputy Director. The Tribunal, however, took care in holding that the promotion to the post of Deputy Directors upto the date of the judgement remained undisturbed. It is the case of the respondents that the applicant was carrying the scale of Rs. 650-1200 prior to his appointment as Assistant Director and he was appointed as Assistant Director, Grade-I only on 6.12.90. Only from the date of his appointment as Assistant Director Grade-I with effect from 6.12.90, the period of regular service of five years have to be calculated to make him eligible for

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promotion to the post of Deputy Director. The applicant would be ineligible for promotion to the post of Deputy Director in 1992 as he was having only two years of service in the scale of Rs. 700-1300. But it should be noticed that the date of judgement is 24.2.93. After receipt of a copy of the judgement, no review DPC has been held on the basis of the decision of the Tribunal to cancel the promotions of officers to the post of Deputy Director already made nor sought to be revised on the basis of the judgement. No notice had been issued to the applicant bringing to his notice about the ratio in the judgement and seeking to cancel his promotion. On the other hand, it should be remembered, when several representations were made by several officers questioning the validity of the DPCs held in 1992-93, the respondents have been rejecting the representations one after the other. The applicant was in fact regularised in 1994 i.e. when the judgement had already come to the knowledge of the respondents. Thus the respondents have neither implemented the judgment either in its letter or in spirit. The applicant continued from 1993 to 1999 undisturbed. Now why should he^{be} disturbed? It is manifest from the aforesaid facts, that the only reason for passing of the order in fact as stated in the order itself is that one Shri Anabarsu, a deputationist had returned from deputation and he should be accommodated. It is true that Anbarasu is a senior officer, he should be given a posting. If the cadre was full, the junior most officer should have been reverted. As per the latest seniority list of Deputy Director, valid as on 8.8.95, the applicant was shown as senior to Anbarasu and one A.K. Dua was his junior. Hence, A. K. Dua should have been reverted to accommodate Anbarasu.

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10. Learned counsel for the applicant also submits that there are four officers who have been working on ad hoc basis viz. Smt. Romila Chopra, Shri J.P. Gupta, Shri B.C. Thakur and Smt. Rajita Das. However, learned counsel for the respondents submits that these officers were in fact eligible to have been considered for promotion in 1992, but they were wrongly ignored by the DPC. But the fact remains that they have been working on ad hoc basis as on 20.7.99, i.e. the date of the order of reversion. If the respondents needed to accommodate Shri Anabarsu, they could have accommodated him in place of one of these officers. They have not adopted either of the two courses. Surprisingly, a third course was adopted. They have reviewed the promotions held in 1992. What prompted them to do that, there is no plausible explanation. It cannot be either the representation made since they were already rejected, nor ~~it~~ ^{it} can be either the decision given by the Tribunal striking down the recruitment rules, since the decision was given as early as in 1993 and only thereafter the applicant was regularised.

11. It is stated by the learned counsel for the respondents that in fact a review DPC was held in 1998 and the above ad hoc employees were recommended for promotion and they ~~were also~~ issued appointment orders in 1998. Learned counsel for the applicant however contends that the review DPC held in 1998 is wholly illegal since it had been done without giving notice to the applicant. There is sufficient force in the contention of the learned counsel for the applicant. The applicant was regularly promoted in 1994 with effect from August 1993 and has been working from 1993

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continuously for a period of six years and if such was the position the respondents cannot disturb his promotion and reconvene a DPC to promote others in his place on regular basis. In the said review DPC held in 1998, the applicant has not been empanelled. Hence the right of the applicant has been adversely affected. In our view, the review DPC held in 1998 without issuing notice to the applicant and thus passing ~~of~~ the order of reversion dated 20.7.99 is wholly vitiated.

12. It is, however, clarified that any action that may be taken either to hold a review DPC if it adversely affects the seniority of the applicant can only be taken after the issue of adequate notice to the applicant.

13. The OA is accordingly allowed. The order dated 20.7.99 reverting the applicant is quashed. No order as to costs.

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(Mrs. Shanta Shastry)
Member (A)

V. Rajagopala Reddy

(V. Rajagopala Reddy)
Vice Chairman (J)

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