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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH

OA.No.263 of 1999

New Delhi, this 23<sup>rd</sup> day of November 2000

HON'BLE SHRI KULDIP SINGH, MEMBER(J)  
HON'BLE SHRI M.P. SINGH, MEMBER(A)

(5)

P.M. Mishra  
Assistant Legal Adviser  
M/o Law & Justice  
O/o Land and Development Officer  
Nirman Bhavan, Room No.625, 'A' Wing  
New Delhi. ....Applicant

(By Advocate:Shri H.K. Gangwani)

versus

Union of India  
Through

1. The Secretary  
M/o Law & Justice  
Dept. of Legal Affairs  
Shastri Bhavan  
New Delhi.
2. The Chairman  
Union Public Service Commission  
Dholpur House, Shahjahan Road  
New Delhi
3. Shri J.K. Das  
Assistant Legal Adviser  
M/o Law & Justice  
Shastri Bhavan  
New Delhi.
4. Shri B.K. Bhargava  
Assistant Legal Adviser  
M/o Law & Justice  
240 4th Main Road  
Sadasivnagar  
Bangalore-80
5. Shri K. Neelakanthan  
Assistant Legal Adviser  
M/o Law & Justice  
Branch Sectt.  
Shastri Bhavan Rear Wing  
Annexe Building  
26 Hadows Road  
Chennai-6
6. Shri C.R. Choudhary  
Assistant Legal Adviser  
M/o Law & Justice  
Shastri Bhavan  
New Delhi .... Respondents

(By Advocate: Shri Madhav Panikar)



ORDER

Hon'ble Shri M.P. Singh, M(A)

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The applicant has filed this OA U/S 19 of the Administrative Tribunal Act, 1985 challenging the order dated 23.11.1998 passed by respondent No.1.

2. The brief facts which led to the filing of this OA are that the applicant was initially appointed as an Assistant (Legal) on 19.11.1977 in the Ministry of Law, Justice and Company Affairs. Thereafter he was appointed as Public Prosecutor in Delhi Administration in July, 1985. He was selected as Superintendent (Legal) through direct recruitment by Union Public Service Commission (Commission, for short) and his name was recommended for appointment vide order dated 6.10.1986. The offer of appointment for the post of Superintendent (Legal) was sent to him on 9.9.1987 by respondent No.1. He was relieved of his duties in the Directorate of Prosecution on 5.10.1988 and he joined as Superintendent (Legal) in the Ministry of Law on the same date. According to the applicant Shri Joseph R. De Gudinho was selected and recommended for the post of Superintendent (Legal) on the basis of interview held in response to the subsequent advertisement. Thereafter some more vacancies in the post of Superintendent (Legal) were also filled up by appointing Shri B.K. Bhargava and Mrs Geeta Rawat on 29.1.1988 and 6.10.1989 respectively.



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3. The post of Superintendent (Legal) is also filled up through promotion of Assistant (Legal) working in the Ministry of Law, Justice & Company Affairs. Certain vacancies arose in the promotee quota and Shri Om Prakash and Shri C.R. Choudhary who were junior to the applicant in the grade of Assistant (Legal) were promoted from 20.11.1987. Although the applicant was considered and recommended for promotion as Superintendent (Legal) by the DPC he was not appointed on the said recommendation as he had already been recommended for appointment as Superintendent (Legal) as direct recruit by the Commission over and above the seniority of the persons considered and recommended by the said DPC. The applicant was assigned his due seniority by placing him above Smt. Shail Goel, Shri Asthana, Shri J.K.Das, Shri J.R. De Godinho, Shri B.K.Bhargava etc.

4. According to the Indian Legal Service Rules, 1957, a Superintendent (Legal) in the Department is eligible for promotion to the post of Assistant Legal Adviser. Till 28th August 1987 qualifying service for promotion to the post of Assistant Legal Adviser was three year's service in the grade of Superintendent (Legal). After amendment of the recruitment rules with effect from 29.8.1987 the requirement of the qualifying service has been raised to seven

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years. However, such of the persons as were already working as Superintendent (Legal) on the crucial date i.e. 29.8.1987 were allowed to be considered for promotion after completion of three years' service only. Certain posts in the grade of Assistant Legal Adviser fell vacant and a DPC proposal was sent to UPSC in the year 1993 in which applicant's name was also there in consideration zone along with his juniors like Shri J.K.Das and Shri J.R.D. Gudinho. The proposal was returned to the Department by the Commission with certain observations. Thereafter a fresh proposal <sup>was</sup> sent to the Commission for promoting the Superintendent (Legal) in the year 1995-96. The applicant's qualifying service as on 1.10.1995, i.e. the crucial date of eligibility fell short by four days. His case was considered for relaxation by respondent No.1 in consultation with the Department of Personnel. The DPC could not be convened as the dates of appointment of the promotee Superintendents (Legal) were not accepted by the Commission and with the result the concerned officials including applicant could not get the promotion in the year 1995/96. Later on the Department revised the dates of appointment of the Superintendent (Legal) in consultation with the Department of Personnel and a fresh proposal for DPC was sent to the Commission in the year 1996-97. The applicant gave a representation on 26.2.1997 for



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taking into account the seniority assigned to him in the light of the instructions contained in OM dated 18.3.1988. The applicant has been appointed as Assistant Legal Adviser with effect from 8.8.1997. His name has been placed below Shri C.R.Choudhary who was the juniormost Superintendent (Legal) considered by the DPC whereas the applicant was the seniormost Superintendent (Legal). According to him, he has been assigned seniority not because of the grading assigned to him by the DPC but because applicant was not considered against the vacancies for the year 1995-96 as he had not put in seven years service as on 1.10.1995. He has alleged that respondent No.2 did not think it proper to give four days' relaxation in qualifying service to him who was the senior-most Superintendent (Legal) whereas they thought it proper to exercise the power and relax the service condition for a junior and subsequent direct recruits like Smt. Geeta Rawat by five days. Aggrieved by this, he has filed this OA and sought reliefs that the respondents be directed to hold Review DPC and to consider the applicant against the DPC held in July 1993 and March 1997 for the post of Assistant Legal Adviser after giving relaxation in qualifying service as proposed by respondent No.1 with all consequential benefits.



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5. The respondents have contested the case and stated that the applicant was appointed to the post of Superintendent (Legal) against the vacancy which was reserved for a ST candidate. Since the post was reserved for a ST candidate and the Commission had recommended a general candidate it was mandatory to dereserve the post with the approval of the Department of Personnel and Training before the offer of appointment could be sent to the applicant. Accordingly approval of the Department of Personnel and Training was sought for which was conveyed by them on 1.9.1987. The offer of appointment to the post of Superintendent (Legal) was given to the applicant on 9.9.1987 through his employer, i.e. Delhi Administration. After obtaining the vigilance clearance from the employer of the applicant on 10.12.1987 they were finally requested to relieve the applicant by 18.1.1988. However, the applicant vide his representation dated 12.1.1988 requested for extension of time for joining the post of Superintendent (Legal) till 1st week of May 1988 owing to <sup>personal</sup> ~~personal~~ reason and again made a representation on 4.5.1988 for extension of further time which was granted to him. Finally the applicant joined as Superintendent (Legal) on 5.10.1988. The seniority was assigned to the applicant in the grade of Superintendent (Legal) after interpolation of seniority between direct



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recruits and promotees to the said grade. Three vacancies in the grade of Assistant Legal Adviser to be filled by promotion occurred in the year 1989, out of which two vacancies were unreserved. The respondents submitted a DPC proposal to UPSC and forwarded the names of three officers including the applicant. As none of these candidates had the required qualifying service, a proposal was sent to the Commission to grant relaxation of qualifying service. But the Commission did not grant relaxation of qualifying service. Subsequently the Department moved a DPC proposal for filing up six vacancies in the grade of Assistant Legal Adviser. All the vacancies after being carried over pertain to the year 1995-96. The applicant and Smt. Geeta Rawat fell short of qualifying service of seven years by four days and one year and five days respectively against the vacancies of the year 1995-96, the crucial date of eligibility being 1.10.1995. The Commission did not relax the qualifying service in the case of the applicant as well as Smt. Rawat retrospectively and considered five officers against six vacancies and one remaining vacancy was carried forward to the year 1996-97. The applicant was considered for the vacancy in the year 1996-97 and recommended for the appointment as Assistant Legal Adviser. According to the respondents the relief sought for by the applicant for holding a



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review DPC to review the recommendations of the DPC held in July 1993 is time barred. Hence the applicant is not at all eligible to make any such claim at this belated stage.

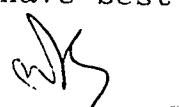
6. Heard both the learned counsel for the rival contesting parties and perused the records.

7. It is an admitted fact that the applicant was selected and recommended for appointment on 6.10.1986 against a post reserved for a ST candidate. Therefore, it took some time to get the post dereserved by respondent No.1 in consultation with Department of Personnel and Training. After dereservation of the post, he was finally given the offer of appointment for the post of Superintendent (Legal) on 9.9.1987 and was required to join on the said post latest by 18.1.1988 at Branch Secretariat, Madras. However, the applicant did not join and sought for extension of time on the ground of education of his children till 1st week of May 1988 (Annexure R-III). Thereafter he again represented and sought further extension of time on the ground of serious illness of his wife vide representation dated 4.5.1988. According to the Indian Legal Service Rules, 1957, a Superintendent with seven years' qualifying service is eligible for consideration to the post of Assistant Legal Adviser. Before 29.8.1987 the requirement was



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three years' qualifying service and the protection was given to those Superintendent (Legal) who were already working on the crucial date, i.e. 29.8.1987. They were allowed to be considered for promotion to the post of Assistant Legal Adviser after completion of three years' service only. Since the applicant was not working as Superintendent (Legal) on the date of amendment of Recruitment Rules he is not entitled for the benefit of the 3 years' qualifying service for promotion to the post of Assistant Legal Adviser. Moreover, the selection process of the applicant for the post of Superintendent (Legal) was completed by September 1987 when he was given an offer of appointment. Had he joined the post of Superintendent (Legal) immediately he would have completed seven years of service in the grade in 1994 itself and would have become eligible for the post of Assistant Legal Adviser for vacancies of 1995-96 along with his juniors who were considered in the year 1995-96. He did not join the post immediately because he was offered the post of Superintendent (Legal) at Madras (Chennai). He sought extension of time to join the post on one ground or the other. As soon as a vacancy of Superintendent (Legal) became available at Delhi, he immediately joined the post on 5.10.1988. The delay in joining the post was of his own making and now he wants relaxation in qualifying service and thus he wants to have best of everything.

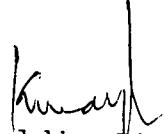


8. The learned counsel for the applicant had drawn our attention to the judgement of the Tribunal dated 8.10.1998 in OA.1328/97 and submitted that similar issue was considered in the said OA and directions were given to the respondents to consider the applicant for promotion to SAG level in relaxation of service condition. In that case, the applicants were appointed in Junior Time Scale of Pay & Accounts and Finance Service on the basis of the Civil Service examination, 1974 and the person who was the junior most in the batch was given the offer of appointment earlier whereas applicants being senior to him were given offer of appointment much later. It was because of this reason that the junior most person joined the service prior to the applicant and became eligible for promotion to SAG level earlier to the applicants. In that case there was no delay on the part of the seniors (applicants) to join the service nor they had asked for extension of time to join the post. In this case, the applicant has deliberately delayed his appointment of Superintendent (Legal) to suit his convenience. In view of this, the present OA is distinguishable from the judgement in OA.1328/97.

9. In view of the above, we do not find any merit in the OA and the same is accordingly dismissed. No order as to costs.

  
(M.P. Singh)  
Member(A)

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(Kuldip Singh)  
Member(J)