

CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH

OA.No.1257 of 1998

New Delhi, this 09th day of March 2001

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

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Surinder Singh  
S/o Shri Ajit Singh Dhaiya  
C/o Directorate of Enforcement Hqrs.  
Lok Nayak Bhawan  
Khan Market  
New Delhi

... Applicant

(By Advocate: Shri S. Bisaria)

versus

1. Union of India, through  
Secretary  
Department of Revenue  
Ministry of Finance  
North Block  
New Delhi
2. The Director of Enforcement  
Enforcement Directorate  
6th Floor, Lok Nayak Bhawan  
Khan Market  
New Delhi
3. The Secretary  
Ministry of Home  
Department of Personnel & A.G.  
North Block  
New Delhi

... Respondents

(By Advocate: Shri K.C.D. Gangwani)

ORDER(Oral)

By Shri Kuldip Singh, M(J)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 for a direction to the respondents to consider his name for promotion with effect from 17.11.1997 to the post of Chief Enforcement Officer (CEO, for short) against the the quota of

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Office Superintendent and further to strike down the recruitment and promotion rules of 22.11.1975.

2. The applicant alleges that to fill up the post of CEO, there are two separate cadres, namely (a) Enforcement Officer and (b) Office Superintendent and claims that both these cadres are separate and independent in the department and the department has chosen to include both the cadres constituting as feeder cadre for promotion to the post of CEO. As per existing rules, 3 years' service in the cadre is required to be eligible for consideration for promotion. It is further stated that although there are two separate independent cadres constituting the feeder cadre for promotion to the post of CEO, the said rule is totally silent, vague as the ratio of promotion from each cadre is to be considered at the time of promotion by selection. This leaves unguided principle in the hands of the respondents while considering the candidates for promotion to the post of CEO and as such the rule is totally arbitrary, discriminatory, vague and is liable to be declared as ultra vires the provisions of Article 14 and 16 of the Constitution. It is further stated that the applicant having been promoted as Superintendent on 26.12.1985, has become eligible to be considered for promotion after completing 3

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years' service in the grade. But till date he has never been considered for promotion. Even in the DPC held on 31.12.1997 the department had considered 20 persons from amongst the cadre of Enforcement Officers only for promotion to the post of CEO and no Office Superintendent was considered.

3. The OA is being contested by the respondents. They have submitted that the recruitment rules for the post of CEO were framed and circulated vide Notification dated 22.11.1975. These provide for appointment through two different channels i.e. (i) 75% by promotion from amongst Enforcement Officer and Superintendents in the Directorate with 3 years' regular service in the grade and (ii) 25% on deputation basis from amongst the officers holding posts in analogous scales in other departments. They also pointed out that rules provide for 3 years' regular service for promotion to the post of CEO. For that purpose the Enforcement Officer and Superintendent both are eligible and for considering an officer to be eligible for the post of CEO the length of service is taken into consideration and on that basis the post of CEO is filled up and it does not leave any unguided principle in the hands of the respondents. So the rules as they stand are quite justified and does not require any

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amendment for prescribing any quota for the post of CEO from the cadres of Superintendent and Enforcement Officer. Thus the rules are not ultra vires and violative of Articles 14 & 16 of the Constitution nor it leaves any unguided discretion in the hands of the respondents for giving promotion to the post of CEO from amongst Superintendents and Enforcement Officers.

4. We have heard both the learned counsel for the parties and gone through the records.

5. In the grounds to challenge the rules and getting the same declared as ultra vires of the Constitution the applicant has contended that since the rules are silent as regards prescribing any separate quota for Superintendents and Enforcement Officers, that leaves unguided discretion in the hands of the respondents. So, on that score, the rules are liable to be quashed and for this purpose the learned counsel for the applicant has also submitted that from the year 1985 till the year 1997, no Superintendent has ever been considered as CEO. According to the respondents they have not come into the consideration zone. According to the applicant, this goes to show that the rules are being manipulated and the same are liable to be quashed and quota from the posts of Superintendent and Enforcement Officer has to be prescribed

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separately. In support of his contention, the learned counsel for the applicant has also referred to para-XII DoP&T's O.M. dated 10.9.1985 which is reproduced below:-

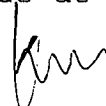
"According to principle 5(ii) of the annexure to GI, MHA, OM No.9-11/65-RPS, dated the 22nd December, 1959, where promotions to a grade are made from more than one grade and quotas have been laid down for each feeder grade, the eligible persons are to be arranged in separate lists in the order of their relative seniority in their respective grades. Thereafter, the Departmental Promotion Committee is to select persons for promotion from each list upto the prescribed quotas and arrange all the candidates selected from different lists in a consolidated order of merit which will determine the seniority of the persons on promotion to the higher grade. The 'NOTE' given below that principle gives a direction to the Ministries/Departments to the effect that if quotas for promotion have not already been prescribed in the relevant recruitment rules, they may do so, in consultation with the UPSC, wherever necessary. Despite this clear direction, it has come to the notice of this Department that in a large number of cases separate quotas for the feeder grades have not been prescribed with the result that difficulties for the feeder grades have not been prescribed with the result that difficulties arise in the preparation of a panel of promotees. It is, therefore, necessary to initiate action to review the existing recruitment rules with a view to considering the feasibility of laying down quotas for the feeder grades, in consultation with the Department and the Union Public Service Commission where necessary."

6. In our view as far as the rules, as they stand on record as on today, it seems the department is following the principle of seniority and the number of years of service



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rendered by the Superintendents as well as Enforcement Officers. That does not leave any discretion in the hands of the respondents, rather it suggests that the length of service rules out the possibility of any discrimination to be made by the respondents amongst the Superintendents vis-a-vis the Enforcement Officers. Further, on our enquiry, we find that for the post of Superintendents the feeder cadre is Assistants/Head Clerks whereas for the post of Enforcement Officer the feeder cadre is Assistant Enforcement Officers, Assistants and Senior Stenographers. The learned counsel for the respondents has conceded at the Bar that for the post of Enforcement Officer, a quota has been prescribed for the post of Assistants to be promoted to the post of Enforcement Officers. But why there is no quota for the post of CEO from the cadres of Superintendents and Enforcement Officers there is no specific reply to the same. But we find that the rules itself prescribe that the regular service rendered by officers of either of the feeder cadres of Superintendents and Enforcement Officer has to be taken into consideration for filling up of the post of CEO. Since there is no element of discrimination, we restrain ourselves to hold that the rules are ultra vires of the Constitution in any manner and the same cannot be quashed. The rules as it stands as on date are

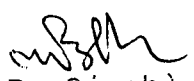


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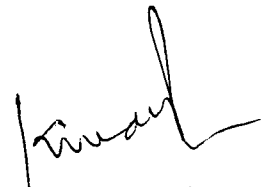
quite valid rules and it does not leave any unguided discretion at the hands of the respondents. So, no interference is called for at this stage and the OA is dismissed.

7. However, before parting with the case, since the applicant has mentioned about the DoP&T's guidelines supra reproduced in Swamy's Book, we direct that respondents may consider prescribing quota from the feeder cadre of Superintendents and Enforcement Officers for promotion to the post of CEO, if they feel the need for prescribing quota.

No order as to costs.

  
(M. P. Singh)  
Member(A)

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(Kuldip Singh)  
Member(J)