

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 143/98

New Delhi, this the 28th day of September, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Sh. O.P. Shukla,
working as Additional Legal Advisor,
in the Department of Legal Affairs,
Ministry of Law and Justices,
New Delhi.

....Applicant

(By Advocate: Shri R. Venkatramani with Sh. S.M.
Garg and Ms Neera Gupta)

Versus

Union of India through:

1. Law Secretary,
Department of Legal Affairs,
Ministry of Law & Justice,
New Delhi.
2. Joint Secretary (Admn.)
Department of Legal Affairs,
Ministry of Law & Justice,
New Delhi.

...Respondents

(By Advocate: Shri P.H. Ramchandani)

ORDER

delivered by Hon'ble Shri S.P. Biswas, Member (A)

Applicant, working presently as Additional Legal Adviser - Department of Legal Affairs, is aggrieved by Annexure P-1 order dated 9.1.1997 by which his request for ante-dating his promotion as Deputy Legal Advisor (D.L.A., for short) from the date of promotion of his junior Shri J.L. Minocha. [redacted] was rejected. Consequently, he is seeking relief in terms of issuance of direction to respondents

d

to promote him retrospectively to the post of DLA w.e.f. 17.12.1991 alongwith Shri Minocha, junior to applicant.

2. Applicant seeks to justify the aforesaid claim on the basis that on 31.10.1991 when he had become eligible for promotion to the post of DLA, promoting his junior on 17.12.1991 as DLA without considering his candidature is arbitrary and unreasonable. He would also urge that there were two vacancies in 1991 and hence the respondents at the time of considering Shri Minocha for promotion to the post of DLA should have considered the applicant's case as well by holding DPC after October, 1991 or in 1992. That his case for timely promotion has been prejudiced since no DPC was held in 1992 right upto October, 1993. In the year 1993, though the applicant was considered for promotion against a vacancy of 1991-92, but he was promoted on 13.10.1993, when he was on study leave and he could join the said post only on 2.2.1994, after returning from USA. Thus, due to the deliberate delay and illegal action of the respondents, the applicant has been subjected to the loss of seniority for more than two years and his juniors were allowed to supersede him in promotion to the next higher post of Additional Legal Advisor. Even otherwise, when the DPC ultimately was held in 1993-94, he ought to have been promoted w.e.f. the same date in 1991-92.

2

3. Applicant would further contend that, the action of the respondents is in violation of the Department of Personnel & Training O.M. No. 14017/82/88 EST.(RR) dated 23.10.1989 read with O.M. No. AB14017/12/87-Estt(RR) dated 18.3.1988, which prescribe that if junior officers, who have completed the prescribed eligibility condition for promotion, are being considered for higher post, the senior officers who have not completed the required service, but completed the probation period, should also be considered for the higher post.

4. That apart, applicant claims to be a scheduled caste candidate and the Govt. of India's instructions in O.M. No. 1/10/74-Estt (SCT) dated 23.12.1974 issued by DOP&T provide the following while considering the cases ~~of~~ of promotions for SC/ST officers/officers.

"In promotion by selection to posts within Group 'A' which carry an ultimate salary of Rs. 5,700/- or less p.m., there is no reservation. However, SC/ST officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion. Their position in the select list would, however, be the same as assigned to them by Departmental Promotion Committee on the basis of their record of service".

5. While opposing the claims, the respondents have submitted that there were four vacancies pertaining to the year 1990-91 and the DPC was held in September, 1991. The "cut off" date for the purpose of consideration of candidates for promotion in 1991-92 was 1.10.1990. On this crucial date for considering promotions the applicant did not complete the

2
P

eligibility condition of three years' service in the feeder grade, having joined as A.L.A. on 30.10.1988. He had not even completed the probation period on the said date. On the other hand, Shri J.L. Minocha who was then Assistant Legal Adviser w.e.f. 31.8.1987 was eligible for promotion as DLA as he had completed more than three years of service as on 1.10.1990. The applicant was short by one month as on 1.10.1990 which was the crucial date for considering eligibility against the vacancies of 1991-92. Respondents sought relaxation of eligibility conditions in favour of the applicant from the Department of Personnel & Training. After receipt of reply from DOP&T, respondents did send a proposal to UPSC suggesting constitution of DPC which could be held in July, 1993. Thereafter, the respondents referred the recommendations of the DPC to the Appointments Committee of the Cabinet and obtained their approval for appointment of the applicant alongwith his juniors to the posts of DLA. However, when the approval of the ACC was received the applicant was out of the country to U.S.A. on study leave. As such he could be promoted to the post of DLA only after he had returned from the study leave and physically available to assume the charge. The main contention of the respondents is that on 1.10.1990 i.e. the ~~crucial~~ crucial date for determining the eligibility for promotion in the year 1990-91, the applicant's case could not be considered for vacancies of 1991-92 recruitment year even though his junior, Shri Minocha, was eligible for consideration for promotion having joined as A.L.A. w.e.f. 31.8.1987.

g
H

6. The crucial issue that falls for determination is whether the applicant can legitimately claim promotion from 17.12.1991 when Shri Minocha, his junior was promoted.

7. The law on the issue of claim for promotion is now well settled. Right to be considered for promotion according to one's own turn flows from Articles 14 and 16 (1) of the Constitution. No employee has a right to be promoted but he has only a right to be considered for promotion according to rules. Chances of promotion are not conditions of service and are defeasible. If any authority is needed for this proposition, it is available in Syed Khalid Rizvi Vs. UOI 1992 Supp (3) SCC 575. While interest to seniority can be acquired under relevant rules but there is vested right to seniority or promotion.

8. What is not in dispute is that on the crucial date of consideration i.e. 1.10.1991 the applicant was not due for consideration as he did not fulfil the eligibility criteria of three years service. As per provisions under Rule 8 of the relevant recruitment rules called "Indian Legal Service Rules", 1957 it is provided in sub-section (iii) that "a person shall not be eligible for promotion to a duty post of Grade-III (DLA) unless he has held a duty post in Grade-IV for a total period of not less than three years." This is an essential ^{condition} and the applicant did not fulfil this criteria when the consideration for promotion took

g
11

place on 1.10.1991. The respondents' action, therefore, cannot be faulted for not considering the applicant's case against the vacancies of 1991-92.

9. The applicant would then argue that completion of period of probation is not a condition precedent for consideration for promotion. There are clear examples (Dr. Raghbir Singh and Sh. K.N. Chaturvedi) in whose cases relaxations were allowed in terms of two years probation. In the case of Dr. Raghbir Singh, DPC was convened in advance and ACC clearance was obtained before he had become eligible. He was promoted as Joint Secretary even without waiting for the probation period to be completed. In the case of Shri Chaturvedi, even though he did not complete his probation of two years in the post of Additional Legislative Counsel and yet he was promoted to the post of Joint Secretary. Thus, the respondents could have sought the necessary relaxation well in advance and effected the promotion. We are unable to accept such contention. If some employees have been offered some benefits undeservedly one cannot take that as a matter of legal right and demand parity in matters of illegality. The mere fact that the respondents have passed a particular order in the case of another person similarly situated can never be the ground for issuing an order in favour of the petitioner on the plea of discrimination.

10. In the case of Chandigarh Administration & Anr. vs. Jagjit Singh & Anr. [JT 1995 (1) 445] the Apex Court held that the order in favour of other

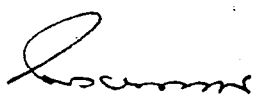
person might be legal and valid or might not be that has to be investigated first before it can be directed to be valid in the case of another person. If the order in favour of the other person is found to be illegal or not warranted it is obvious that such illegal or unwarranted order cannot be made the basis for issuing a writ compelling the respondents to repeat the illegality or pass another unwarranted order. In the instant case, respondents appear to have sought for some relaxation from DOP&T, notwithstanding the legal position as above.


11. In the background of the aforesaid position we are unable to accept the applicant's contention that the relaxation should have been obtained by the respondents as was done in the case of Dr. Raghubir Singh and Ors. and made available to him as well.

12. We also do not find any illegality in adhering to a "cut off" date. Such dates invariably have to be fixed in all selection matters when the respondents are required to scrutinize the documents made available to them by the contending parties for the purpose of processing them. In any case, as per applicant's own submission he had become due for promotion for the post of DLA only on 31.10.1991, though short by only one month. It is an item of unavoidable hazards of civil service in our set up. Even if there is a marginal delay, we don't find any biased attitude on the part of respondents in causing that delay entailing prejudice to the applicant.

13. There is yet another legal issue and that is with respect to limitation. We find that the cause of action for the applicant arose in the year 1991 whereas the OA has been filed in 1998. As per applicant's own admission the first representation itself was made on 2.5.1994. Applicant has not come out with any reasons, muchless convincing one's, which could persuade us to condone such delays. Condonation of delays is the legal pre-requisite before such matters could be considered (See P.K. Ramchandaran Vs. State of Kerala & Anr. [JT 1997 (8) SC 189]).

14. In view of the details aforesaid, the O.A. fails on merit as well as on limitation and is accordingly dismissed. No costs.


(S.P. Biswas)
Member (A).

 28.9.98
(T.N. Bhat)
Member (J)