

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
PRINCIPAL BENCH

OA No.1609-1998

NEW DELHI this the 25th day of May, 2001

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

(24)

Somnath Kataria
s/o Late Shri Hansraj Kataria
r/o 109D, AG-1 Pocket, Vikaspuri,
New Delhi-110018/

.....Applicant
(Applicant in person)

VERSUS

Secretary
Ministry of Water Resource
Shram Shakti Bhawan,
New Delhi-110001.

.....Respondent
(None present)

ORDER

By Hon'ble Shri Kuldip Singh, Member (J):

The applicant has filed this case under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:-

(a) The applicant may be regularised on the post of Assistant Director from the date vacancy arose in the promotee quota (13.6.78). (Under article 14 of the Constitution of India).

(b) Seniority list at Assistant Director level may be finalised on the basis of the OM dated 22.12.1959 and the deemed amendment to OM dated 22.12.1959 (vide OM dated 7.2.1986) or on the basis of OM dated 18/5(i)/81-Adm.I dated 18.5.82 issued by Ministry of Energy, Department of Power (Under clause 14 of CWE (Group A) Service Rules 1965 (Under article 14, 16, 73, 309 of Constitution of

KN

25

India). The applicant name should appear in the seniority list of Asstt. Director as on 1.6.79 and 1.5.81.

(c) The applicant should be considered for promotion to the post of Deputy Director whenever the occasion was arisen after completion of eligibility that is after 13.6.80 because the 50% of service at Class II post maximum of 2.5 years service is required to be counted as an equivalent service at Assistant Director Level as a part of 4.5 years of service required for promotion to the Deputy Director post (Proviso 26(ii) of CWES 1965). (Under article 14, 16, 309, 311(2) of Constitution of India).

As per the directive of The Principle Bench, New Delhi dated 27.5.88 in case of Shri C.L. Dhar Vs. UOI, the fresh panel as on 6.6.1981 was required to be considered by DPC and which was actually held on 27.5.1989 for promotion to Deputy Director post. The applicant is required to be considered in the same DPC.

As the panel of 17.4.80 DPC selected 92 officer for promotion to the Deputy Director post and during the currency panel when the direct recruits complete their eligibility an order was passed and thus department was having the intendment to fill up 92 posts as the date of fresh panel was forwarded to 6.6.1981, all the available post of Deputy Director available upto 10.4.82 are required to be filled up through the fresh panel.

km

(26)

C(i) If the applicant could not be selected for regular promotion, then the applicant is required to be considered for ad hoc promotion to the Deputy Director post from 10.4.82 onwards whenever his junior in seniority list have been promoted to Deputy Director post.

2. Facts which are not in dispute are as under:

The applicant had joined the Central Water Commission (CWC) as a Supervisor on 7.2.1969. He was promoted as Extra Assistant Director (EAD) on ad hoc basis vide order dated 26.7.1971 where he is stated to have been regularised on 7.2.1972.

3. The next promotion from the post of EAD is to the post of Assistant Director (AD) for which an employee is required to have rendered 3 years service as EAD to become eligible for the post of AD. Promotions to the post of AD were held sometime on 19.3.75 as DPC had met on that day and some seniors of the applicant were promoted from the post of EAD to the post of AD, but it is alleged that for next 7 years no DPC was held and next DPC was held on 9.8.1982 but those ADS realised that none of the promotee officer would go further higher to the post of Deputy Director and Director in future. The applicant then proceeded to some foreign country on deputation and in the meanwhile 35 posts of AD became available and Assistant Engineer/EAD were promoted to the post of AD on 31.3.78 on ad hoc basis and one Shri V.P. Mishra who was junior to the applicant was also included in the list of ad hoc promotees.

fr

(27)

4. The applicant⁴ came back to the parent department w.e.f. 11.8.80 and he was also given promotion as AD on ad hoc basis. However, he again went on deputation to Iraq from where he returned in 1983. On his return on 21.6.83, he was promoted as AD on regular basis under NBR principle his deemed promotion date was fixed as 9.8.82, i.e., the date on which his juniors were promoted on regular basis. However, when the seniority list was prepared showing the position as on 1.6.1985 the applicant was not given seniority whereas his junior Shri Moolaram Das Gupta was assigned date of regularisation as 9.8.78, i.e. when he was promoted on ad hoc basis but the applicant had been deprived of the benefit of NBR principle. Thereafter he made representation to the Commission and the matter was raised through association of Central Water Engineering Service requesting the applicant and other promoted officers who were promoted in 1982 be assigned the regular date of promotion as the date on which the vacancy was available.

5. However, one Shri V.P. Mishra, a promotee Assistant Director had filed an OA 31/87 for quashing the seniority list issued on 12.9.85. His OA was allowed and respondents were directed to draw fresh seniority list as on 3.8.98 but the respondents took an SLP before the Hon'ble Supreme Court bearing No. 14389/88 wherein following directions were given:-

" After hearing the learned counsel for the petitioners and respondent in person we do not consider it necessary to interfere. V.P. Mishra was admittedly promoted to the post of Assistant Director on 31.3.78 and on that post his services were regularised w.e.f. 9.8.82 after the Departmental Promotion Committee approved his appointment. Therefore, he is entitled



(28)

to seniority w.e.f. the date on which a vacancy in the promotee quota was available for him. According to the document produced before us vacancy was available some where in 1979".

6. In view of the above direction on the SLP, Mishra was assigned seniority as AD on 3.5.79 when vacancy was available in the promotee quota and he further got a promotion as Deputy Director w.e.f. 5.1.1993.

7. Since benefit was only given to Shri Mishra so certain other EADs who were similarly situated also filed an OA which included the juniors and seniors to the applicant bearing No. 1050/94 which was allowed by the CAT on the basis of the judgment given in Mishra's case. So the applicant claims that his seniority should also be fixed in accordance with the judgment given in V.P. Mishra's case read with the judgment given in OA 1050/94 by the Tribunal and he claims that according to these two judgments seniority is to be formulated on the basis of continuous officiation and seniority is to be counted from the date the vacancies became available in the promotee quota.

8. However, the Union of India had gone again in an SLP bearing No. 4873/96 against the judgment of the Tribunal in OA 1050/94 wherein the order of the Tribunal was quashed and the Hon'ble Supreme Court has observed as under:-

" It is seen that admittedly the vacancies for the promotees had arisen on May 3, 1979 and thereafter V.P. Mishra is entitled to the vacancy that arose on that date. Therefore, when the inter-se seniority is determined between the promotees to the substantive vacancies that have arisen on May 3, 1979 and thereafter, though the direct recruits were recruited

JK

(29)

later, their fitment in the order of seniority should be determined with reference to rota and quota prescribed under the aforesigned administrative instructions and the statutory rules. It would appear that the Government of India had worked out the rota and quota in tune with the above rules" (emphasis supplied).

9. It was also observed that the Tribunal was not right in giving direction to the respondents to consider their fitment vis-a-vis the order passed by this Court (Hon'ble Supreme Court) in their quota above the direct recruits and rather the directions were given to maintain rota and quota under the administrative instructions and the statutory rules.

10. The applicant now claims that earlier there was an OM dated 22.12.1959 which provides the general principles of seniority and which followed the principle of rota quota. However, the said OM was modified by another OM dated 7.2.1986 which dispensed with the system of keeping vacant slot for promotee and direct recruit against the vacancies of the particular year or previous years being carried forward. The intendment of the order was that it would have retrospective effect and accordingly it was held in OA 473/89 decided by the Ernakulam Bench of the Tribunal. Thus the applicant has pleaded that in accordance with the OM dated 7.2.1986 which had modified the OM dated 10.12.1959 he is entitled

K

(30)

to be given seniority w.e.f. the date when a vacancy had become available in the promotee quota irrespective of the fact of finalisation of seniority vis-a-vis direct recruits and promotees under the rota quota system.

11. So the short question before this Tribunal is that the applicant who was promoted as AD by the DPC held in the year 1982 is entitled to get his seniority fixed in accordance with the OM of 1986 which came subsequently or in accordance with the OM of 1959 which was existing at the time when the DPC had met.

12. For this purpose we may mention that the colleagues of the applicant had earlier twice filed OAs before this Tribunal. One of the colleague of the applicant was Shri V.P. Mishra who was given benefit of continuous officiation and was given seniority from the date when the vacancies had become available as per the directions given by the Hon'ble Supreme Court quoted in para 5 above. After the judgment of V.P. Mishra another batch of colleagues of the applicant had come up with an OA bearing No.1050/94 which judgment had also allowed a similar benefit to be given. However, the Union of India had again gone in an SLP where the directions given by the Tribunal were quashed and the Hon'ble Supreme Court had given directions as quoted in para 8 above. The judgment was given by the Hon'ble Supreme Court on 12.2.1996. Thus, to our mind, the controversy with regard to fixation of seniority of ADs of this very department had been set at rest by the Hon'ble Supreme Court vide their order in SLP No. 3767/96 dated

Ku

(31)

12.2.96 though the applicant had mentioned in his pleadings about some judgment of the Ernakulam Bench of the Central Administrative Tribunal in OA 473/1989 and has urged that the Ernakulam Bench had held that the OM dated 7.2.1986 had retrospective effect and has the effect of deeming amendment to OM of 22.12.1959. The said judgment has not been placed before us and even otherwise we may mention that as per the pleadings it seems that in the order the Tribunal may have interpreted the OM dated 22.12.1959 and as well as the OM dated 7.2.1986 but the fact remains that subsequent to that the Hon'ble Supreme Court while deciding an appeal from OA 1050/94 had set the controversy at rest and had given the observations quoted above.

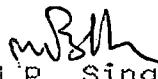
13. The respondents in their reply/counter-affidavit have submitted that the seniority of these ADs had been not fixed in accordance with the judgment given by the Hon'ble Supreme Court and since the Hon'ble Supreme Court in their judgment dated 23.4.1991 which had held that the rule of rota quota as laid down in OM dated 22.12.1959 was applicable and it was held that the promotee officer is entitled to seniority according to the rules as applicable at the relevant period and the seniority list thereafter had been revised. Even in case of Mishra also his seniority was also revised and he also came down from 337A to 444 on the same principle and Mishra had also gone for Contempt Petition before the Hon'ble Supreme Court for being downgraded and the Contempt Petition was also discharged

Km

(32)

by the Hon'ble Supreme Court that shows that even the seniority of Shri V.P. Mishra was also fixed in accordance with the OM dated 22.12.1959 so we find that the applicant is not entitled to reckon his seniority in accordance with the OM dated 7.2.1986.

14. Besides that it is an admitted case of the applicant himself that he had not been continuously officiating in the post of Assistant Director, CWC as he had been going abroad on deputation, so we are of the considered opinion that the applicant has been rightly assigned seniority. Apart from that we may also mention that this OA had been filed on 20.8.97 and the seniority was fixed sometime in the year 1985 (1.6.1985) so the applicant cannot now come up to unsettle the seniority which had already been settled so we find that the OA is devoid of any merits and the same is dismissed. No costs.


(M.P. Singh)
Member (A)


(Kuldip Singh)
Member (J)

Rakesh