

(21)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 295/98

New Delhi: dated, this the 6th day of June, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Balwant Singh Solanki,

S/o Late Shri Jandu Ram,

R/o Vill. Baprola,

P.O. Najafgarh,

New Delhi-43

..... Applicant.

(By Advocate: Shri B.B. Raval)

Versus

Union of India,
through
the Cabinet Secretary,
Govt. of India,
Rashtrapati Bhawan,
New Delhi-1

2. The Secretary,
Research and Analysis Wing,
Cabinet Secretariat,
Govt. of India,
Room No. 7, Bikaner House Annexe,
Shah Jehan Road,
New Delhi-11

3. Shri Anil Kumar,
Field Assistant,
Now working as Deputy Field Officer,
Research and Analysis Wing,
C/O Respondent No. 2,

4. Shri S.S. Nair,
Field Assistant,
C/o Respondent No. 2

..... Respondents.

(By Advocate: Shri Madhav Panikar).

ORDER

S.R. Adige, VC(A):

Applicant impugns respondents' order dated 12.8.97 (Annexure-A) and seeks promotion as Senior Field Assistant with effect from the date his juniors were so promoted as such with consequential benefits. In this connection, applicant has named Shri Anil Kumar and Shri S.S. Nair as his juniors.

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2. Admittedly applicant joined respondents' organisation as Security Guard (redesignated as Field Assistant) on 12.9.69. The next promotion is to the post of Sr. Field Assistant. Prior to coming into force of the R & AW (RC & S) Rules, 1975, the method of promotion from the post of Field Asstt. to Sr. FA was selection, with certain weightage given for educational qualifications. All eligible candidates used to be considered for promotion and the eligibility period for FAs for promotion to the post of SFA was

- a) Non-matriculate - 7 years service in IB & RAW
- b) Matric - 5 years service in IB & RAW
- c) Intermediate - 4 yrs. " " "
- d) Graduate - 3 yrs. " " "

3. Respondents held a DPC on 31.1.73 to make recommendation for promotion from FA to SFA. It is not denied that applicant was only Higher Secondary passed when he joined respondents organisation in 1969. He passed BA (part I) in 1973. B.A. part-II in 1974 and BA part-III in 1975. Thus when the DPC met on 31.1.73 applicant was not entitled to get weightage for Intermediate/ B.A.

4. In a copy of an unsigned seniority list of Field Assistants as on 1.7.79 shown to us and taken on record, applicant is shown at Sl.No.99 and against his name his educational qualifications are shown as B.A. The name of Shri Anil Kumar is shown at Sl.No.161 and against his name his date of joining is shown as 21.1.70 and his educational qualifications are shown as Intermediate. Similarly at Sl.No.164 the name of S.S. Nair is shown and against his name date of joining is shown as 27.1.70 and his educational qualifications

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are shown as SSLC. Against the names of both Shri Anil Kumar as well as Shri S.S.Nair it is stated in the aforesaid seniority list that they have been promoted as HSG on 10.5.73. Respondents in their reply have stated that Anil Kumar though junior to applicant in the seniority list of FA, had higher academic qualifications than applicant. Necessary relaxation of prescribed length of service was granted in his case by the competent authority, and he was considered and recommended for promotion to the post of HSG by the DPC, which was duly approved by the competent authority, while applicant was not eligible for consideration for promotion to the next higher grade of HSG on 31.1.73. In regard to Shri S.S.Nair, it is stated that no one by that name was considered and promoted as HSG.

5. Even if applicant had any grievance regarding the promotion of Shri Anil Kumar and /or Shri S.S.Nair as HSG in 1973, he should have challenged their promotions at that time, and the correctness of the promotion of the aforesaid two persons cannot be questioned at this point of time, after the lapse of nearly 28 years. Further the fact that the name of Shri S.S.Nair does not feature in the seniority list of SFAs and the higher levels of posts shown to us and taken on record, leads to a reasonable presumption that he left service ^{some time} soon after he was promoted as SFA, assuming that the unsigned seniority list is correct, and he was promoted as SFA on 10.5.73.

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6. In 1974 the mode of filling up the post of SFA underwent a change, and came to be governed by the principle of seniority-cum-fitness instead of selection, on the basis of the cadre rules which came into force w.e.f. 21.10.75. As per these rules, vacancies were to be filled up

- i) 50% on the basis of seniority-cum-fitness
- ii) 30% through LDCE
- iii) 20% through deputation/re-employment

(later this was changed to 80% on the basis of seniority-cum-merit, and 20% through LDCE).

7. The next DPC for promotion from FA to SFA was held on 14.5.74, by which time promotions were being made on the basis of seniority-cum-fitness and not on the basis of selection. In that DPC the junior most FA who was considered for promotion as SFA had joined on 1.2.69, while applicant had joined on 12.9.69. He was, therefore, not within the zone of consideration.

8. From the impugned order dated 12.8.97 it is clear that further promotions from FAs to SFAs were made in 1979 through LDCE as well as seniority-cum-fitness basis. In the LDCE some persons junior applicant were promoted as SFA on the basis of their performance in the competitive examination in regard to which applicant cannot legitimately complain. In regard to those promoted on the basis of seniority-cum-fitness, the aforesaid

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Memo dated 12.8.97 states clearly that none junior to applicant was promoted and no materials have been shown to us during hearing to establish that this assertion is not correct.

9. The impugned order dated 12.8.97 further makes clear that the next DPC was held in July 1980, which covered personnel appointed upto 28.7.69. As applicant had joined respondents' organisation on 12.9.69 his name did not come within the zone of consideration by that DPC also. No cogent materials have been furnished on behalf of applicant to refute the above contents of impugned order dated 12.8.2000 either.

10. Thereafter DPCs were held in October, 1984, May, 1985, June, 1986 and March, 1987. Meanwhile consequent to alleged gherao and wrongful confinement of senior officers FIR No. 311/80 u/s 342/186/353/332/427/506 IPC was instituted against applicant and others. Applicant was arrested and placed under suspension. Hence the aforesaid DPCs did not clear applicant's name for promotion as SFA. That criminal case was finally withdrawn pursuant to withdrawal application dated 8.2.87, and the suspension was revoked on 2.3.87. A charge memo dated 5.3.87 under Rule 16 CCS (CCA) Rules was issued to applicant in regard to the aforesaid incident, which concluded in his being censured by order dated 16.9.87. It is clear that during applicant's suspension from 1980 till 2.3.87 there could be no

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question of his promotion.

11. Applicant was again considered for promotion along with his junior Shri Shenoy in December, 1987. While Shri Sheonoy was found fit and was promoted, applicant was not found fit for promotion by that DPC. There is no specific allegation of bias or malafide against the members of the DPC of December, 1987, and it is beyond our jurisdiction to sit in appeal over the DPC's recommendations.

12. Furthermore we note that applicant even at the time he had filed this O.A. in February, 1998 had stated in the O.A. that he had retired on superannuation from Government service.

13. Under the circumstances we find ourselves unable to grant the relief prayed for by applicant. The O.A. is dismissed. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

S.R. Adige

(S.R. Adige)
Vice Chairman (A)

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