

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

O.A. No. 1910/95

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)
Hon'ble Shri R.K.Ahooja, Member (A)

New Delhi, this ^{May} 11th day of April, 1996

Prem Prakash Dhal
s/o Shri Atma Ram
r/o 1023, Sector IV
Sonepat(Haryana)

...Applicant

(By Shri P.P.Khurana, Advocate)

Versus

1. Lt. Governor, Delhi
Government of NCT, Delhi
Rajniwas Marg,
Delhi.
2. The Secretary
Department of Social Welfare
Govt. of NCT, Delhi
5, Sham Nath Marg,
Delhi.
3. Smt. Chandra Prabha
Deputy Director (Technical)
1, Canning Lane,
Kasturba Gandhi Marg,
New Delhi- 110 001.

..Respondents

(By Shri B.S.Oberoi, proxy of Sh.Anup Bagai, Adv.)

O R D E R

By Hon'ble Shri R.K.Ahooja, Member (A)

The applicant was directly recruited as a Senior Superintendent in the Social Welfare Department of the Govt. of NCT, Delhi on 25.8.1993. The next post in the channel of promotion is that of Deputy Director (Technical) and as per the recruitment rules for the post, Senior Superintendents with two years regular service in the grade are eligible. The

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grievance of the applicant is that the respondents are not considering his case for promotion to the post of Deputy Director(Technical) either on regular or an adhoc basis notwithstanding that he fulfils the eligibility conditions as per recruitment rules and that they are instead promoting ineligible officers who are junior to him.

2. The applicant submits that he completed two years of regular service as Senior Superintendant on 25.8.1995, thus, fulfilling all requirements for consideration for promotion. On the other hand Respondent No.3, Smt. Chandra Prabha was appointed as Senior Superintendant on regular basis w.e.f. 22.5.1995 initially on probation for a period of two years. In the same order, the respondents also promoted one Smt. Sharda Mathur as Senior Superintendant on regular basis. On 1.2.1994, the respondents issued the impugned order, appointing Respondent No.3 and the said Smt. Sharda Mathur as Deputy Director (Technical) on ad-hoc and emergent basis for a period of six months or till regular arrangements were made whichever be earlier. The applicant contends that on the date of issue of this order neither of the two promotees were even Senior Superintendant on regular basis yet their ad-hoc appointment was extended from time to time. The names of Respondent No.3 and Smt. Sharda Mathur therefore, did not even appear in the Seniority List of Senior Superintendants issued in February, 1996

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whereas the name of the applicant appeared at Sr.No.10 which now has gone up to No.5 after various requirements. Even according to the Seniority List issued on 7.8.1995, the name of the applicant appears at Sr. No.10 and that of Smt. Sharda Mathur appears at Sr. No.11 and that of Respondent No.3 at Sr. No.14. Since then Smt. Sharda Mathur has also retired on 30.9.1995 for which reason she has not been impleaded as a party by the applicant. The applicant also submits that officers at Sr. No.1, 2, 3, 7 and 9 of the Seniority List have already retired, those at Sr. No.5 and 6 are facing major disciplinary proceedings under CCS(CCA) Rules, 1965 and therefore, cannot be promoted, those at Sr. No.4 and 8 do not fulfil the requisite qualifications laid-down in the Recruitment Rules for promotion and hence he is the senior most person eligible for consideration for regular promotion. His grievance is that despite this, he has not been considered even for ad-hoc promotion and those junior to him even though ineligible, in terms of recruitment rules, have been given promotion over looking his legitimate case.

3. The respondents have filed a counter affidavit. Firstly, they claim that the applicant was not even eligible when Respondent No.3 and Smt. Sharda Mathur were promoted since he had not at that time completed the requisite two years of service. They also state that the Respondent No.3 had been working on the

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post of Senior Superintendent since 21.10.1987 on an ad-hoc basis, and she was promoted as Deputy Director since she had the experience of seven years and was other wise also qualified. The respondents deny that the seniority list referred to by the applicant is a final Seniority List; in any case, the promotions were made before the issue of the tentative Seniority List. The case for regular appointment will be taken up when the Seniority List is finalised, at which time the case of the applicant would also be duly considered.

4. During the course of the arguments, it was contended on behalf of the applicant that the ad-hoc appointment being for a period of six months only, everytime the ad-hoc appointment was extended, the case of all the eligible persons had to be considered. And that as such, the case of the applicant had any how to be considered whenever ad-hoc promotions were continued after the applicant completed two years of regular service as a Senior Superintendent. The learned counsel for the respondents put before us that the case of the applicant had been considered but due to the fact that the certain adverse comments had been found against him in the files, he was not considered fit for ad-hoc promotion. It was also stated that the disciplinary proceedings were contemplated against the applicant under Rule 14 of the CCS (CCA) Rules, 1965.

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✓ To ascertain the facts the ACR dossier and other relevant records concerning the applicant were also made available and perused by us at the time of hearing.

5. Shri P.P.Khurana, counsel for the applicant, firstly argued that if the applicant was not eligible at the time, the Respondent No.3 who was promoted was also ineligible since she was not at that time a Senior Superintendent on a regular basis. Secondly, he submitted that assuming that the applicant had no claim till he completed the requisite two years of regular service, he definitely and in-disputably had a right to be considered for promotion thereafter. In this connection, the learned counsel drew our attention to the instructions contained in OM No.28036/8/87-Estt.(D) dated 30.3.1988 issued by the Department of Personnel and Training, New Delhi regarding ad-hoc appointment. He pointed out that as per the instructions in this O.M., ad-hoc appointments were normally to be avoided, but if such a course of action became unescapable then instructions in Para 4(iii)(a) became applicable. This Para 4(iii)(a) reads as follows:

4(iii) Where adhoc appointment is by promotion of the officer in the feeder grade, it may be done on the basis of seniority-cum-fitness basis even where promotion is by selection method as under:-

(a) Adhoc promotions may be made only after proper screening by the appointing authority of the records of the officer.

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It was argued that the promotion on ad-hoc basis in the feeder grade had to be done on the basis of Seniority-cum-fitness, and should be done after proper screening by the Competent Authority. Further more, only such officers who fulfil the eligibility conditions prescribed in the Recruitment Rules should be considered and where no such officers were available then necessary relaxation should be obtained from the Competent Authority in exceptional circumstances. It was argued that the applicant was senior to Respondent No.3, was the only eligible officer and also had a good record. It was vehemently argued that the record of the officer in this context meant the AEB dossier and not any stray comments made in some file or the other as contended by the respondents.

6. As regards the allegation that disciplinary action may be initiated against the applicant, Shri Khurana cited the case of Lachman Das Gandhi Vs. Chief Post Master General, New Delhi (1992)20 ATC 100, wherein it was held that the question for consideration was what was the position vis-a-vis the applicant when his juniors were promoted. Hence adhoc promotion could not be decided on the mere evidence of a preliminary investigation. Since admittedly, no charge-sheet had issued in the case of the applicant on the relevant date, his promotion could not be with held.

7. The learned counsel for the respondents sought to justify the promotion of respondent no. 3 on the basis of her ^{long} albeit adhoc service as Sr.Suptd. and also because the tentative seniority list is likely

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to undergo changes in which there was every possibility that Respondent No.3 would become senior to the applicant. It was also argued that the adhoc appointments were purely temporary and ^{for} emergent requirement and as Respondent No.3, due to greater experience was considered more suitable compared to the applicant who was relatively in experienced, there was nothing wrong with the impugned order; in any case, the applicant would be duly considered if found within the zone of consideration at the time of regular appointment. It was also submitted that as disciplinary proceedings were now pending against the applicant he could no longer be considered for ad-hoc promotion in preference to Respondent No.3.

8. We have carefully considered the arguments advanced by the respondents but find no merit therein. The argument that the Seniority List presently in existence is only a tentative one and is subject to revision is not relevant since even regular promotions have to be made on whatever is the latest Seniority List, though if it is tentative seniority list, the orders of promotion can always be made provisional and subject to any change in the Seniority List. The comparative claims of the applicant and Respondent No.3 for consideration thus, have to be seen on the basis of the existing inter-se seniority and according to the this admittedly the applicant is senior to Respondent No.3. Further more, as per

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existing orders, Respondent No.3 has been appointed as Senior Superintendent on regular basis only w.e.f. 22.5.1995 and thus, even on date of hearing of the application she lacks two years of regular service in that capacity. Thus, not only the applicant is senior to Respondent No.3 but is in fact, the only eligible officer while Respondent No.3 is strictly not even eligible because of lack of regular minimum service. In this context Shri P.P.Khurana cited/ relied on G.Radhakrishna Sarma Vs. Union of India & Others (1993(23) Administrative Tribunals Cases 500) in which it was held by the Hyderabad Bench of this Tribunal that eligible junior can be promoted, by passing the senior who is yet to become eligible and the grant of adhoc promotion to the senior to avoid regular promotion to the junior was held on facts to be invalid and violative of administrative rules of Government of India regarding adhoc promotion. We feel that the present case also falls within the ratio of this decision since its ^{natural corollary is} that a junior who is not ^{even} eligible ^{in this case} cannot bypass an eligible senior.

9. On the question of the 'fitness' of the applicant, we have perused the ACR dossier of the officer and found nothing in it which could be construed as an adverse report. A file was shown to us by the learned counsel for the respondents in which certain observations adverse to the applicant in handling a particular case were recorded. Such observations, particularly when there is no record to show that the applicant was given an

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opportunity to explain his position, can hardly be the basis for assessing his fitness in the face of an ~~otherwise~~ ^{otherwise} blameless service record.

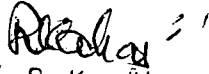
10. The plea of the respondents that since then major penalty disciplinary proceedings have been initiated against the applicant, is also not relevant as has been discussed earlier in the case of Lachhman Das Gandhi Vs. Chief Postmaster General, New Delhi (1992(20) Administrative Tribunals Cases 100). In that case it was held that adhoc promotion could not be denied merely on the ground that the case of the employee had been referred to CBI for enquiry. In such a case, it was observed, if the respondents decided to commence disciplinary proceedings against the applicant by issuing a chargesheet then in that event, he will not be confirmed but in case he was penalised he could even be reverted. Admittedly, at the time the Respondent No. No.3 was promoted on adhoc basis ^{or even} when this order of adhoc appointment in respect of Respondent No.3 was continued after the applicant attained two years experience, there was no chargesheet against him and thus, he could not be denied adhoc promotion on that ground. ^{could} Action ^{could} be taken against him on the basis of ^{such a} chargesheet ^{follow} following his adhoc or regular promotion. Subsequent disciplinary enquiry cannot bar ^{such a} promotion with retrospective effect.


11. On the basis of the above discussion, we allow the application and order that the respondents should

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✓ consider the applicant for promotion to the post of Deputy Director (Technical) from the date when his juniors were promoted and to promote him on an adhoc basis if he is eligible and fit, within one month from the date of receipt of a copy of this order. If the disciplinary enquiry subsequently initiated against him is continued then he will not be confirmed and in case he is penalised, he could also be reverted. The applicant will however be not entitled to the payment of back wages. No costs.


(R.K. Ahooja)
Member (A)


(A.V. Haridasan)
Vice Chairman(J)

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Ans.