

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.1944/1995

New Delhi this the 31st day of August, 1999.

HON'BLE SHRI R. K. AHOOJA, MEMBER (A)

HON'BLE SHRI SYED KHALID IDRIS NAQVI, MEMBER (J)

S. D. Keswani S/O Hoth Chand,  
R/O Qr. No. 329, Sector 1,  
Sadiq Nagar,  
New Delhi.

... Applicant

( By Shri Sarvesh Bisaria, Advocate )

-Versus-

1. Lt. Governor of Delhi through  
Chief Secretary,  
Govt. of N.C.T. of Delhi,  
Sham Nath Marg, Delhi.

2. Director of Education,  
Govt. of NCT of Delhi,  
Old Secretariat,  
Delhi.

... Respondents

( By Shri Rajender Pandita, Advocate )

O R D E R (ORAL)

Shri R. K. Ahooja, AM :

This is another case where the applicant is aggrieved on account of his stagnation in the initial post to which he was recruited for a period of over 31 years.

2. The admitted facts of the case are that the applicant was appointed as Workshop Incharge in the Science Branch of the Education Directorate of Delhi Administration in the scale of Rs.550-900 w.e.f. 24.2.1967 and has been stagnating at the maximum of the grade for the last several years. The applicant submits that he made various representations for his

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promotion in accordance with the scheme formulated by the Government of India for career advancement of Group 'C' and 'D' employees notified vide Ministry of Finance O.M. dated 13.9.1991, Annexure A-1. However, no action has been taken by the respondents so far.

3. The respondents have stated that the above scheme which has been notified by the Government is not within the purview of the Delhi Administration. The applicant has not impleaded the Union of India as a party to the O.A. For these reasons, the O.A. may be dismissed.

4. We have heard the counsel. The learned counsel for the applicant relies on Deena Nath Dogra v. Delhi Administration & Ors., 1991 (7) SLR 475 in which it was held that promotion in every wing of public service is necessary for generating efficiency in service and fostering the appropriate attitude to grow for achieving excellence in service. The learned counsel submits that in that case a direction was given to the respondents to create<sup>a</sup> supernumerary post in order to promote the applicant therein.

5. Shri Rajender Pandita, learned counsel for the respondents, raises two preliminary objections. Apart from the ground taken in the counter that the scheme in question has been promulgated by the Government of India which has not been impleaded as a party, the learned counsel also submits that the application is not maintainable under Section 19 of

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the Administrative Tribunals Act, 1985 since there is no specific order against which the applicant has approached the Tribunal. Shri Pandita has submitted that the applicant should have first filed a representation and only in case his representation was not replied to or was decided against him the applicant could approach the Tribunal. He also relies on the Full Bench judgment of this Tribunal in B. Parameshwara Rao v. Divisional Engineer, Telecommunications, Eluru. Full Bench Judgments of CAT (1989-1991) Vol. II p.250.

6. We have carefully considered the submissions made by the learned counsel. We do not consider that the objection taken by Shri Pandita regarding the maintainability of the O.A. is valid. Section 19 of the Act provides that "a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance." This does not mean that the order should be specific. It is not only the issuance of an order but also the failure to issue the order that may give a cause of action to a person to approach the Tribunal. We agree with the learned counsel that "normally" an employee can approach the Tribunal only after he has exhausted the alternate remedies including that of representation to the competent authority. In this case, we find that the applicant did make a representation for grant of promotion in terms of the scheme dated 13.9.1991. Though the receipt of his representation is denied by

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the respondents, we find from Annexure 2 at page 17 of the O.A. that a reply was given to the applicant in the following terms :

"Sub:- Career Advancement of Group 'C' & 'D' employees (Promotion case of Sh. S.D.Keswani, Workshop Incharge in the next higher scale).

With reference to your office endorsement no.347 dated 12.3.93 on the above cited subject, it is to inform that the case of Sh. S.D. Keshwani is under process and his service book is returned herewith on your requirement."

A reply was given stating that the case of the applicant was under process. It is submitted that no action thereafter was taken by the respondents. We therefore, conclude that the applicant had a legitimate ground for approaching the Tribunal under Section 19 of the Act.

7. It has next been contended by the learned counsel for the respondents that the Delhi Administration at the relevant time did not have the power to implement the scheme issued under Ministry of Finance O.M. dated 13.9.1991 in regard to career progression of Group 'C' and 'D' employees. We have also gone through the copy of the O.M. dated 13.9.1991 and find that the scheme is applicable to all Central Government employees who are directly recruited to Group 'C' and 'D' posts as also to employees whose pay on appointment was fixed at the minimum of the scale and who have not got the promotion even after one year and reaching the maximum

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of the scale of such post. In such cases, there is a proposal for grant of in situ promotion to the pay scale of the next higher post in the channel of promotion. No further reference is required to the Government of India. It is also provided as per para 3 of the scheme that if there exists no promotional grade, information relating to designation, scale of pay, recruitment qualifications, duties and responsibilities attached to such posts along with suggestion for suitable promotional scale based on comparable promotional grades generally available for the posts of that level, be forwarded to the Ministry of Finance. The employees of the Delhi Administration are also governed by this scheme. There is also no specific averment on the part of the respondents that the scheme is not applicable to the employees of the Delhi Administration. We do not consider, therefore, that the non-impleadment of the Union of India is fatal to the case of the applicant since it has not been stated that there is no post available in the normal line of promotion.

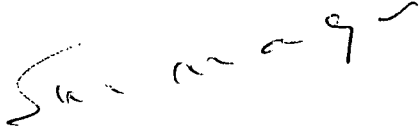
8. As already noted, the applicant filed a representation to which a reply was given that the matter was under consideration. Since then by an order dated 9.8.1999, a further scheme has been issued by the Department of Personnel & Training, Government of India providing for career progression in respect of Group 'C' and 'D' employees on the completion of 12 and 24 years of service. In these circumstances, we

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consider it appropriate that respondents should first examine the representation of the applicant.

9. Accordingly we dispose of this O.A. with a direction that the respondents will decide the representation Annexures 2 & 3 within a period of three months from the date of receipt of a copy of this order. No costs.

  
( R. K. Abooja )  
Member (A)

  
( Syed Khalid Idris Naqvi )  
Member (J)

/as/