

2  
1  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No.2278 /1995

Date of Decision: 3 - 4 -1998

Shri V. K. Asthana

APPLICANT

(By Advocate Shri B. B. Raval

versus

Union of India & Ors. . . . . RESPONDENTS

(By Advocate Shri K. C. D. Gangwani

CORAM:

THE HON'BLE SHRI Lakshmi Swaminathan, Member (J)

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?

(S.P.Biswas)

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

3.4.1998

Cases referred:

- 1) Syed Khalid Rizvi V. UOI 1993 Supp (3) SCC 575
- 2) Director, Lift Irrigation Corpn. Ltd. V. Parvat Kiran Mohanty (1991)2 SCC 296
- 3) State of Assam Vs. P.C. Mishra, IAS & Ors. 1996 SCC (L&S) 160

(31)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2278/1995

New Delhi, this 3rd April, 1998

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)  
Hon'ble Shri S.P. Biswas, Member(A)

Shri V.K. Asthana  
s/o Shri T.N. Asthana  
C-182, Minto Road, New Delhi .. . . . . Applicant

(By Advocate Shri B.B. Raval)

versus

Union of India, through

1. Secretary  
Department of Education  
M/Human Resources Development,  
New Delhi
2. Shri A.K. Basu  
Director, IIPA, IP Estate  
New Delhi
3. Smt. Sharda Ali Khan  
Under Secretary, Dte. of Adult Education  
New Delhi
4. Director of Adult Education  
10, Jamnagar House  
Shahjahan Road, New Delhi
5. Secretary  
UPSC, Dholpur House, New Delhi
6. Shri Mohan Kumar  
Joint Director  
Dte. of Adult Education  
10, Jamnagar House, New Delhi .. . . . . Respondents

(By Advocate Shri K.C.D. Gangwani)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, officiating as Joint Director (JD for short) in the Directorate of Adult Education (DAE in short)/Ministry of Human Resources Development, challenges Annexures A, B, C and D orders dated 1.6.95, 13.11.95 and 20.12.95 respectively. By Annexure A, he has been appointed as JD only on ad hoc basis. By Annexures B and C, he has been reverted to the rank of

32

(2)

Deputy Director (DD for short) and an officer junior to him has been promoted, respectively. By Annexure D, he has been again promoted as JD with effect from 14.11.85 for a short period. Consequently, he has prayed for quashing all those orders.

2. The detailed background of the case, as mentioned in chronological order hereunder, would indicate not only the legal issues involved but also sustainability of the stands taken by both the parties.

As per the recruitment rules for the post JD in DAE, all the posts are to be filled up by promotion. A regularly constituted DPC in association with UPSC is required to consider candidates in the zone of consideration for promotion to JD's post.

3. The first DPC held on 9.9.88 under the chairmanship of a UPSC Member, recommended a panel consisting of the following officers in the order as stated thereunder for promotion to the posts of JD:

<u>Sl.No.</u>	<u>Name (S/Shri)</u>	<u>Assessment</u>
1)	Shri S.P. Jain	Very good
2)	Shri J.P. Gupta	Very good
3)	Shri V.K. Asthana	Very good
4)	Shri Ram Das (SC)	Good

The above recommendation suited the Department very well but for the time being. This is because Shri Asthana(applicant) was adjusted vide A-1 order dated 29.9.88 against Shri J.P. Gupta, who was "on deputation". Shri Ram Das continued against R.S.Mathur on promotion as Additional Director-cum-Project

(3)

Coordinator (upto 31.12.92). It is only because of the aforesaid peculiar recommendation of DPC that the order dated 29.9.88 mentions "Shri V.K. Asthana, Deputy Director is appointed with immediate effect to officiate as Joint Director in the scale of pay of Rs.3700-5000, in the Directorate of Adult Education, on regular basis till 28.2.1989 or till further orders, whichever is earlier". So far so good continued to be the position between 29.9.88 till 31.5.92.

4. The situation, however, took an unhappy turn from 1.6.92 when Shri Gupta was to return from deputation. Since the applicant was promoted as JD with effect from 29.9.88 against the post of Shri J.P. Gupta (on deputation) as per specific recommendation of first DPC, the applicant rightly apprehended his reversion and, therefore, approached this Tribunal in the first round of litigation through OA 1459/92 and got an interim order on 2.6.92 restraining the respondents against any reversion. The respondents thus got into a dilemma of there being four JDs in position against 3 sanctioned posts. It was an issue for them to decide as to who should be reverted - applicant or Shri Ram Das. The applicant, as felt by respondents, could not be reverted as he was at SI.No.3 in the panel approved by DPC whereas Shri Ram Das, though at SI.No.4 in the panel could not be reverted because of DoPT's instructions in respect of provisions for SC/ST officers. It was, therefore, decided on 20.6.92 to make a reference to UPSC seeking their advice on the subject. But before that, the respondents, because of our interim order dated 2.6.92, had to take actions to create yet another

post of JD for accommodating the applicant. This explains respondents' action in upgrading one of the posts of DD to that of JD in the said Directorate from 1.6.92 till 31.7.93, i.e. the date when Shri Ram Das was to be retire.

5. But the dilemma aforesaid continued with the respondents. This is because the panel should have been normally of three persons. In the seniority list, Shri Ram Das, belonging to SC community, was admittedly senior to the applicant and in terms of DoPT's order No.1/9/69-Estt(SCT) dated 26.3.70 for promotion by selection to the post of Group "A" officers carrying salary of Rs.5700 per month (in the revised scale). SC/ST officers who are senior enough in the zone of consideration for promotion are to be included in the list provided they are not considered "unfit" for promotion. The respondents felt that in accordance with these instructions, Shri Ram Das should have been placed at Sl.No.3 in the panel and the applicant being junior to Shri Ram Das should not have been included in the panel though assigned a grading of "very good" as only 3 vacancies were available and the inclusion of SC/ST candidate could not be avoided as per rules. This is how a badly delayed reference dated 30.6.92 was made by the respondents to UPSC asking for clarification.

6. In 1988 itself, Shri Ram Das had, being senior, represented his case to the Commissioner for SC/ST as he was superceded by a general category officer (i.e. applicant herein) in the panel for promotion to the post of JD. The respondents appear to have given an

(3)

undertaking to the SC & ST Commission at that time stating that though Shri Ram Das is placed at SI.No.4 in the panel, it is the applicant who will be reverted in case of Shri Gupta's repatriation back to the parent department. Thus, respondents being aware of this position in 1988 should have sought clarification on the aforesaid vital issue four years before. In this connection, remarks of Secretary (Education) dated 20.6.92 is worth reproducing:

"I am afraid I am unable to agree. What you should be doing i.e. for a review DPC and not for a fresh assessment. This should have been done long time ago and in any case soon after we received the reference from the SC Commissioner"

7. Be that as it may, on being referred to by the respondents, vide its communication dated 30.6.92, the UPSC offered the following advice on 30.7.92:

"When Shri J.P. Gupta returned from deputation on 1.6.92 and if there was no vacancy to accommodate him, Shri V.K. Asthana who was promoted in his place was required to be reverted. There is no question of reverting Shri Ram Das on the ground that his name figured at SI.No.4 in the panel. In view of the position explained above, it will be seen that there was no mistake in the preparation of the panel and as such there is no ground for holding a review DPC in this case."

The applicant at no stage was officially communicated that the UPSC/DPC's recommended first panel of 9.9.88 was hedged with a condition and that was reason for granting repeated extensions to the applicant from time to time. As a result, the applicant continued claiming promotion/appointment as JD on regular basis on being duly recommended by the DPC in its meeting held on 9.9.88. Because of the reasons aforesaid, this Tribunal

in its order dated 10.9.93 in OA 1459/92 directed that "the applicant be allowed to continue to work in the post of JD so long as there is vacancy available in that rank and should not be reverted otherwise following principles of natural justice".

8. With the retirement of Shri Ram Das with effect from July, 1993, the respondents got a temporary reprieve in terms of continuing with the applicant on extended basis. But the basic problem continued. A decision was to be taken whether the applicant was to be continued automatically being senior most DD on the panel or to go in for fresh DPC. This is because applicant automatically stood reverted as per UPSC's recommendations on repatriation of Shri Gupta. This was in June/July, 1993 when some other DDs had also become eligible for promotion to the post of JD. Respondents decided to go in for fresh DPC and names of two DDs namely that of applicant and of Shri Mohan Kumar (R-6) were sent on 31.7.95 to UPSC for consideration. The DPC in its meeting on 30.8.95 assessed the two DDs and recommended Shri Mohan Kumar for officiating promotion to the post of JD having been graded as OUTSTANDING. This is how Shri Mohan Kumar stole a march over the applicant herein and was promoted accordingly vide office order dated 13.11.95. And this explains the origin of applicant's present OA (2278/95) filed on 4.12.95 in the second round of litigation. However, fortuitous circumstances again came to the rescue of the applicant when Shri S.P.Jain one of the JDs was promoted as Additional Director-cum-Project Coordinator from

2.8.95. Following this, applicant was again adjusted vide Annexure-D order dated 20.12.95 promoting him as JD with effect from 14.11.95.

9. In the present OA, the applicant has staked his claim on grounds of the following:

- (a) That he has been regularly selected by a regularly constituted DPC and posted as JD on 29.9.88 and has been continuing in that post without break;
- (b) That the applicant, though senior and continued to work as JD, R-6 who is junior to him by seven years has been allowed to officiate as JD on regular basis, ignoring his superior claims;
- (v) That even though the applicant is working on regular basis as JD for the last 8-9 years and is due for promotion to the post of Additional Director, R-2 and R-3 are sparing no efforts to get him reverted to the post of DD for reasons not made known to him.

10. In the counter, respondents have denied the claims. Respondents would submit that suppressing the orders dated 13.11.95 and 14.11.95, applicant moved this Tribunal by means of the present OA pretending ignorance of any such orders.

11. The undisputed facts are that: (i) there are only 3 sanctioned posts in the cadre of JD; (ii) that Shri Ram Das, a SC officer of the department is senior to the applicant; (iii) Shri J.D. Gupta on being released from deputation post was available for posting on 1.6.92 and (iv) that the applicant's claim of regular posting as JD was not granted by the Tribunal vide its earlier order dated 10.9.93.

12. The issues that fall for determination in this OA are whether (i) an employee has a fundamental right to promotion and whether (ii) inclusion of an employee's name in the panel for promotion to a particular category vests any legal right for appointment to a higher grade? Law is well settled in respect of both the issues. Right to be considered for promotion according to one's own turn flows from Articles 14 and 16 of the Constitution. No employee has a right to promotion 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. Reduction in chance of promotion does not affect any right. If any authority is required for these propositions, it is available in Syed Khalid Rizvi V. UOI 1993 Supp (3) SCC 575 and Director, Lift Irrigation Corpn. Ltd., V. Parvat Kiran Mohanty (1991)2 SCC 295.

13. Again, a candidate whose name appears in the merit list/panel does not acquire any indefeasible right to appointment even if the vacancy exists. However, it does not mean that the respondents have a licence of acting in an arbitrary manner. If the vacancy continues, respondents want to make appointment and a corresponding panel is operative, respondent is bound to respect the said panel, prepared in terms of rules and no discrimination can be permitted. This is the law laid down by the Hon'ble Supreme Court in the case of Shankarsan Dash V. UOI 1991(2) SLR 779. We find that the applicant's name for promotion to the post of JD was in the panel of September, 1988 with Sl.No.3 based on applicant's grading being "very good". But that was,

with a specific condition. The UPSC in its subsequent recommendations dated 30.7.92 and 30.8.95(2nd DPC) did not recommend the applicant for promotion, though his name was considered on both the occasions. Applicant's present claim for regular/permanent promotion as JD is based exclusively on A-1 order dated 29.9.88. A-1 originates out of DPC's approved panel dated 9.9.88. And that very panel does not support applicant's claim. Since DPC's initial recommendation for the applicant was conditional, A-1 order was required to be issued based on what was really intended by DPC. Judged in the background of these factors, A-1 promotional order was not apparently carefully worded. Consequently, the same became the source of all controversy.

14. Notwithstanding the above factor, the materials produced before us establish that there was no arbitrariness whatsoever on the part of the respondents in filling up the vacancies of JDs.

15. We find that the applicant continued alleging malafide on the part of R-2 and R-3, particularly the later one. We are unable to countenance applicant's pleas on this account for the simple reason that the respondents have been sympathetic to the applicant's cause for continuation as JD and on several occasions have of their own adjusted the applicant's claim in one way or the other and even by upgrading one of the DDs' posts as JD for a short while. Respondents' actions cannot, therefore, be faulted on this plea taken by the applicant. However, applicant made as many as six representations highlighting his basic claim and

respondents did not care to clarify the correct position in writing at any stage, even once. Such an attitude of the respondents has been deprecated by the apex court in the case of State of Assam Vs. P.C. Mishra, IAS & Ors. 1996 SCC (L&S) 169. It has been held therein that it is incumbent for each occupant of every high office to be constantly aware that the power vested in the high office he/she holds is meant to be exercised in public interest and only for the public cause. In the facts and circumstances of the case, an official duty was cast on the respondents to explain the the peculiar position to the applicant as regards the DPC's recommendations of September, 1988. Unfortunately, records do not reveal that any such attempt was officially made by the respondent. Respondent No.2, however, did give a reply to applicant in November, 1992, but that was touching upon only the problem of extension of leave sought for by the applicant. As a result the applicant continued repeatedly harping on his old claim of being included in the panel for promotion as JD on regular basis. The fact remains that DPC's recommendation of September, 1988 for the applicant was not the one for "regular promotion", reconfirmed by UPSC in its subsequent advice dated 30.7.92.

16. In the background of the facts and circumstances and the law aforequoted, the present OA fails on merit and deserves to be dismissed.

Our orders, however, would not stand in the way of respondents' considering the applicant's case for promotion as JD alongwith Dr. D.S.Mishra (OA 1667/96)

(11)

41

and others in terms of rules and regulations. This is because the applicant continues to work in the present capacity for almost last 10 years, was at one time recommended favourably by DPC and respondents have not so far declared him unsuitable. Respondents will also be at liberty to continue the applicant on the post of JD so long as there is vacancy but all in accordance with Rules/Regulations and principles of natural justice.

In the result, the OA is dismissed. No costs.

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

Lakshmi Swaminathan  
(Mrs. Lakshmi Swaminathan)  
Member(J)

/gtv/