

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(a)

D.A./T.A. No. 295 of 19 95 Decided on: 29.2.96

J.S. Fulzele APPLICANT(S)
(By Shri S.S. Tiwari Advocate)

VERSUS

U.O.I. RESPONDENTS

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

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THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

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

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? No

Ans. by
(S.R. ADIGE)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 295 of 1995

New Delhi, dated the 29th February, 1996

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

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

Shri J.S. Fulzele,
S/o Shri S.M. Fulzele,
Working as Dy. Dir. (Coop.),
Dept. Agri. & Coop..
R/o Qr. No. 86/Sector-I,
Sadiq Nagar,
New Delhi-110049. APPLICANT

(By Advocate: Shri S.S. Tiwari)

VERSUS

Union of India through the
Secretary,
Ministry of Agriculture,
Dept. of Agri. & Coop.,
Krishi Bhawan,
New Delhi-110001. RESPONDENTS

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

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application, Shri J.S. Fulzele, Dy. Director (Cooperation), Dept. of Agriculture & Cooperation, has prayed for a direction to treat him as Deputy Director (Coop.) w.e.f. 1983 and not 1993 as he has been promoted retrospectively as Asstt. Director w.e.f. 1978, and to consider him for promotion to the post of Director with all consequential benefits.

2. Shortly stated, the applicant who as Senior Technical Assistant in the Dept. of

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Agriculture & Coop., was promoted as Asst. Director (Coop.) on ad hoc basis w.e.f. 28.8.78, but was reverted to the post of Senior Tech. Asstt. vide order dated 7.12.84. He challenged the revision in O.A. No. 763/87 which was disposed of by judgment dated 29.7.91, wherein the Tribunal after noting that the applicant belonged to the S.C. Community directed the Respondents to convene a review DPC and place the applicant before it for being appointed as Asst. Director if he fulfilled the prescribed conditions, by relaxing the rules if necessary.

3. Pursuant to that judgment, a review DPC was conducted by the UPSC and by order dated 30.4.92 it was decided with the approval of the competent authority to appoint the applicant as Asst. Director (Coop.) on officiating promotion basis with retrospective effect from 28.8.78 until further orders.

4. The applicant contends that as per the Recruitment Rules then prevalent (Ann.-B) 5 years' regular service as Asst. Director was required for promotion as Dy. Director (Coop.) and he was entitled to be considered for promotion as Dy. Director in Sept. 1983 but his case was overlooked and one Shri Zile Singh was appointed as Dy. Director. He states that eventually he was promoted as Dy. Director only 23.7.93, and now the

promotion as Director (Coop.) on the ground that he has not put in the required five years service as Dy. Director vide impugned letter dated 15.3.94 (Annexure A).

5. The resp. in their reply do not deny that pursuant to the recommendations of the review DPC the applicant was promoted as Asstt. Director on officiating basis with retrospective effect from 28.8.78. They however, state that as per the RRs prevailing at that point of time, the post of Dy. Director (Coop.) was to be filled (i) 33 1/3% by promotion, failing which by transfer on deputation, failing both by direct recruitment and (ii) 66 2/3% by transfer on deputation (including 'short term' contract) failing which by director recruitment. Asstt. Directors with 5 years regular service were eligible for consideration for promotion. As per rotation roster against one post of Dy. Director falling within promotion quota, one Shri R.K. Kanaujia, Asstt. Director was promoted w.e.f. 27.12.77, and subsequently the posts which fell under deputation quota were filled by appointing S/Shri S.N. Ghosh and R.P. Gupta w.e.f. 27.4.83 in Dept. of Agri. & Coop. and 27.8.83 in Dept. of Civil Supplies respectively. They state that after framing of fresh RRs for the post of Dy. Director (Coop.) notified on 11.4.85 (Ann. R-II) the applicant's case for promotion to the post of Dy. Director

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(Coop.) against vacancy falling under the the promotion quota was processed and the applicant was eventually promoted as Dy. Director (Coop.) w.e.f. 23.7.93. As regards Shri Zile Singh, it is stated that he was appointed as Dy. Director (Coop.) on deputation basis w.e.f. 1.8.88 against a deputation quota post as per RRs prevailing, in the year 1985. As the vacancy falling under promotion quota was not available in 1983, the applicant's case for promotion as Dy. Director (Coop.) was not processed. As regards promotion to the post of Director (Coop.) the respondents state that the same was not considered as he had not rendered 5 years service in the grade of Dy. Director (Coop.) after his promotion as such w.e.f. 23.7.93.

6. The applicant in his rejoinder has broadly denied the contents of the reply and reiterated what has been stated in the O.A.

7. We have heard Shri S.S. Tiwari for the applicant and Shri K.C.D. Gangwani for the respondents. We have also perused the materials on record and given the matter our careful consideration.

8. In this connection our attention has been invited to the addl. affidavit dated 20.12.95 filed by the Resp. which is taken on record enclosing a copy of the note dated 30.7.84 for consideration of the DPC for

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regular promotion to the post of Dy. Director (Coop.), and a copy of the DPC minutes dated 4.3.85 presided over by a UPSC member. From those papers it appears that one post of Dy. Director (Coop.) was available for regular promotion against which two officers were considered, one of whom was selected.

9. Consequent to the order dated 30.4.92 granting the applicant officiating promotion as Asstt. Director with retrospective effect from 28.8.78, he would satisfy the requirement of 5 years regular service as Asstt. Director for consideration for promotion as Dy. Director (Coop.) on 28.8.83, as per the RRs then prevalent. The DPC held closest to that date ^{was} on 4.3.85 as noted above, and the applicant would be eligible for consideration for the post of Dy. Director (Coop.) on 4.3.85, provided he fulfilled all the other prescribed qualifications and came within the zone of consideration, because promotions are to be made by selection.

10. Under the circumstances the Respondents are directed to examine whether the applicant possessed all the other eligible qualifications for promotion to the post of Dy. Director (Coop.) w.e.f. 4.3.85.

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If so, then having regard to the fact that he satisfied the requirement of five years regular service as Asst. Director on that date, consequent to this retrospective promotion as Asst. Director w.e.f. 28.8.78, the Resp. will further examine whether the applicant came within the zone of consideration for promotion to the post of Dy. Director (Coop.) on 4.3.85, and if so consider him for promotion as Dy. Director (Coop.) w.e.f. 4.3.85 in accordance with the rules by constituting a review DPC for the purpose.

11. If as a result of the review DPC's recommendations, the applicant is promoted as Dy. Director (Coop.) w.e.f. 4.3.85, he would be entitled to consequential benefits flowing therefrom, in accordance with rules, including consideration for further promotion in accordance with rules from the date his immediate junior was so promoted.

12. In case any one person is likely to be adversely affected, he should be given a reasonable opportunity of being heard by the resp. before final orders are passed. The Resp. should implement the above directions within six months from the date of receipt of a copy of the judgment.

13. This O.A. is disposed of in terms of the directions contained in paras 10, 11 & 12 above. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
Member (J)

S.R. Adige

(S.R. ADIGE)
Member (A)