

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 315/1996

T.A. No.

109

X

DATE OF DECISION: 31-1-2000

Sh. Rosie Ahuja

....Petitioner

Sh. Sudhir Mendiratta

....Advocate for the
Petitioner(s)

VERSUS

UOI through the Secretary
M/O Water Resources and
others.

....Respondent

Sh. A.K. Bhardwaj, learned counsel....Advocate for the
through proxy counsel Shri M.K. Respondents.
Bhardwaj

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)
The Hon'ble Shri M.P. Singh, 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? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

OA 315/1996

✓ New Delhi this the 31st day of January, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri M.P. Singh, Member (A)

Shri Rosie Ahuja
S/O Shri P.C. Ahuja
R/O E-3/6, Sector-16,
Rohini, Delhi-85

working as Asstt. Research Officer
(Engineering) at Central Soil and
Materials Research Centre, Hauz Khas,
New Delhi-16

.. Applicant

(By Advocate Shri Sudhir Mendiratta)

versus

1. Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
2. The Director,
Central Soil and Materials
Research Station, Olof Palme Marg,
Kauz Khas, New Delhi.
3. The Under Secretary,
Central Soil and Materials Research
Station, Olof Palme Marg, Hauz Khas,
New Delhi-16
4. Union Public Service Commission
through its Chairman
Dholpur House, Shahjahan Road,
New Delhi.
5. Shri G.K. Vijh,
Assistant Research Officer(Engg.),
Central Soil and Materials Research
Station, Olof Palme Marg, Hauz Khas,
New Delhi-16
6. Shri G.D. Sharma,
Asstt. Research Officer(Engg.)
Central Soil and Materials
Research Station, Olof Palme Marg,
Hauz Khas, New Delhi-16

.. Respondents

(By Advocate Sh. A.K. Bhardwaj through
proxy counsel Sh. M.K. Bhardwaj)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant is aggrieved by the proceedings of Departmental Promotion Committee (DPC) dated 31.1.1996 and subsequent promotion order passed by the respondents promoting Respondent 5, Shri G.K. Vijh as Research Officer (Engg.) w.e.f. 4.3.1996.

2. The brief relevant facts of the case are that the applicant was recruited directly by the U.P.S.C. as Research Assistant (Engg.) (RA Engg.) and joined the post on 14.6.1985. Respondents 5 and 6, namely, S/Shri G.K.Vijh and G.D.Sharma who were working earlier in the feeder grade of Supervisor had been promoted as RA (Engg.) on regular basis w.e.f. 30.1.1985. The respondents have stated that at that time, the applicant was considered senior to Respondents 5 and 6. This is also shown in the seniority list issued by the by OM dated 23.2.88 respondents for RA (Engg.) as on 1.2.1988, although in the OM itself it is mentioned that the seniority list of RA (Engg.) is as on 1.1.1988. Admittedly, the respondents held DPC on 25.1.88 to consider the promotion of eligible RA (Engg.) to the grade of Assistant Research Officer (Engg.) (ARO(Engg.)). This post was to be filled 100% by promotion from the feeder grade of RA (Engg.) and the ~~eligible~~ conditions were that the RA (Engg.) with three years regular service was eligible for consideration.

3. One of the main contentions taken by Shri Sudhir Mendiratta learned counsel for the applicant, is that the applicant has been discriminated by respondents vis-a-vis Respondents 5 and 6. He alleges that they were not eligible for consideration by DPC which met on 25.1.1988 as they had not completed three years service in the feeder grade of RA (Engg.). This, he submits, the respondents ^{had} ~~had~~ mentioned in the counter reply filed by the respondents where the Members of the DPC had doubts whether they can empanel the officers who were yet to become eligible during the subsequent date in the current year.

4. Shri Sudhir Mendiratta, learned counsel for the applicant has relied on the DOP&T OM dated 19.7.89 (Annexure A-IV) on the subject of counting of eligibility of officers to be considered for promotion by the DPC. In this OM, it is mentioned that when juniors who have completed the eligibility period are considered for promotion, their seniors would also be considered, irrespective of whether they have completed the requisite service provided

they have completed the probation period. In this OM, reference has also been made to the earlier OM issued by the DOP&T OM dated 18.3.85 in which all Ministries/Departments etc. had been requested to insert a note in the Recruitment Rules for various posts as mentioned above. It is, however, not the case of the applicant that such note had been inserted in the recruitment rules at the time when the DPC met on 25.1.1988 to consider eligible candidates for promotion to the post of ARO(Engg.). In any case, on the recommendations of the DPC which was held in January, 1988, Respondents 5 and 6 were given ad hoc promotions as ARO(Engg.) w.e.f. 29.1.1988 and thereafter confirmed from this date when they would have completed three years service in the feeder grade of RA(Engg.). Applicant's counsel submits that either in terms of the DOP&T OM dated 19.7.89 or on the ground that juniors to the applicant were being considered by the DPC, the applicant should have also been considered even ~~otherwise~~ ^{though} he had not completed the eligibility criteria of three years regular service in the grade of RA (Engg.)

5. After the seniority list of 23.2.1988 issued showing the applicant senior to Respondents 5 and 6, it is not denied that the respondents have issued at least three seniority lists of RA(Engg.) ARO(Engg.) , namely, on 26.7.89, October, 90, September, 1991 and October, 1992 in which they have shown the applicant as junior to Respondents 5 and 6. The respondents have also submitted that in the subsequent seniority lists, a note had also been added that if any person is affected by the position shown in the seniority list, they may bring the error to the notice of the concerned Officer within thirty days of issue of the seniority list. Sh.Sudhir Mendiratta, learned counsel for the applicant has submitted that this has been done and the applicant has submitted numerous representations to the respondents to that effect.

6. The applicant has challenged the proceedings of DPC held by the respondents on 31.3.1996 and the subsequent recommendations made by the Committee for promotion of Respondent 5, Sh.G.K.Vijh, ARO(Engg.) to the grade of Research Officer(Engg.) w.e.f. 4.3.1996.

7. The Tribunal by order dated 9.2.1996 had directed that if any promotion is made on the basis of the impugned order, it would be subject to the outcome of the OA.

8. The respondents in their reply have controverted the above facts. We have heard Shri M.K.Bhardwaj, learned proxy counsel for the respondents, who has submitted that the grievance of the applicant relates to the DPC held on 25.1.1988 and seniority list issued from 1989 onwards. He has, therefore, submitted that the OA is hopelessly barred by limitation and repeated representations made by the applicant will not help him to over-come ^{the} bar on limitation. He has also submitted that the respondents 5 and 6 have been considered for promotion to the post of ARO(Engg.) from the grade of RA(Engg.) in January, 1988 and thereafter they have been holding the higher posts and therefore, they are senior to the applicant. He has further submitted that the applicant was promoted subsequently as ARO after the respondents 5 and 6, and hence the applicant was placed junior to them. Learned counsel has, therefore, submitted that the respondents have followed the relevant rules and has prayed that the OA may be rejected.

9. Learned counsel for the applicant has drawn our attention to the M.A. filed by the applicant along with the rejoinder to the reply filed by the respondents, in which he has given certain grounds praying for condonation of delay. He has submitted that the applicant could not file the OA earlier, although his grievance had arisen as far back as in 1989 ~~but~~ due to family obligations and other circumstances which were beyond his control and, therefore, he has prayed that the delay from 1988 till the OA was filed may be condoned, ^{and} the OA was filed on 7.2.1996.

10. We have carefully considered the pleadings and the submissions made by the learned counsel for both the parties.

11. As seen from the facts briefly mentioned above, and as brought out by the applicant himself in the OA, the respondents had

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as initially issued seniority list of RA(Engg.)/on 1.1.1988 by their OM dated 23.2.88 in which the applicant had been shown at Serial No.9 whereas the respondents 5 and 6 were shown at Serial Nos 14 and 10, respectively. Thereafter by OM dated 26.7.89 the applicant's name has been shown junior to respondents 5 and 6 and this position has continued in the subsequent seniority lists ^{as 1990} issued in 1991 and 1992 wherein they have continued showing the applicant as junior to the private respondents. The contentions of the learned counsel for the applicant that the DPC which met on 25.1.1988 had taken a wrong decision in ignoring the applicant case for promotion as RA(Engg.) and promoting ineligible persons like Respondents 5 and 6 cannot be accepted, both on the ground of limitation as well as on merits. It is noted that the DPC which met on 25.1.1988 was to consider the eligible persons who had rendered three years regular service as RA(Engg.). Admittedly both the respondents 5 and 6 have been appointed as RA(Engg.) on promotion w.e.f. 30.1.1985. It is also relevant to note that both were given ad hoc promotion w.e.f. 29.1.1988 on the basis of the recommendations of DPC i.e. after they had completed three years service in the feeder grade. The contention of the applicant that he/made repeated representations will not assist him. having regard to the settled law in such matters, as ^{held by} in the case of Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra (JT 1990(2) SC 264), The Supreme Court has held that it is not in the interest of service to unsettle a settled position. Further in S.S. Rathore Vs. State of M.P. (AIR 1990 SC 10), the Supreme Court has held that repeated representations will not extend the period of limitation.

12. The applicant has admittedly filed an MA which is attached to the rejoinder, much after the OA has been filed praying for condonation of delay. We do not consider that the grounds taken in the MA for condonation of delay are sufficient reasons to bring it within the provisions of Section 21(3) of the

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Administrative Tribunals Act, 1985. In other words, on the ground of limitation alone this OA being highly belated is liable to be rejected. Learned counsel for the applicant has relied on the judgement of the Tribunal (Jabalpur Bench) in J.P.Shukla Vs.UOI (1990(12)ATC 475) stating that non-promotion of the applicant by DPC which met on 25.1.1988 should be considered as giving him a continuous cause of action. In view of the judgements of the Hon'ble Supreme Court to the contrary referred to above, we are unable to accept this contention and this plea also fails.

13. Apart from that we have considered the grounds taken by the applicant on merits and find that since the respondents 5 and 6 have already been promoted as ARO(Engg.) prior to the promotion of the applicant to this post he cannot claim seniority over them at a later point of time. The reliance placed by the applicant on the DOP&T OM dated 19.7.89 cannot also assist the applicant. The necessary note which ^{was} to be inserted in the recruitment rules has apparently not been done and the applicant cannot agitate this matter after a lapse of several years. We also do not find any substance in the allegation made by the applicant that he has been discriminated, as the respondents have not violated the relevant rules and instructions with regard to the holding of DPCs. The DPC which has been impugned in the present OA is one held on 31.1.1996 in which they have recommended Respondents 5 and 6 for promotion from the post of ARO(Engg.) to the grade of Research Officer(Engg.). The seniority lists which have been relied upon by the respondents have been issued from 1989 onwards where admittedly respondents 5 and 6 are shown senior to applicant in the grade of ARO(Engg.). In the facts and circumstances of the case we do not see any good ground to justify interference in the matter.

14. In the result for the reasons given above, OA fails and is dismissed. No order as to costs.


(M.P.Singh)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)