

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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O.A./~~TXAX~~ No 1319 of 1997
MA No. 1373 of 1997

Decided on: 29/4/98

Shri R.K. MahajanApplicant(s)

(By Shri E.X. Joseph Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri R.P. Aggarwal Advocate)

CORAM:

THE HON'BLE ~~SHRI~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? yes
2. Whether to be circulated to the other Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL. PRINCIPAL BENCH

O.A. No. 1319 of 1997
M.A. No. 1373 of 1997

New Delhi this the 22nd day of April, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri R.K. Mahajan
Deputy Director (Admn.),
Aviation Research Centre,
Directorate General of Security
(Cabinet Secretariat),
Block V (East);
R.K. Puram,
New Delhi-110 066.

..Applicant

By Advocate Shri E.X. Joseph.

Versus

1. Union of India through the
Cabinet Secretary,
Rashtrapati Bhawan,
New Delhi-110 001.
2. The Director General
Directorate General of Security,
(Cabinet Secretariat)
Block-V (East), R.K. Puram,
New Delhi-110 066.
3. The Director,
Aviation Research Centre,
Directorate General of Security
(Cabinet Secretariat)
Block-V (East),
R.K. Puram,
New Delhi-110 066.

.Respondents

By Advocate Shri R.P. Aggarwal.

ORDER

Hon'ble Mr. K. Muthukumar. Member (A)

Applicant is aggrieved that in the review DPC held by the respondents on 30.09.94 for considering his promotion as Joint Director in the ARC/SFF (Executive Service) under the respondents, he was not approved for this promotion. The applicant has earlier raised a dispute in regard to the reckoning of his past service in his parent

department in the Aviation Research Centre and had joined the Executive Wing of the ARC/SFF (Executive Service) which came into effect from 30.6.1976 for which necessary service rules were promulgated on 15.3.1977. The above dispute was resolved by the orders of the Tribunal dated 6.3.1992 in O.A. No. 2231/1989 in which it was directed that the applicant should be deemed to have been included in the Executive Cadre at the initial stage of constitution, namely, 30.6.1976 duly reckoning his antecedent service in the ARC (Air Wing) and his career progression should be made accordingly by holding a Review DPC as necessary and subject to his being found fit, he should also be entitled to payment of difference in salary and allowances for the period and for the post, which he would be entitled to hold in accordance with the revised seniority. SLP against this was dismissed by the Apex Court on 25.5.1992. In pursuance of the directions of the Tribunal, the applicant was appointed as Deputy Director w.e.f. 11.2.1985 by the order dated 22.10.1993, Annexure A-16. By this date, another officer Shri Y.N. Roy had already been promoted as Deputy Director with effect from 11.2.1985 and since Shri Roy was shown junior to the applicant in pursuance of the aforesaid judgment, the respondents promoted the applicant also on the same date as that of Shri Roy as Deputy Director.

2. Applicant alleges that since there was only one post of Deputy Director available on 11.2.1985, he should have been promoted to that post and Shri Roy should have been deemed to have been reverted on that day. The other grievance is that if Shri Roy had been deemed to have been reverted from 11.2.1985, he (the applicant) would have been

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the only Deputy Director eligible for the next promotion to the higher grade of Joint Director and he would have been promoted. The applicant alleges that the respondents have somehow attempted to circumvent the directions contained in the order passed by the Tribunal on 6.3.1992 and in order to protect the interest of Shri Roy, the benefit of the judgment was denied to him and he was also denied the promotion to the grade of Joint Director by the impugned order which has been passed by the respondents on the basis of the review DPC stated to have been held on 30.9.94.

3. The respondents aver that the post of Joint Director is an ex-cadre post and in the ARC/SFF (Executive Service) to which the applicant belongs, there is no post of Joint Director. Although the applicant has a right of consideration against his own cadre post, he has no particular claim for promotion against an ex-cadre post on the basis of his seniority in his cadre post of Deputy Director. The post of Joint Director (Planning and Coordination) (hereinafter referred as Jt. Director (P&C)) in terms of the Recruitment Rules (Annexure R-3) is also to be filled by transfer on deputation. The respondents assert that the applicant belongs to ARC/SFF (Executive Service) for which separate Recruitment Rules exist, whereas for the post of Divisional Organiser, Joint Director (SSB) and Jt. Director (P&C) which are posts in the separate cadres, separate Recruitment Rules are in force. The applicant contends in his rejoinder that it was only in 1995 that the post of Jt. Director (P&C) was taken away from the SSB (Senior Executive Service) and was made to be governed by

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the separate Recruitment Rules.

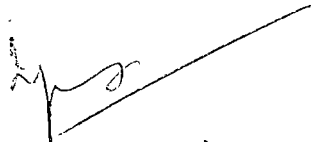
4. The respondents, however, state that the review DPC held on 30.9.1994 considered the name of the applicant in accordance with the rules in vogue but his case was not approved by the competent authority as he did not obtain the minimum bench mark. It is also stated by the respondents that Shri Roy had already superannuated on 30.4.92 much before the date on which review DPC was held. They, therefore, assert that the contention of the applicant is devoid of merit. They also aver that the said post of Jt. Director (P&C) which fell vacant on 30.4.92 was again filled up by another officer on deputation basis in accordance with the rules in force. The contention of the respondents that since the DPC held on 30.9.94 was held to review the earlier DPC held on 18.11.1991, the applicant's case was considered for promotion/appointment to the ex-cadre post of Jt. Director (P&C) w.e.f. 18.11.1991 but the applicant could not obtain the prescribed minimum bench mark. On the basis of the Recruitment Rules in the SSB (Senior Executive Service), the post of Divisional Organiser/Joint Director could be filled by promotion of Deputy Directors general having six years regular service. Separate rules for the post of Jt. Director (P&C), however, came into effect only in 1995 with the promulgation of Director General of Security-Jt. Director (P&C) Recruitment Rules, 1995. It was because of this, the applicant was considered in the review DPC to review the proceedings of the earlier DPC held on 18.11.1991 which had recommended the promotion of Shri Roy, Deputy Director ARC.

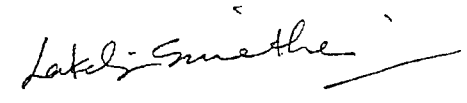
5. We have heard the learned counsel for the parties and have perused the pleadings.

6. It is true that the applicant was promoted as Deputy Director in the ARC with effect from 11.2.1985 by the respondents' order dated 22.10.1993 in pursuance of the direction of the Tribunal dated 6.3.1992. but Shri Roy was already appointed to the post of Deputy Director as early as on 11.2.1985 and was actually holding the post. But by that time, the applicant was promoted in compliance with the Tribunal's judgment w.e.f. 11.2.1985 by their order dated 22.10.1993. Shri Roy had already retired on 30.4.1992 and the respondents have shown Shri Mahajan as senior in the revised seniority list after the aforesaid promotion orders of the applicant by their seniority list of Deputy Directors as on 11.2.1985 and 1.11.1991. Therefore, the contention of the applicant that Shri Roy should have been retrospectively reverted from the post of Deputy Director is not a valid contention. In any case, Shri Roy even before the retrospective promotion of the applicant as Deputy Director by their order dated 22.10.1993 was already promoted as Joint Director on the basis of the DPC held on 18.11.1991 and had also retired on 30.4.1992 much before the review DPC of 30.9.1994. Besides in the review DPC, the applicant did not reach the minimum prescribed bench mark as stated by the respondents and, therefore, he cannot claim any vested right for the retrospective promotion as Joint Director on 18.11.1991 itself.

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7. In the conspectus of the above discussion, we do not find any merit in this application and ^{it} is accordingly rejected. There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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