

Central Administrative Tribunal
Principal Bench

(S)

O.A. 2897/97

New Delhi this the 31st day of July, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

1. Association of Officers of Central Labour Service represented by G.P. Bhatia, General Secretary, Labour Officer, Ordnance Factory, Muradnagar-201206
2. G.P. Bhatia, S/o late Shri G.D. Bhatia, Labour Officer, Ordnance Factory, Muradnagar-201206. ... Applicants.

Shri G.P. Bhatia, Applicant 2 present in person.

Versus

1. Union of India, through the Secretary, Ministry of Labour, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. The Secretary, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi.
3. Shri S.N. Pathak, Assistant Labour Commissioner (Central) Jaipur (Rajasthan).
4. Shri M.M.A. Kumar, Assistant Labour Commissioner (Central), Bellary (Karnataka).
5. Shri S.K. Chand, Assistant Labour Commissioner (Central), Chaibasa, Distt. Singhbhum (Bihar). ... Respondents.

By Advocate Shri R.P. Aggarwal.

O R D E R

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

In this application, the Association of Officers of Central Labour Service (CLS) have sought a direction from the Tribunal to Respondent 1 to implement

18

(Q)

the Government policy contained in DOP&T O.M. dated 10.4.1989.

2. We have heard Applicant 2 and Shri R.P. Aggarwal, learned counsel, for the respondents.

3. Shri Bhatia, Applicant 2, submits that by respondents' issuing Office Order No. 18/98 dated 16.3.1998 promoting private respondents 3-5 among others in Grade-IV of the CLS, they have contravened the provisions of the aforesaid DOP&T O.M. dated 10.4.1989. He has submitted that these respondents had earlier separately requested that their promotions may be deferred, for example, by the letter dated 2.8.1997 submitted by Respondent 4. Applicant 2, therefore, contends that in terms of Para 17.12 of the aforesaid O.M. since the respondents have asked for deferment of their promotion, they should have been debarred from promotion for a period of one year and persons junior to them should have been considered for promotion. He also draws our attention to Office Order No. 40 of 1997 dated 27.8.1997 in which other persons have also been promoted to Grade IV of the CLS on ad hoc basis for a period of six months. He submits that he, ~~however~~, is junior to the persons promoted by Office Orders dated 27.8.1997 and 16.3.1998. His contention is that because all the private respondents 3-5 have refused ~~for~~ promotions they ought to have been debarred for promotion for one year and persons junior to them should have then been promoted, which the respondents have not done and hence this O.A.

Y.S.

10

4. The respondents in their reply have submitted that the DOP&T O.M. dated 10.4.1989 is not applicable in case of ad hoc promotions and that Para 17.12 relied upon by the applicants is applicable only in case of regular promotions. They have, therefore, submitted that there is no question of debarring Respondent 4 for one year from promotion because he had submitted a representation on 2.8.1997 that he should not be considered for promotion to Grade-IV of CLS due to his personal problems or in the other similar cases.

5. We have carefully considered the pleadings and the submissions made by both the parties.

6. This application was filed by the applicants ~~of~~ the Association on 8.12.1997 seeking a direction to Respondent 1 that they should implement the Government policy laid down in Para 17.12 of the O.M. dated 10.4.1989 uniformly. At the time of hearing, applicant 2 has impugned the Office Order issued on 16.3.1998 promoting private respondents 3-5 on ad hoc basis for a period of six months to Grade-IV of CLS. This period of six months will expire only on 15.9.1998. Applicant 2 claims that although he is junior to Respondents 3-5, he should have been considered for promotion to Grade-IV. However, in the facts of the case, at the time when the applicants filed this O.A., the order dated 16.3.1998 had not even been issued on the basis of which Applicant 2 submits that they have a grievance. This application is, therefore, premature and not maintainable.

8-

7 Para 17.12 of the O.M. relied upon by the applicants reads as under:

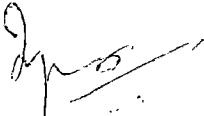
"Refusal of promotion

17.12. When a Government employee does not want to accept a promotion which is offered to him he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. On the eventual promotion to the higher grade, such Government servant will lose seniority vis-a-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above mentioned policy will not apply where ad hoc promotions against short term vacancies are refused".

(Emphasis added)

In the facts of the case, the contention of the applicants that respondents 3-5 should be debarred for one year because they had submitted that their promotions should be deferred is without any basis as it cannot be stated that they have refused any promotions earlier in terms of the aforesaid para of the O.M. As a matter of fact, it appears that Respondents 3-5 have accepted their promotions vide order dated 16.3.1998. The allegation that Respondent 1 has acted in a discriminatory manner against certain officers has also not been shown from the documents on record.

8. In the facts and circumstances of the case, we do not find any justification to interfere in the matter. Application accordingly fails and is dismissed. No order as to costs.


(K. Muthukumar)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)

SRD