

24

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-421/97

New Delhi this the 11th day of September, 1998.

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Jagan Lal,
Asstt. Director,
Head Qtr., Office of
Registrar General, India,
New Delhi.

..... Applicant

(through Shri A.K. Behera, advocate)

versus

1. The Union of India,
through its Secretary to
the Government of India,
Ministry of Home Affairs,
New Delhi.
2. The Registrar General,
Government of India,
Ministry of Home Affairs,
2/A Mann Singh Road,
New Delhi.
3. Sh. Hari Ksihan Kaushal,
Investigator in the office of
Registrar General India,
Ministry of Home Affairs,
2/A Mann Singh Road,
New Delhi.

..... Respondents

(through Shri KCD Gangwani, advocate)

ORDER

Hon'ble Shri S.P. Biswas, Member(A)

Applicant is aggrieved by A-1 order dated 9.12.96 by which the seniority granted to the applicant by A-2 order dated 27.1.93 has been cancelled without offering any opportunity of hearing. Consequently, he seeks to quash A-1 order and also issuance of direction to respondents restraining them from passing of any further order because

2p

he has already been promoted as Assistant Director on 30.8.1994 vide orders at Annexure A-7 and his case for promotion to Deputy Director is also likely to be affected adversely.

2. Shri A.K. Behera, learned counsel for the applicant submitted that arising out of regular D.P.C. held in July 1982, the applicant was ultimately promoted as Investigator against a reserved vacancy, being the seniormost scheduled caste candidate and his seniority in the cadre was retrospectively fixed w.e.f. 29.3.83 vide A-2 order dated 27.1.93. The provisional seniority list of Statistical Assistant as on 1.3.1983 shows applicant's position at Sl. No. 39 whereas the respondent No.3 Shri Hari Krishan Kaushal at No.69 which shows that even as Statistical Assistant the applicant is far senior than the respondent No.3. It was further contended that respondent No.3 could never be considered for the post reserved for scheduled caste candidate by the D.P.C. of July 1982 because he was not coming in the consideration zone. Hence his promotion, in case ordered, would jeopardise the interest of the applicant.

3. Further details that support applicant's case have been added in para xiii of the O.A. In the facts and circumstances, the applicant has prayed that even the D.P.C. of May 1982 needs to be reviewed by this Hon'ble Tribunal so as to see that two general candidates, junior to the applicant, were wrongly promoted against the two reserved vacancies and as per the DOPT's instructions on

26

the subject the applicant's case for promotion on regular basis is fully covered. In other words, his ^{claim} should be allowed from the date his juniors were promoted.

4. In the counter, Shri K.C.D. Gangwani, learned counsel appearing for the respondents submitted that the recruitment rules for the post of Investigator were amended in the year 1985 providing filling up of 75% vacancies by promotion and 25% vacancies by direct recruitment. A meeting of DPC was held on 25.05.87 to make recommendations for promotion from the grade of Statistical Assistant to the grade of Investigator for three vacancies. According to the instructions on the subject, the zone of consideration for three vacancies is 10, and, therefore, the cases of 10 seniormost Statistical Assistants including the applicant, was considered by DPC. Since the post of Investigator is a promotional post by selection, DPC had accordingly graded the officers on the basis of their records. DPC recommended the following three Statistical Assistants in the order of merit for promotion to the grade of Investigator.

1. Shri H.K. Kaushal, SC
2. Shri V.P. Singh, SC
3. Shri Jagan Lal, SC

The applicant was accordingly placed in the seniority list of Investigator as per the recommendations made by D.P.C. The applicant made a representation for according promotion in the grade of Investigator retrospectively. An office order dated the 27th January

2p
1993 (Annexure A-II) was issued according to him the

29

benefit of seniority with retrospective effect i.e. from the 29th April, 1983. One of the officers affected by this order, Shri H.K. Kaushal, (S.C.) Respondent No.3 in this case represented against the office order dated the 27th January 1993 offering seniority in the grade of Investigator to the applicant from the 29th April, 1983. The entire matter was reviewed and it was held that the order dated the 27th January 1993 according seniority to the applicant retrospectively from the 29th April, 1983 was not in conformity with the rules and regulations on the subject.

5. The detailed reasons for which the impugned orders were issued are also available at pages 73-74 of the O.A.

6. Before we could examine the legality of claims and counter claim, we find a patent violation of an elementary principle of natural justice that no man can be condemned without hearing. The order at A-2 conferred a vested right in the applicant in matters of his seniority position w.e.f. 29.4.83. That right cannot be taken away without affording an opportunity of hearing. If any authority is required for this proposition, it is available in Shridhar Vs. Nagar Palika, Jaunpur and Others (1990 (Supp.) SCC 157).

7. We find that based on the strength of seniority in the grade of Investigator w.e.f. 1983, the applicant was promoted as Assistant Director on 30.8.94 and was expecting a further promotion to the status of Deputy Director against reservation quota. Surely rescission of

2

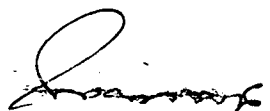
Office Order dated 21.1.93 is to the detriment of the applicant and could not have been issued without following natural justice of audi alteram partem and affording predecisional opportunity of hearing to the affected person. We find such a view finds direct support in the decision of Scheduled Caste and Weaker Section Welfare Association (Regd.) and Another Vs. State of Karnataka and others (1991 (2) SCC 604) by the Hon'ble Supreme Court. It is not in dispute that the respondents' decision of the impugned order in A-1 dated 9.12.96 was not preceded by any formal warning.


7. In the result, the O.A. is allowed with the following directions:-

(a) A-1 order dated 9.12.96 shall stand quashed.

(b) If the respondents have any case at all, they will be at liberty to put the applicant on notice, consider his representation/case, pass a speaking order alongwith reason and shall keep the applicant informed of the decision.

(c) There shall be no order as to costs.


(S.P. Biswas)
Member (A)


(T.N. Bhat)
Member (J)

/vv/