

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1014 of 1997

New Delhi, this the 24th day of September, 1998

Hon'ble Mr. N. Sahu, Member(Adminv)
Hon'ble Dr.A.Vedavalli, Member(J)

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Shri Sohan Singh ...Applicant


(By Advocate Shri P.L. Mimroth)

Versus

Union of India & Others ...Respondents

(By Advocate Shri Harvir Singh, proxy for Mrs. P.K. Gupta, Advocate)

1. To be referred to the Reporter or ~~not~~? YES
2. To be circulated to other Benches of the Tribunal
or not? ~~NO~~


(DR. A. VEDAVALLI)
MEMBER(J)

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Hon'ble Mr. N. Sahu, Member (Admny)
Hon'ble Dr. A. Vedavalli, Member (J)

Shri Sohan Singh,
S/o Shri Banta Singh,
R/o House No.1751/6,
Gobindpuri Ext.,
New Delhi-110009.

...Applicant

(By Advocate Shri P.L. Mimroth)

Versus

1. Union of India through,
Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
North Block,
New Delhi-110001.

2. Establishment Officer and
Additional Secretary,
Department of Personnel and Training,
North Block,
New Delhi-110001.

3. Director (Central Services),
Department of Personnel & Training,
Lok Nayak Bhawan,
New Delhi-110003.

...Respondents

(By Advocate Shri Harvir Singh, proxy for Mrs. P.K.
Gupta, Advocate)

ORDER

Hon'ble Dr. A. Vedavalli, Member (J):

The applicant, Shri Sohan Singh, who belongs to a scheduled caste community, was working as a Desk Officer/Section Officer in the Ministry of Finance, Department of Revenues, Government of India. He retired from service on 30.9.94. His grievance is that he was not given his promotion as an Under Secretary, which was due to him when his turn came just before retirement and the respondents have

wrongly promoted two of his juniors, namely, Shri Rajbir Singh and Shri Kanwal Singh as Under Secretary on ad hoc basis w.e.f. 7.9.94.

2. The applicant has impugned in this O.A. Govt. of India, Ministry of Personnel, P.G. Pension Deptt. of Personnel & Trg. New Delhi's letter No.4/18/95-CS-I dated 26/11/96 (Annexure A-1) sent to the applicant vide Govt. of India, Ministry of Finance, (Deptt. of Revenue) New Delhi letter No.F.No.A/9014/2/93-Ad. I dated 13/1/97 read with operative portion of Para 9(VI) of the judgement order dated 31.10.94 in O.A. No.434/1994 (Annexure A-3) passed by the Hon'ble CAT, New Delhi and Govt. of India, Deptt. of Personnel & Trg. order dated 7/9/94 (Annexure A-4).

3. The applicant has sought the following reliefs:

"The Hon'ble Tribunal may be pleased to direct the respondents

- (a) to declare the applicant promoted to the post of under Secty. (Grade I of CSS) with effect from 7/9/94 i.e. the date on which his juniors namely S/Shri Rajvir Singh (S.No.2020) and Kanwal Singh (S.No.2024) have been promoted in the said grade, with all consequential benefits including to that of pension, gratuity etc.
- (b) to grant any other relief/reliefs which this Hon'ble Tribunal may deem it proper and just in this case.
- (c) to grant cost of the O.A. in favour of the applicant."

4. The grounds on which the said reliefs were sought by the applicant are as under:

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- (A) The respondents have illegally and unjustifiably denied the promotions to the applicant to the post of Under Secty. on two occasions mainly on account of his social orgine and invisible malafide intention.
- (B) There is no rule or law which prohibits the promotion to the applicant on the ground taken by the respondents in their counter-affidavit.
- (C) The applicant has been meted out a discriminatory treatment in the matter of promotion whereas other similarly situated employee has given promotion.

5. The O.A. has been contested by the respondents. They have submitted, inter alia, that the impugned order dated 28.11.96 at Annexure A-1 is not the immediate cause of his grievance and relates to a general issue. They have stated that the actual grievance is the one relating to the promotion of two of his juniors by the order dated 7.9.94 (Annexure R-1). They have submitted that when the applicant's turn for promotion came he was duly considered for promotion to Grade-I of Central Secretariat Service (CSS) (Under Secretary level) on ad hoc basis along with other Section Officers in September, 1994. At that time he was working as a Section Officer in the Department of Revenue of the Ministry of Finance and there was no vacancy available in the said department as well as in the other two departments of that Ministry, namely, Department of Expenditure and Department of Economic Affairs. Since the applicant was due to retire from service shortly, i.e., on 30.9.94, and it was not administratively feasible to post him elsewhere in other Ministries/Departments

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for a period of less than one month, he could not be promoted. Two officers junior to him were promoted since the administrative difficulty did not exist in their cases.

6. It was also submitted by the respondents that the vacancies in the Under Secretary grade of the CSS, to which the applicant belonged, are filled up by promotion (on regular basis) from the feeder grade of Section Officers of CSS and PSs (namely Grade A&B (merged) Stenographers of CSSS) by the process of selection. There is no direct recruitment to the said grade of Under Secretary. No regular promotions to Under Secretary's Grade could be made after the panel of 1986 for that grade was issued, due to protracted litigation regarding inter-se seniority of the directly recruited and promotee Section Officers. Meanwhile, pursuant to the directions of the Hon'ble Supreme Court from 4.12.91 onwards, vacancies in that grade were filled by promoting Section Officers on ad-hoc basis on different occasions. These ad-hoc promotions have been made in accordance with the general instructions laid down in this Deptt's O.M. dated 30.4.1983 read with O.M. dated 30.9.1983 (Annexure R-3).

7. The learned counsel for the applicant relied upon the cases of an employee stated to have been similarly situated, namely, Shri Har Bhagwan Khurana, a permanent Section Officer in the Department of Agriculture and Cooperation to the post of Under Secretary, who was promoted on ad hoc

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✓ basis by an order dated 18.3.97, even though there were only 13 days left before his retirement on 31.3.97 and argued that the grounds given by the respondents in their reply are neither valid nor supported by any rules and that the stand taken under the relevant OM of the Department of Personnel (supra) is not tenable.

8. Though the applicant has not specifically impugned the order of the respondents dated 7.9.94 (Annexure R-4) as pointed out by the respondents, the nature of his grievance and the cause of action are quite evident from the relevant contents of the OA including the grounds raised therein and the reliefs sought for by the applicant and hence we are proceeding to dispose of the matter.

9. We have heard the learned counsel for both the parties. The pleadings and the relevant documents and material placed on record have been perused. Matter has been considered carefully.

10. The crucial question before us is whether the applicant can legitimately be denied his due promotion, though ad hoc, after his selection only on the ground that there was no vacancy of under Secretary available in the Department of the Ministry of Finance where he was working and that it was not administratively feasible or possible to promote him in other Ministries/Departments as he was due to retire in less than a month?

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11. It is admitted by the respondents that the turn of the applicant for ad hoc promotion as Under Secretary in Grade I of the CSS came in September, 1994 when the Department of Personnel and Training issued the order dated 7.9.94, promoting 11 Section Officers to the said grade (Annexure R-1) and that two other officers amongst them were junior to the applicant who was not promoted. There is nothing in the reply filed by the respondents to indicate that the applicant was not selected or found fit for promotion by the concerned selection Board or Screening Committee/Departmental Promotion Committee as the case may be. The respondents have also not denied that in the case of Shri Khurana (supra) promotion was given to him though only a few days were left for his retirement. They have also not indicated as to how the non-availability of vacancy at the relevant time in the department or the Ministry in which the applicant was working and the administrative difficulty in posting him elsewhere in view of the short period available before his retirement stands in the way of promotion being given to the applicant. They have failed to establish clearly and specifically with supporting rules or material, if any, that they can legitimately deny the due promotion to the applicant even though it is purely ad hoc on the aforesaid ground. Moreover, any Government servant after due consideration and selection for promotion has a legitimate expectation of being promoted even if it is for a single day particularly when he is due to retire after serving the Government for a long time. He should not be

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denied that satisfaction towards the far end of his career on grounds or for reasons which are not duly established by the respondents as being tenable or valid in the eye of law, since such an action by the Government will have the result of causing severe mental agony, torture and harassment to the Government servant concerned. It will also have serious consequences in the Governmental Administration due to the sense of frustration which may be caused by such action.

12. In the facts and circumstances of this case and in view of the aforesaid discussion, we direct the respondents to give notional ad hoc promotion to the applicant as Under Secretary in Grade-I of the Central Secretariat Service w.e.f. 7.9.94, i.e., the date from which two of his juniors were promoted to the said grade with all consequential benefits, including fixation of pay for the purpose of pension, as are permissible under the law, within a period of three months from the date of receipt of a copy of this order.

13. The O.A. is disposed of accordingly in terms of paragraph-12 above. No costs.

A. Vedavalli
24/9/98
(Dr. A. Vedavalli)
Member (J)

N. Sahu
(N. Sahu) 24.9.98
Member (Admin)

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