

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2064/94

199

T.A.No.

DATE OF DECISION 16-9-99

(15)

Shri B.D.Jain

....Petitioner

None

....Advocate for the
Petitioner(s)

VERSUS

UOI & ORS

....Respondent

Sh. N.S. Mehta, Sr. Counsel forAdvocate for the
Official Respondents. Respondents.
Sh. Hari Shanker for pvt. respondents.

CORAM

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

The Hon'ble Shri S.P. Biswas, 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

O.A. 2064/94

New Delhi this the 16th day of September, 1999

(b)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.P. Biswas, Member(A).

Shri B.D. Jain,
S/o late Shri Suraj Bhan Jain,
R/o 339, Guru ram Dass Nagar,
Laxmi Nagar,
Delhi-92.

Applicant.

None.

Versus

1. Union of India,
through its Secretary,
Ministry of Human Resources Development,
Shastri Bhavan,
New Delhi.
2. The Director General,
Archaeological Survey of India,
Janpath,
New Delhi-11.
3. The Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi.
4. Shri M.K. Goel,
C/o Superintending Archaeologist,
Safdarjung Tomb,
New Delhi. Respondents.

By Advocate Shri N.S. Mehta, Sr. Counsel - for official
respondents.

By Advocate Shri Hari Shanker - for private respondent.

O R D E R (Oral)

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

MA 685/95 filed by the applicant seeking amendment
of the O.A., had been allowed on 3.5.1995 with a direction
to the learned counsel for the applicant to incorporate the
amendment in the O.A.

2. As none has appeared for the applicant even on
the second call, we have perused the records, including the

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pleadings in the amended O.A. and heard the learned counsel for the respondents.

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3. In the amended O.A., the applicant has sought a direction to Respondents 1-3 to correct the seniority list dated 16.10.1992 (sic - mentioned wrongly as 22.10.1992) so as to show that he was appointed to the post of Assistant Superintending Archaeological Engineer (ASAE) on 29.9.1989 instead of 29.5.1991. He has also impugned the promotion order dated 13.10.1994 promoting certain other persons, including Respondent No.4 which he has prayed may be quashed and set aside. His contention is that Respondent No. 4 did not have the essential qualifications and experience as prescribed in the Recruitment Rules for promotion to the post of Deputy Superintending Archaeological Engineer (DSAE).

4. In the original O.A. filed by the applicant, he had not challenged the seniority list dated 16.10.1992. Respondents 1-3 have filed reply to the original O.A. In the facts and circumstances of the case, Shri N.S. Mehta, learned Sr. Counsel, has submitted that the reply filed to the original O.A. is sufficient as reply to the amended O.A. also.

5. In the impugned seniority list of ASAE as on 1.10.1992 circulated by the respondents' letter dated 16.10.1992, the applicant is mentioned at Serial No. 9 and his date of appointment/date of confirmation in the present post is shown as 29.5.1991 in Patna Circle. In the case of Respondent No.4, Shri M.K. Goel, his date of appointment/confirmation is shown as 29.9.1989 and place of posting is in Delhi Circle. The applicant has stated in the

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✓ amended O.A. that he had submitted a representation to the respondents against this seniority list as at Annexure-V, which is supposed to be on 6.11.1992. The respondents have in their reply categorically stated that no such representation was received by them to the office letter dated 16.10.1992 within the time prescribed therein and hence the draft seniority list which had been circulated had become final. They have also stated that in Annexure-V enclosed with the petition of the applicant there is an over-writing and hence it is concocted. They have also stated that since the applicant was posted at Patna Circle of Archaeological Survey of India, he should have submitted his representation through proper channel. They have, therefore, submitted that no reliance can be placed on this representation which is stated to have been given on 6.11.1992.

6. The respondents have also submitted that the claim of the applicant to ante-date his promotion of ASAE cannot be granted. Shri N.S. Mehta, learned Sr. Counsel, has referred to Office Order No. 54/91-Adm. I dated 22.3.1991 (Annexure-IV) of the amended O.A. In this order, it is stated that on the basis of the recommendations of the review DPC, the respondents have appointed two Senior Conservation Assistants, including the applicant, to officiate as ASAE in the order of merit w.e.f. 29.9.1989 i.e. the date of promotion of their immediate junior but they will get monetary benefit from the date they assume the charge of the post of ASAE. The respondents have stated that the applicant was working as ASAE w.e.f. 29.9.1991 and would complete three years regular service in that grade only on 29.5.1994. Shri Mehta, learned counsel, submits that since the applicant has assumed the post of ASAE only

w.e.f. 29.9.1991, he will not be eligible for promotion to the post of DSAE since he had not completed 3 years service in the grade of ASAE.

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7. Shri Hari Shanker, learned counsel for Respondent No. 4, has submitted that the applicant does not fulfil the eligibility conditions as laid down under the Recruitment Rules for promotion to the post of DSAE as he does not have 3 years service in the grade of ASAE on the relevant date when the DPC had considered the eligible officers for promotion. He has relied on the judgement of the Supreme Court in Union of India & Ors. Vs. M. Bhaskar & Ors. (1996(4) SCC 416) (Paras 15-16).

8. We have carefully considered the pleadings and the submissions of the learned counsel for the respondents.

9. The relevant recruitment/promotion Rules for the post of DSAE provides that an ASAE with 3 years service in the grade rendered after appointment thereto on a regular basis may be considered for promotion. In the present case, what is relevant under the Rules are the qualifications laid down under Column. 11 for promotion and not what is stated under Column. 7 as eligibility conditions for direct recruits. In this case, the respondents' office order dated 22.3.1991 clearly states that on the basis of the recommendations of the Review Departmental Promotion Committee, Director General, Archaeological Survey of India, had appointed the applicant who was a Senior Conservation Assistant, to the post of ASAE in the scale of Rs.2000-3500 w.e.f. 29.9.1989. The further stipulation in the Order regarding monetary benefit which is payable to the applicant is not relevant here. From this order, it is

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apparent that the Department itself had promoted the applicant on a regular basis as ASAE w.e.f. 29.9.1989, that is the date of promotion of his immediate junior by a review DPC. Therefore, the applicant would be eligible for consideration for promotion to the post of DSAE on completion of 3 years service in the grade of ASAE, that is w.e.f. 28.9.1992. The DPC in question here has been held sometime thereafter. The contention of the applicant that the seniority list of ASAE as on 1.10.1992 should be revised as the respondents ought to have corrected the same in terms of their own Office Order No. 54/91-Adm.I dated 22.3.1991 is correct. Therefore, irrespective of whether the applicant's representation was or was not received by the applicant, we are of the view that the respondents should have revised the seniority list in accordance with their own promotion order promoting the applicant to the post of aSAE w.e.f. 29.9.1989. We have also seen the judgement of the Supreme Court in M. Bhaskar's case (*supra*) relied upon by Shri Hari Shanker, learned counsel for Respondent No. 4. The facts and circumstances in that case will not be applicable to the present case.

10. In view of the above facts and circumstances of the case, this application succeeds and is allowed. The impugned promotion order dated 13.10.1994 with regard to Respondent No. 4, Shri M.K. Goel, is quashed and set aside. Respondents are directed to hold a review DPC and consider the case of the applicant in accordance with the Rules and instructions. Necessary action shall be taken by the respondents within two months from the date of receipt of a copy of this order. In case the applicant is found fit for promotion to the post of DSAE in Archaeological Survey of India by the review DPC, he shall be entitled to all

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consequential benefits, including the difference in pay and allowances in the higher post from the due date till his assumption of charge of the higher post of DSAE. However, in view of the facts and circumstances of the case, till the conclusion of the review DPC, the status quo of Respondent No. 4 with regard to the promotion order shall be maintained.

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Parties to bear their own costs.

Resomone
(S. P. Biswas)

Member (A)

'SRD'

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)