

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2112/94

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T.A. No.

DATE OF DECISION 18.8.1999

Shri P.K. Jha

....Petitioner

Shri G.D. Gupta a

....Advocate for the
Petitioner(s)

VERSUS

Union of India & Anr.

....Respondent

None

....Advocate for the
Respondents.

COURT

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)
The Hon'ble Shri N. Sahu, Member (A).

1. To be referred to the Reporter or notified
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

Original Application No.2112 of 1994

New Delhi, this the 18th day of August, 1999

Hon'ble Mrs.Lakshmi Swaminathan,Member(Judl)
Hon'ble Mr.N.Sahu, Member (Admnv)

Shri P.K.Jha,
Son of Shri B.N.Jha,
Resident of DG-1/20-B,
Vikaspuri,New Delhi-110018

....Applicant

(By Advocate: Shri G.D.Gupta)

Versus

1.Union of India through
the Secretary to the Government
of India,Ministry of Water Resources,
Rafi Marg,Shram Shakti Bhawan,
New Delhi-110001.

2.The Director,
Central Soil and Materials Research Station,
Hauz Khas,
New Delhi-110016

....Respondents

(By Advocate: None)

O R D E R (ORAL)

By Hon'ble Mrs.Lakshmi Swaminathan,Member(Judl)

This case was listed as part-heard today.
We have heard Shri G.D.Gupta, learned counsel for the
applicant. None appears for the respondents.

2. The applicant is aggrieved by the action of
the respondents not considering him for promotion to
the post of Senior Research Officer and rejection of
his request by memorandum dated 30.6.94. In this
memo, the respondents have stated that he had to put
in five years of regular service in the grade of
Research Officer (Engineering) to become eligible for
consideration for promotion to the post of Senior
Research Officer(Engineering) under the Flexible
Complementing Scheme (in short "FCS").

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3. The applicant was initially appointed as Supervisor in the Central Water Commission (in short "CWC") in 1981. Later he was appointed as a direct recruit to the post of Design Assistant on 12.2.1982. He was recommended for appointment to the post of Research Officer by the Union Public Service Commission (in short "UPSC") vide their letter dated 20.3.1986 with respondent 2 i.e. Central Soil and Materials Research Station (in short "CSMRS"). From the facts stated by the applicant, it appears that he was directed to undergo certain medical examinations against which he represented, as according to him, he was already a Govt. servant when he was appointed in CSMRS. Finally, by letter dated 1.1.1990, the respondents offered him the appointment as Research Officer which post he joined on 26.6.1990. From this it is seen that there was delay in the applicant joining the post of Research Officer. The respondents had held a DPC for considering eligible persons for promotion to the post of Senior Research Officer in January, 1994. Following the recommendations of the Board of Assessment, the respondents had issued the order dated 10.1.94 pertaining to ten other persons promoting them to the post of Senior Research Officers. The applicant states that persons appearing at serial number 4-10 are junior to him. At that time, the respondents had issued office memorandum dated 4.1.91 showing the combined seniority list in respect of Research Officers (Engineering & Scientific) in the pay-scale of Rs.2200-4000 in CSMRS as on 1.1.1991. In
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in this list, the applicant is shown at serial number 14 whereas he had represented to the respondents that he should have been shown at serial number 5.

4. Shri G.D.Gupta, learned counsel for the applicant has submitted that the respondents had finally agreed with the contention and request of the applicant to revise the seniority list mentioned above. They had issued a subsequent seniority list on 30.6.94 showing the seniority in the grade of Research Officer(Engineering) as on 1.1.1991 wherein the applicant has been shown at serial number 5. In other words, in the revised seniority list issued by the respondents, they have shown the applicant at serial number 5 and senior to the officers who are shown from serial numbers 6-10 of the promotion order dated 10.1.94. In the revised seniority list, Shri Aabi Binju is shown at serial number 6 and he is at serial number 4 in the promotion order dated 10.1.94, just below the applicant who is given the revised seniority in the list at serial number 5. Learned counsel for the applicant has further submitted that when the respondents themselves have revised the seniority list as per his request and placed the applicant senior to the officers who have been promoted as Senior Research Officers, the respondents should have also considered him for promotion to the post of Senior Research Officer under FCS particularly because it is ~~not~~ ^{any P} in-situ promotion. He has submitted that in case the applicant was also doing the similar nature of job as Assistant Engineer in CWC before he was directly appointed as Research Officer with CSMRS ^P and the

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respondents could not have ignored him for consideration for promotion. He relies on the DOPW guidelines issued to all departments on preparing schedule and notification with regard to consideration of seniors who have not completed the qualifying service for promotion ~~before~~ ^{when} juniors who have completed the requisite service are being considered under the Rules.

5. We have seen the written statement filed by the respondents. Their main contention is that the applicant has not completed five years regular service as Research Officer on the date when the Board of Assessment considered the eligible officers for promotion as Senior Research Officers under FOS. It is seen from the reply that the Board of Assessment had met to consider the promotion of the officers to the post of Senior Research Officer before the respondents accepted the UPSC recommendation letter dated 3.5.94 to revise the seniority list which was issued on 30.6.94. At the time when the Board of Assessment met, the applicant had been shown at serial number 14 in the seniority list and, admittedly, his juniors had been promoted as Senior Research Officer ignoring the claims of the applicant.

6. We have considered the pleadings and submissions made by Shri G.D.Gupta, learned counsel for the applicant. Under the relevant Recruitment Rules - Central Soil and Materials Research Station, New Delhi (Group "A") Posts Recruitment Rules, 1983, for promotion to the post of Senior Research Officer,

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Research Officer with five years regular service are eligible for consideration. In view of the facts mentioned above, particularly with regard to ^{the} medical examination of the applicant, the applicant admittedly joined service as Research Officer on 26.6.90. Therefore, the persons who had five years regular service at ^{the} time, although junior to him, had been considered for promotion to the post of Senior Research Officer in 1994. Learned counsel for the applicant relied on the DOPR office memorandum dated 23.10.89. Relevant portion of the said memorandum reads as under:-

"The undersigned is directed to refer to para 3.1.2 of Part III in this Department's O.M.No.AB 14017/12/87-Estt.RR dated 18th March,1988 wherein it was suggested that a suitable "Note" may be inserted in the recruitment rules to the effect that seniors who have completed the probation period may also be considered for promotion when their juniors who have completed the requisite service are being considered.

2. It has been brought to the notice of this Department that inspite of the instructions referred to above, the proposed "Note" has not been incorporated in the recruitment rules of a number of posts. This has led to difficulties at the time of making promotions when the seniors had either to be left out or relaxation of recruitment rules had to be resorted to on each occasion. In order to avoid a situation of this kind, it is requested that all the Ministries/Departments may kindly examine their recruitment rules and insert a "Note" as referred to above wherever it is considered necessary."

7. The above O.M. deals with the situation which is present in this case, namely, the question of considering ^{the} senior who has not completed the qualifying service for promotion where the juniors have completed the requisite service under the Rules.

The relevant recruitment rules applicable for promotion to the post of Senior Research Officer have not been amended as provided in the guidelines issued by the DOP&T by office memorandum dated 18.3.88. The aforesaid O.M. itself provides that in order to avoid a situation of this kind, the concerned Departments were to examine their recruitment rules and insert a "Note" which has not been done in this case. It has been specifically mentioned that this is ^{the P} to avoid taking concurrence of competent ~~the~~ authority to relax the provisions of the recruitment rules in cases where juniors are considered for promotion, keeping the seniors out as they have not completed the qualifying service. It is also relevant to note that the respondents themselves have revised the seniority list showing the applicant senior to the officers who have been promoted as Senior Research Officers.

8. In the facts and circumstances of the case, the O.A. succeeds and is allowed. The respondents are directed to consider the applicant's case in the light of the guidelines given by the DOP&T in 1988 and, if necessary, obtain the concurrence of the competent authority for relaxation of the relevant Recruitment Rules. Thereafter, they shall hold a review DPC to consider the case of the applicant for promotion to the post of Senior Research Officer(Engineering). If

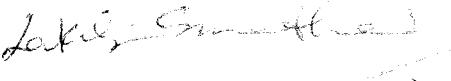
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after obtaining the relaxation, the applicant is considered fit by the Board of Assessment for such promotion, he shall be entitled to the consequential benefits in accordance with law/Rules. No order as to costs.



(N. Sahu)
Member(Admnv)



(Mrs. Lakshmi Swaminathan)
Member(Judl)

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