

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

15

O.A. No. 982 of 1994

New Delhi, dated this the 8th JULY 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri M. Gopalakrishnan,
S/o late Shri P. Makuteswaran,
Director,
Central Water Commission,
presently as
Superintending Engineer,
North Eastern Investigation Circle,
Jamir Mansion,
Nong Shillong,
Shillong, Meghalaya.

.... APPLICANT

By Advocate: Shri S. Balakrishnan,
Sr. Counsel

VERSUS

1. Union of India through
the Secretary,
Ministry of Water Resources,
Shramshakti Bhawan,
New Delhi-110001.
2. Central Water Commission
through its Chairman,
Sewa Bhawan,
R.K. Puram,
New Delhi-110066.
3. Shri R. Jayaseelan,
Superintending Engineer,
Central Water Commission,
CGO Complex, Seminary Hills,
Third Floor,
Nagpur-440006.
4. Shri S.K. Dass II,
Jt. Commissioner (B&N),
Ministry of Water Resources,
Lodhi Road,
New Delhi-110003.

... RESPONDENTS

By Advocate: Shri Vijay Mehta

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J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

(16)

Applicant impugns official Respondents' order dated 28.2.90 (Ann. D-1), fixing his seniority below private Respondent No.3 & 4 and also official Respondents' order dated 3.11.93 (Ann. H) rejecting his representation *against the same*.

2. [^]Shotly stated, consequent to the stagnation being faced by officers in the Senior Time Scale of the Central Water Engineering (Group 'A') Services, in 1986, Respondents decided to promote them to J.A.G. on purely personal basis by upgrading the post of Dy. Director (Senior Time Scale) to that of Director (Superintending Engineer) (J.A.G.) till these officers were promoted on regular basis. It ~~was~~ made clear that this service rendered as a result of personal promotion to JAG would not count for the purpose of seniority in JAG, and the upgraded post would stand down graded automatically w.e.f. date the incumbent was promoted on regular basis or vacated the post on retirement. Pursuant to this decision, applicant was promoted to JAG on personal basis vide order dated 12.2.87 (Ann. C) w.e.f. 22.8.86.

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3. After grant of these personal promotions, meetings of DPC were held on 2.4.87 and 12/13.2.90 to make regular promotions to the grade of Director (JAG). These DPCs considered all those officers who were eligible to be promoted, including those who had got personal promotions to JAG as well as those who had^{not} got personal promotions. From Ministry of Water Resources File No. 3/13/87/Estt. I - Vol.II dealing with the subject, which was produced before us for our perusal, we note that the DPC in its meeting held on 2.4.87 drew up a panel of 37 officers for promotion to the JAG (OG) for the vacancies pertaining to year 1986, all of whom were subsequently promoted. In the DPC held on 12/13.2.90 for the vacancies pertaining to 1987, it was noted that there were 116 sanctioned posts of JAG during 1986 and as per CWES Rules, 20% of these posts were in the Selection Grade prior to 1.1.86 which worked out to 23. Out of the remaining 25% posts were in deputation quota and 75% posts in promotion quota. However, consequent to DOPT's O.M. dated 14.8.87, the concept of Selection Grade in JAG had changed altogether and now the number of SG posts in the JAG of organised services ^{would} ~~would~~ be equal to 15% of all duty posts in the Senior Time Scale and above. Keeping in view the sanctioned duty post from STS above and above in the CWES, the number of SG posts came to 67 during 1986 leaving 49 posts in the

18

Ordinary Grade (OG). As the deputation quota was applicable to Ordinary Grade only, the number of deputation posts came down from 23 to 12 thereby giving an increase of 11 posts in the promotion quota. As the DOPT O.M. dated 14.8.87 was effective from 1.1.86, these 11 vacancies, fall in promotion quota for the year 1986 and could not have been foreseen while sending the proposal for preparing a panel of officers for 1986 vacancies. Against the afore-mentioned 11 additional vacancies for the year 1986 which had arisen pursuant to DOPT's O.M. dated 14.8.87, and which came to notice in the DPC dated 12/13.2.90 33 officers were considered for promotion, including the applicant (Sl. No.24) and R-3 (Sl. No.30) both of whom were assessed Very Good. Neither of them were selected for that year, and indeed nor was R-4, because of their low panel position.

4. For the year 1987, that DPC noted that 14 vacancies became available, for which 42 officers were considered for promotion, including applicant (Sl. No.13) as well as R-3 (Sl. No.19) and R-4 (Sl. No.30). While applicant was assessed as "Very Good", both R-3 and R-4 were assessed as "Outstanding", and accordingly were placed above the applicant in the background of the relevant instructions on the subject.

5. We note that the DPC dated 12/13.2.90 was held by the UPSC, in which a Member, UPSC presided as Chairman, and the Members were also very senior officers, including the Member, Central Water Commission, and the

19

Jt. Secretary & Financial Adviser, Ministry of Water Resources. No malafide is alleged against any of them.

6. It is well settled that a Govt. servant has no legally enforceable right to be promoted. He has only a legally enforceable right to be considered for promotion if he is otherwise eligible, and admittedly applicant was considered for the 11 additional vacancies arising for the year 1986 pursuant to DOPT O.M. dated 14.8.87 but neither he nor R-3 could be promoted, in view of their low panel position. For the year 1987, applicant as well as R-3 and R-4 were considered. DPC assessed the performance of R-3 and R-4 to be Outstanding while that of applicant continued to remain Very Good and under the circumstances R-3 and R-4 stole a march over the applicant. We see no legal infirmity in the action taken by the Respondents to warrant our judicial interference in the matter, and the mere fact that applicant was given personal promotion to JAG gives him no advantage when he was being considered for regular promotion along with others eligible for such regular promotion.

7. During hearing applicant's counsel sought to argue that if these 11 additional vacancies were made available in 1986 itself the zone of consideration would have increased, in which case the applicant might

20

have been promoted that year itself. This is a purely hypothetical suggestion. These 11 additional vacancies became available only pursuant to DOPT's O.M. dated 14.8.87 and could not have been foreseen by the Respondents while sending a proposal for preparing the panel for the 1986 vacancies.

8. Similarly the apprehension voiced by the applicant's counsel during hearing that some of the applicant's ACRs for the period in question may not have been placed before the DPC putting him at relative disadvantage vis-a-vis R-3 and R-4 is also not borne out by the materials on record, including the statement showing the yearwise availability of ACRs placed in File No. 3/13/87/Estt. I - Vol.II referred to above.

9. During hearing applicant's counsel had also urged that applicant should be granted seniority w.e.f. the date of his personal promotion in J.A.G., but this prayer is untenable in view of ¹ para 2(i) of the personal promotion order dated 12.2.87 which expressly states that the services rendered in JAG would not count for the purpose of seniority.

10. In the result this O.A. fails and is dismissed. No costs.

A. Veda Valli
(DR. A. VEDAVALLI)
Member (J)

/GK/

S. R. Adige
(S.R. ADIGE)
Member (A)