

Date - 8-9-99

(13)

RA 181/99

on 2255/95

with

RA 182/99

on 2256/95

Present:

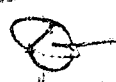
Sh. V.K. Rao Taxey Counsel for Sh

K.P. Sunder Rao, counsel for Applicant

Sh. S. Mohd. Arif counsel for

respondent.

R.A. Dismissed. order dictated in
open Court today, by a DB of
Honble Mr. Justice. R.G. Vaidyanatha,
re. S, and Honble Mr. J.L. Dhawan. M.D.

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CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI.

R.A. 181/99
AND
O.A. 2255/95

AND

R.A. 182/99
AND
O.A. 2256/95

New Delhi, this the 8th day of September, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha,
Vice-Chairman,
Hon'ble Shri J.L.Negi, Member (A).

1. P.S.Awal, GH.10, 65 - B,
Sundar Apartments, Paschim
Vihar, New Delhi - 41.

...Applicant in
RA 181/99

2. S.K.Chadha, C-II-45, Lajpat
Nagar, New Delhi - 24.

...Applicant in
RA 182/99

(By Advocate: Sh. V.K.Rao)

Vs.

1. Union of India, through
Secretary, Ministry of
Finance, Department of
Economic Affairs, I.E.S.
Division, North Block, New
Delhi.
2. Establishment Officer,
Department of Personnel,
North Block, New Delhi.
3. Secretary, Union Public
Service Commission, Dholpur
House, New Delhi.


...Respondents in
R.A. 181/99 and
R.A. 182/99

(By Advocate Mr.S.M.Arif)

ORDER (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These two applications were disposed of by our
order dated 1.9.99. The applicant's counsel has since
filed two Review Application Nos. 181/99 and 182/99
to recall our order dated 1.9.99 and to hear the OAs



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on merits. Counsel for respondents seriously opposed both the OAs and further submitted that the RAs are not maintainable. After hearing both sides, we find that our order dated 1.9.99 was passed without hearing the applicant's counsel. Hence, in the interest of justice, we feel that applicant should be given opportunity to address arguments on merits. We need not go by technicalities but we should do substantive justice to the parties. Therefore, we allow both the RAs and the order dated 1.9.99 is hereby recalled. Both the OAs are restored to file.

Today, we have heard Mr. V.K.Rao, counsel for applicant and Mr. S.M.Arif, counsel for respondents on merits.

2. In both the OAs, the applicants are claiming promotion to the post of Sr.Administrative Grade in the Indian Economic Service. The case of both the applicants is that they were seniormost in their cadre and they were due for promotion and their names were recommended for promotion by the DPC, but further when the matter sent to ACC for approval, the names of three persons, including two applicants, were not approved. The juniors were promoted by the impugned order dated 4.8.95. Both the applicants retired on superannuation on 31.7.95. The applicants have also come to know that their promotion was not approved by the DPC presumably on the ground that they did not have minimum three months' tenure after promotion and before retirement. The applicant's

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grievance is that there was inordinate delay on the part of the administration in not calling the DPC meeting and processing the cases of the applicants for promotion. Both the applicants had a good record of service and were due for promotion in their own turn. Though the vacancies arose in 1995, in view of the inaction on the part of the administration. The promotion papers were not processed and there was undue delay and this has resulted in denying promotion to the applicants. Therefore, the applicants have approached this Tribunal praying for a direction that the action of the respondents in not giving promotion to the applicants is arbitrary and illegal and for direction to respondents to promote the applicants to the post of Sr. Administrative Grade either from the date of actual vacancy or from the date of DPC meeting.

2. Respondents in the reply have stated that though, the DPC recommended the names of three officers including the applicants, the names of the applicants were not approved by the ACC since they do not have minimum tenure of three months after promotion. No right is conferred on officials merely because their name were recommended by the DPC when recommendation is accepted by the competent authority. That there was no malafide intention on the part of the respondents. Respondents have also pointed out that as a policy the Govt. has decided that in such a senior post like SAG an officer on promotion must have minimum tenure of three months. The OM dated 25.1.90

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(which is Ex.R-1 to the written statement) says that no officer should be promoted to higher post unless he has minimum service of three months after promotion and before retirement. It is, therefore, stated that applicants have no case and are not entitled to any of the reliefs.

3. Counsel for applicant contended that there was inordinate delay and inaction on the part of the Administration in calling DPC meeting and taking up the question of promotion. If there is a delay or inaction on the part of the Administration, the officers should not suffer and they cannot be denied the promotion. He pointed out that as per rules, DPC must be held regularly every year so that the officers should not be denied promotion if they are likely to retire in the near future. On the other hand, counsel for respondents contended that no officer has a right to promotion unless the names are approved by the competent authority. The order for promotion cannot be issued unless DPC recommendation is approved by competent authority.

4. There is no dispute that in this case there has been delay on the part of the Administration for putting up the papers for promotion and in arranging the meeting of DPC. It is also true that the rules provide that the DPC must be held regularly to consider the cases for promotion but the rules nowhere provided as to what happens if there is delay in holding DPC meeting. If there is delay in holding

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the DPC on the part of the Administration and negligence and inaction, it is open to the Govt. to take action against the officer for negligence but that will not confer any right to claim for promotion unless the DPC is held and the names are recommended and then approved by the competent authority. No person has a right to promotion but only a right to be considered for promotion. It is well settled by the judgement of the Hon'ble Supreme Court that no Court or Tribunal can give a direction to the Govt. to fill up vacancy or fill up a post. There is no rule providing for retrospective promotion from the date of vacancy. There is no such rules or law that an officer should be promoted from the date when the vacancy arose. Promotion comes into effect only after the orders of promotion are issued and the officer assumes the charge. Therefore, this Tribunal cannot give a direction to the Administration to fill up the vacancy either from 1993 or 1994 when the vacancy arose or from May 1995 when the DPC meeting was held. The meeting of DPC will not confer any right unless it is accepted or approved by the competent authority.

5. In a matter like promotion, the right of an officer to claim retrospective promotion comes into play only if the junior is promoted by superceeding a senior officer. In the present case, we find that the applicants retired on superannuation on 31.7.95. No promotion had taken place till that date. Order of promotion was issued on 4.8.95 and some of the juniors of the applicant came to be promoted. The applicants


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may be aggrieved by the order dated 4.8.95 when some juniors came to be promoted and in such a case, we can direct the Administration to promote the applicants from the date the juniors got promotion, namely, 4.8.95. But unfortunately, the applicants had retired prior to 4.8.95. Therefore, in the facts of the circumstances of the case, no relief can be given to the applicant in view of the retirement on 31.7.95 and juniors getting promotion subsequently on 4.8.95.

6. What we have stated above is sufficient to dispose of this application. But in addition to this, respondents have placed reliance on OM dated 25.1.90 which says that in case of senior appointments which required approval of the ACC, no officer can be promoted unless he has minimum service of three months before retirement. The respondents's case is that the papers were sent to ACC some time in June, 95 and since, the applicants were to retire on 31.7.95, they could not be approved for promotion in view of the OM. Counsel for applicant contended that if there is a delay on the part of the Administration in processing the papers and calling the DPC meeting and getting approval of ACC, an officer should not suffer due to lapse on the part of the Administration. This argument is not without force. But, however, since on merits, we have reached the conclusion that no direction can be given to Administration to fill up vacant posts and no direction can be given for retrospective promotion from the date of vacancy, we need not examine the above arrangement.



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7. Even, if we ignore the OM dated 25.1.90, in the facts and circumstances of the case, we hold that the relief prayed for by the applicant, cannot be granted, since no junior had been promoted prior to their date of retirement and the promotion of their juniors came into effect only in 4.8.95. In view of the above discussion, we hold that the applicants had a good case for promotion but they cannot be granted promotion in view of their retirement by 31.7.95 and juniors getting promotion subsequently.

8. In the result, both the OAs are dismissed.
No order as to costs.

(J.L.NEGI)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN (J)

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