

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

...  
OA.No.1627 of 1994

Dated New Delhi, this 28<sup>th</sup> day of October, 1994

Hon'ble Shri J. P. Sharma, Member(J)

Hon'ble Shri B.K. Singh, Member(A)

Shri Karnail Singh  
R/o E/106, Nanakpura  
NEW DELHI-21

... Applicant

By Advocate: Shri H. B. Johri

VERSUS

Union of India through

1. Cabinet Secretary to the  
Government of India  
Rashtrapati Bhavan  
NEW DELHI-110001

2. Director General of Security  
Cabinet Secretariat  
Government of India  
Room No.8-B, South Block  
Central Secretariat  
NEW DELHI-110001

3. Principal Director  
Directorate General of Security  
Cabinet Secretariat  
Government of India, Block-V East  
Ramakrishnapuram  
NEW DELHI-110066

4. Director  
Special Service Bureau(SSB)  
Cabinet Secretariat  
Government of India  
Block-V East, Ramakrishnapuram  
NEW DELHI-110066

... Respondents

By Advocate: Shri P. H. Ramchandani

JUDGEMENT

Shri B. K. Singh, M(A)

This OA.No.1627/94 has been filed by the applicant

Under Section 19 of the Administrative Tribunal Act, 1985

against the Memo No.22/Estt/A1/SSB/78(26)IV Pt. dated

28.6.93 (Annexure A-1 of the paper book).

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2. The admitted facts are that the applicant was appointed as Assistant Sub Inspector(Communication) in Punjab Police with effect from 18.5.59. He was subsequently promoted as ACIO-II(Telecommunication) (since re-designated as Field Officer(Telecommunication) with effect from 16.11.85. The SSB(Telecommunication) Service was constituted and its rules were promulgated vide Cabinet Secretariat notification No.EA/SE-161/74 dated 4.3.77 and after due screening etc., the applicant was appointed as Field Officer(Telecommunication) with effect from 4.3.77. He was further promoted as Senior Field Officer(Telecommunication) with effect from 1.12.77 and subsequently he was promoted as Technical Officer (Telecommunication) with effect from 16.1.84. He was promoted as Assistant Director(Telecommunication) with effect from 9.10.86 vide Cabinet Secretariat, Government of India order No.2/100/86-D011 dated 15.1.87.

2. As per the SSB(Telecommunication) Service Rules notified by the Cabinet Secretariat, Government of India, Notification No.EA/SE-161/74 dated 4.3.77 dated 4.3.76 and amended by Cabinet Secretariat Notification No.

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A-12018/21/85-DOI dated 7.8.86, the highest post in the service is that of Deputy Director(Telecommunication) above Assistant Director (Telecommunication) which the applicant has been holding since 7.8.86. The rules stipulate that an Assistant Director with eight years service in the grade is eligible for consideration for promotion to the rank of Deputy Director(Telecommunication). As per Recruitment Rules, the post can be filled up by promotion, failing which by transfer on deputation/re-employment. The Department of Personnel and Training has issued comprehensive instructions for holding of DPC meeting every year to consider the cases of eligible employees for promotion, failing which by transfer on deputation or by re-employment.

3. In the relief sought, the applicant has prayed for summoning the records and restraining the respondents from filling up the post by re-employment and for issue of Writ of Mandamus to the respondents to consider the case of the applicant urgently for promotion to the rank of Deputy Director(Telecommunication)SSB.

4. A notice was issued to the respondents who filed their reply contesting the application and grant of reliefs prayed for.

5. We heard the learned counsel for the applicant, Shri H. B. Johri and Shri P. H. Ramchandani for the respondents, and perused the record of the case.

6. The learned counsel for the applicant argued that as per the provisions contained in the Recruitment Rules issued in 1977 and amended in 1986 (quoted above), an Assistant Director (Telecommunication) with eight years service is eligible for promotion to the post of Deputy Director (Telecommunication). He argued that the applicant was promoted to the rank of Assistant Director (Telecommunication) with effect from 9.10.86 vide Notification No.2/100/86-DOII dated 15.1.87 and he is eligible for the said promotion during the current year and should accordingly be considered for the same since a clear vacancy exists in the rank of Deputy Director (Telecommunication). According to him, promotion is the first mode of recruitment, failing which the respondents can go in for the alternative mode of filling it by transfer on deputation or by re-employment but since the applicant is eligible and he has the requisite qualification and experience etc. he should be given the preference and promoted to hold the post. It was further argued that the case of the applicant should be considered because he comes from OBC category and Government of India Circular No.12011/58/93-BCC(C) dated 10.9.93

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prescribes a reservation of 27% in Government services for OBCs and thus the applicant is entitled to this benefit and has special claim to the post of Deputy Director (Telecommunication) and the respondents are not justified in filling up the post through the mode of re-employment ignoring the claim of the applicant. The respondents, according to him, have already convened a DPC for filling up the post of Deputy Director (Telecommunication) and unless they are immediately restrained from proceeding further, they will fill up the post.

7. The learned counsel for the respondents submitted that the various averments in the OA made by the applicant are misconceived, baseless and wrong. He argued that the applicant, vide office order dated 28.6.93 (Annexure R-1), was informed that it was not possible to consider his case for promotion to the rank of Deputy Director (Tele) till such time he completed the qualifying eight years period of regular service in the grade. It was pointed out that the applicant was appointed as Assistant Director (Telecommunication) with effect from 9.10.86 and as per the provisions laid down in the Recruitment Rules (Annexure A-6), the post of Deputy Director (Telecommunication)

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is required to be filled up by promotion, failing which by transfer on deputation/re-employment. Assistant Directors(Telecommunication) of SSB with eight years continuous regular service in the grade are eligible for consideration for promotion. The applicant's service is governed by statutory rules and he had not completed eight years regular service in the grade when the DPC was called. He completed eight years service

only on 8.10.94. <sup>In</sup> the Deptt OM No.22011/7/86-Estt(d) dated 19.7.89(Annexure R-2), it has been laid down while holding the DPC during the year, the crucial dates for determining the eligibility of officer for promotion would be as under:-

- (i) 1st July of the year in the cases where ACRs are written calendar year-wise, and
- (ii) 1st October of the year where ACRs are written financial year-wise.

In the office of the answering respondents, the ACRs are written financial year-wise. Therefore, crucial date for determining the eligibility of officers for promotion would be 1st October every year. Since the officer(applicant) completed eight years service on 8.10.94, his case would <sup>become</sup> due for promotion to the next higher grade only in the year 1995 when his ACRs for the year 1994-95 will be available on record. Thus, on the basis of the facts, the OA is premature and the applicant was not eligible for

consideration when the DPC was called and, therefore, the respondents had no other option but to resort to the alternative mode of re-employment.

8. It is admitted that the crucial date for determining eligibility for promotion as per the DoPT's OM dated 19.7.89, would be 1st October every year in case where ACRs are recorded after the close of financial year, i.e. 31st March. Since there is a three-tier system in regard to the writing of the ACRs, the ACRs are expected to be completed if the time schedule is followed by 30th September of the year. The Reporting Authority, the Reviewing Authority and Countersigning Authority/ Accepting Authority have to complete the assessment of the officer and the entire process takes time since the Reporting Officer has to obtain a resume of the work done during the year by the officer reported and he is required to write his own assessment in regard to various columns of the resume put up by the officer reported upon. The reporting officer has to submit his assessment along with the self-appraisal to the reviewing officer who in turn may agree or disagree and will finally send his review to the accepting authority. Unless the officers<sup>concerned</sup>

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complete their assessment the ACRs are not complete and  
this is the rational behind fixing up<sup>of</sup> the cut-off date  
as 1st October of the year. It is not in dispute that  
the applicant did not complete eight years regular service  
during the year 1993-94 and as such he was not eligible  
for consideration. The Hon'ble Supreme Court have  
observed as follows about cut-off date:

"The point of a date as a basis for classification  
cannot always be dubbed as arbitrary even if no  
particular reason is forthcoming for the choice  
unless it is shown to<sup>be</sup> capricious or whimsical in  
circumstances. When it is seen that a line or point  
there must be and there is no mathematical or  
logical way of fixing it precisely the decision of  
the legislature or its delegate must be accepted  
unless we can say that it is very wide of the  
reasonable mark."

In reaching its conclusion, the Hon'ble Supreme Court  
relied upon on *Lois Valley Gas Co. Vs Alabama Power Co.*  
240 US 32 1927. This decision is an authority for  
the proposition that whenever a date is chosen or the  
eligibility criteria<sup>fixed</sup> which divides a class the purpose of  
of choice is unrelated to the object sought to be achieved  
must be accepted as valid. It was made clear in the  
decision itself that even if no particular reason is  
forthcoming for the choice unless it is shown to be  
capricious or whimsical, the choice of the legislature

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or its delegates must be accepted. The same proposition of law has been reiterated by a Division Bench of the Hon'ble Supreme Court comprising Hon'ble Mr Justice Kuldeep Singh and Mr Justice Hansaria, UOI Vs Sudhir Jaiswal C.A.No.2347/94 decided in 1994. This was in case of Civil Service Examination relating to the cut-off date for age eligibility as 1st August of every year. The Hon'ble Supreme Court held that this date was neither arbitrary nor wide of any reasonable mark. While deciding this case the Hon'ble Judges of the Supreme Court relied <sup>on</sup> their own decision in the case of Maneka Gandhi Vs UOI (1978) 1 SCC 248, D.R. Nim Vs UOI AIR 1967 SC 1301, UOI Vs State of Kerala (1980) 25CC410, State of Bihar Vs Ramji Prasad (1990) 35CC 368, Sushma Sharma Vs State of Rajasthan (1985) Supp. SCC45. They also referred to their own decision in the case of Mohan Kumar Singhania Vs. UOI (1992) Supp.(1) SCC 594.


9. In the light of the aforesaid judgements, the cut-off as 1st October date <sup>as 1st October</sup> prescribed by the respondents in the light of the DoPT's OM cited above is reasonable since it is neither arbitrary nor wide of <sup>the</sup> mark. Once this major premiss is <sup>admittedly</sup> accepted the minor premiss is <sup>admittedly</sup> that the applicant has

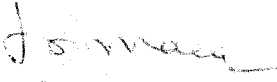
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not completed eight years of regular service on 1st October and he completes it only on 9.10.94 and, therefore, the conclusion follows that he is ineligible for the post on the crucial cut-off date, i.e., 1st October. Therefore, the OA fails and is dismissed, leaving the parties to bear their own costs.

  
(B. K. Singh)  
Member(A)

  
(J. P. Sharma)  
Member(J)

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