

(7)

Central Administrative Tribunal
Principal Bench

O.A. No. 2036 of 2000

New Delhi, dated this the 24, July, 2001

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

Shri Mukesh Chaturvedi,
S/o Shri S.C. Chaturvedi,
R/o F/6-C, G.T.B. Enclave,
Delhi-110093. .. Applicant

(In person)

Versus

Union of India through

1. The Secretary,
Dept. of Personnel & Administrative
Reforms,
North Block, New Delhi.
2. Secretary,
Dept. of Commerce,
Udyog Bhawan, New Delhi.
3. Central Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Bhavishya Nidhi Bhawan,
16, Bhikaji Cama Place,
New Delhi-110066.
4. Director General of Supplies &
Disposal,
Jeevan Tara Building,
Parliament Street,
New Delhi-110001. .. Respondents

(By Advocate: Shri P.H. Ramchandani)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns respondents' letter dated 4.4.2000 (Annexure 12) and seeks promotion as Under Secretary w.e.f. 20.8.99 the date he states his junior shri P.C.Tandon was so promoted with all consequential benefits.

2. Pleadings reveal that applicant was

✓

8

appointed as Section Officer in the select list of 1984 and proceeded on deputation as Dy. Director (Vigilance) North Zone Employees Provident Fund Organisation, New Delhi on 11.9.97 (Page 31 of O.A.).

3. On 20.8.99, Dept. of Personnel & Training issued an O.M. (Annexure 3) temporarily upgrading 690 posts of Desk Officers/Section Officers to the grade of Under Secretary so as to give upgradation on a personal/in situ basis to all the D.Os/S.Os included in the Select List for the year upto 1987. Para 3 of the aforesaid O.M. is particularly relevant and is reproduced below in full.

"3. Officers who are on deputation shall have an option for reversion to get the benefit of appointment as Under Secretary on personal upgradation basis. Such officers may exercise an option for reversion from deputation or otherwise within one month of issue of this order by the concerned Ministry/Department. An officer who exercises the option for reversion will be appointed against the available vacancies of Section Officers in his cadre and on such appointment, he will get the benefit of appointment to the post of Under Secretary on personal upgradation basis. In case an officer opts for reversion, he shall await further instructions from the concerned Ministry/Department before actually reverting from deputation."

4. Applicant who was on deputation as Dy. Director (Vigilance), EPFO at the time gave his option for reversion to his parent cadre in terms of the aforesaid O.M. on 25.8.99 (Annexure 5), and also requested EPFO that he may be relieved at the earliest vide his representation dated 26.8.99

2

(a)

(Annexure 6), but it is clear from the Supply Department's own letter dated 4.4.2000 that in the public interest he could not be spared by EPFO at that point of time for availing of his promotion as Under Secretary on personal/in situ basis, and was eventually relieved from EPFO only on 7.8.2000 (Annexure 14).

5. Meanwhile by Supply Department's notification dated 24.8.99 (Annexure 4) Shri P.C. Tandon who ranks below applicant was promoted as Under Secretary on personal/ in situ basis w.e.f. 20.8.99. In that notification applicant's name as Under Secretary was shown above that of Shri Tandon ^{is shown} and ~~on~~ deputation. In that notification it was further stated that if any of the officers happened to be on leave, deputation etc. he would be given the benefit of personal upgradation from the date he resumed duty in the cadre post.

7. As applicant was not relieved by EPFO to enable him to revert to his parent ^{dept.} ~~parent~~, he represented on 14.9.99 that he be given proforma promotion (Annexure 8) which was rejected on 18.11.99 (Annexure 9). He again represented on 19.11.99 (Annexure 11), which was also rejected by impugned letter dated 4.4.2000 (Annexure 12) giving rise to the present O.A.

8. We have heard applicant who argued his case in person, and respondents' counsel Shri Ramchandani. ✓

9. A perusal of Para 5(iv) of respondents' reply reveals that respondents are denying applicant's claim for proforma promotion on the ground that as per DOPT's O.M. dated 20.8.99 an officer is entitled to the benefit of in situ promotion only when he reverts back from the ex-cadre post and joins the service in the parent cadre. It is contended that the benefit of proforma promotion is not admissible in case of in situ upgradation/promotion which are purely ad hoc in nature.

10. This contention of respondents is decisively rejected in the light of para 3 of their own O.M. dated 20.8.99 issued by the nodal Ministry i.e. DOPT which mandates (the word used is "shall") the concerned Ministry/Dept. to appoint an officer, who ~~exercises~~ exercises his option for reversion, against the available vacancies of S.O in his cadre and thereupon extend to him the benefit of appointment to the post of U.S. on personal upgradation basis. Applicant ~~exercised~~ exercised his option for reversion well within the prescribed period of one month, and if for no fault of his own, he was not relieved in the public interest, and was relieved nearly one year later, he cannot be made to suffer and be denied what is his rightful due. Respondents also cannot be allowed to plead that when applicant sought reversion to his parent dept. there were no available vacancies in that dept. against which he could have been adjusted

(11)

because in that circumstance it was the responsibility of respondents to locate/create a vacancy.

11. Under the circumstances this O.A. succeeds and is allowed to the extent that respondents are directed to consider applicant's claim for proforma promotion as Under Secretary on personal basis w.e.f. the date his immediate junior Shri P.C. Tandon was so promoted. Upon such proforma promotion being granted, applicant will be entitled to consequential benefits flowing therefrom. These directions should be implemented within two months from the date of receipt of a copy of this order. No costs.

A Vedavalli

(Dr. A. Vedavalli)
Member (J)

Karthik

S.R. Adige

(S.R. Adige)
Vice Chairman (A)