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Central Administrative Tribunal
Principal Bench, New Delhi

OA - 2181/2000

This the 11th day of April, 2002

Hon'ble Shri V.K.Majotra, Member (A)
Hon'ble Shri Kuldip Singh, Member (J)

Shri P. Singhal
S/o Shri Ved Prakash Singhal
R/o. E-865, FF Chitranjan Park
New Delhi (Presently posted at
Mohali (Chandigarh)

.....Applicant.
(By Advocate : Shri Shyam Babu)

VERSUS

1. Union of India
Through its Secretary
Department of Supply
Ministry of Commerce
Nirman Bhavan
New Delhi-110001.
2. Director General
Supplies and Disposal
5, Sansad Marg
New Delhi

..... Respondents
(By Advocate : Shri R.N.Singh proxy for
Shri R.V.Sinha)

ORDER

Hon'ble Shri V.K.Majotra, Member (A)

The applicant has challenged action of respondents in not convening Departmental Promotion Committee meetings for yearwise vacancies for 1991, 1992, 1993, and 1994 onwards for the post of Deputy Director of Inspection (DDI). Applicant was promoted to the post of DDI on 11.2.97 on adhoc basis and on a regular basis from 11.12.1997. Earlier on he had filed OA 1649/95 for the following reliefs:

- i) To quash impugned order dated 8.5.91 (Annexure-A/I).

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ii) To direct a review DPC to be convened to consider applicants' case and that if they are found fit, they be promoted Deputy Director of Inspection w.e.f. 8.5.92.

iii) To direct the grant to applicants of all reliefs and benefits consequential to the grant of reliefs prayed for in (ii) above.

iv) To grant costs of this OA to applicant and

v) to pass such orders as may be deemed fit in the interest of justice.

2. Through MA 2320/95 in that OA applicant made a prayer for amending the relief clause which was allowed by order dated 20.9.95 and the following relief bearing No. (vi) was added as follows:-

vi) Direct respondents to convene a DPC to consider promotions to the post of DDI in the Office of Respondent No. 2 for the vacancies existent in 1992 in accordance with the rules in existence at the time and to therefore, consider the applicants' case, therefore as well.

3. In view of the fact that the scope of the earlier OA was sought to be enlarged by bringing in a fresh issue of availability of year-wise vacancies, the OA was disposed of granting liberty to applicant to file fresh OA for issues raised by him in his additional affidavit of 16.4.1999. Hence the present OA. The applicant has sought following reliefs in the present OA:-

a) Call for the records of the case and give directions to the Respondents to hold a review DPC for considering the Applicant's case for the post of DDI in the Respondent No. 2 with effect from 1991, 1992, 1993, 1994 and 1995 on the basis of year-wise vacancies and in accordance with Recruitment Rules in existent at the relevant time

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and if the Applicant is found fit, appoint him as Deputy Director of Inspection on that basis;

b) Declare that the Applicant is entitled to get his seniority as DDI in Respondent No. 2 over SC/ST candidates promoted earlier to the Applicant,

c) Grant all consequential reliefs and benefits whether monetary, seniority or promotion.

4. At the outset, the learned counsel of the applicant stated that as Shri R.Kuruppiyah has been promoted as DDI for quite sometime, applicant does not seek any relief vis.a.vis Shri Kuruppiyah Respondent No. 2 as such relief claimed in para 8(b) above is deleted and needs no adjudication. The learned counsel of the applicant stated that by way of affidavit 16.4.1999 in the earlier OA he had averred regarding availability of long term vacancies of the post of DDI in 1991-92, 1992-93, 1993-94, 1994-95 against which the applicant could have been considered and promoted as he fulfilled the eligibility condition of 4 years service in the grade of Assistant Director under the extant Recruitment Rules. According to the applicant there were 7 vacancies of DDI to be filled through DPC in the year 1991, however, the respondents filled only one vacancy by treating that as reserved. According to the applicant although under the economy cut etc. the cadre strength of the service was reduced in December, 1993, the number of posts at the level of DDI was not reduced, however, the respondents did not hold any DPC from 1991 to 1996 and instead held the DPC in 1996 by bunching the vacancies for all the previous years since 1991.

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5. The learned counsel of the respondents relying on DoPT instructions dated 10.4.1989 relating to the promotions and DPCs as also the ratios of 1983(1)SLR 789 Y.V.Rangaiah vs. J.Sree Nivasrao and others and (1997)9 Supreme Court Cases 287 Union of India and others versus M.R.Banerjee and other contended that it is obligatory for the respondents to calculate year-wise vacancies and prepare year-wise panels. As the respondents had not done that, respondents should be asked to hold review DPC meeting for vacancies which occurred during the year 1991, 1992, 1993, 1994 and 1995 on an year-wise basis. It was also stated that as the Indian Inspection Service (Class I) Rules, 1961 were amended in 1994, 1961 rules should be made applicable to vacancies occurring upto 1993 and the later rules should be applied to vacancies which occurred on 1994 onwards.

6. On the other hand the learned counsel of the respondents stated that DPC could not be held from 1990 onwards as process of amendment of Recruitment Rules was under way and ultimately the amended rules were notified in 1994. Cadre review process was also put on hold on account of ban imposed by the Government in January/February, 1992 as part of economy measures. The cadre strength of the service was reduced from 134 to 121.

7. Respondents have also shown us the official record relating to DPC meeting held on 21.11.1997. From the record the contention of the applicant that the number of

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posts of DD was not reduced on the basis of the SIU report is borne out. We find therein that there were 46 posts of DD and sanctioned strength of posts of DDs remained constant even after the SIU report. The DPC dated 21.11.1997 took into consideration 16 vacancies of DDs, 10 in the Engineering discipline, 4 in metallurgical discipline and 2 in the textile discipline. As there were no eligible officers available in the feeder grade for promotion of vacancies in the textile discipline the DPC was held for 10 posts of DDI in Engineering discipline and 4 in metallurgical discipline. As applicant belonged to the engineering discipline he was considered for promotion to DDI in the engineering discipline against one of the 10 vacancies. The DPC file does not reveal about the year-wise occurrence of vacancies in the post of DDI, therefoe, naturally DPC did not prepare year-wise panels taking into consideration vacancies occurring in different years.

DoPT O&M referred to above states as follows:-

" The DPCs should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the [previous panel by collecting relevant documents like CRs, Integrity Certificates, Seniority List, etc., for placing before the DPC. DPCs could be convened every year if necessary on a fixed date, e.g., 1st April or May. the Ministries / Departments should lay down a time-schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that Recruitment Rules for a post are being reviewed/amended. A

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vacancy shall be filled in accordance with the Recruitment Rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to Recruitment Rules normally have only prospective application, the existing vacancies should be filled as per the Recruitment Rules in force.

Very often, action for holding DPC meeting is initiated after a vacancy has arisen. This results in undue delay in the filling up of the vacancy causing dissatisfaction among those who are eligible for promotion. It may be ensured that regular meetings of DPC are held every year for each category of posts so that an approved select panel is available in advance for making promotions against vacancies arising over a year.

The requirement of convening annual meetings of the DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question.

PREPARATORY ACTION

Determination of regular vacancies

It is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possible. For this purpose, the vacancies to be taken into account should be the clear vacancies arising in a post / grade / service due to death, retirement, resignation, regular long term promotion and deputation or from creation of additional posts on a long term. As regards vacancies arising out of deputation, only those cases of deputation for periods exceeding one year should be taken into account, due note, however, being kept also of the number of the deputationists likely to return to the cadre and who have to be provided for. Purely short term vacancies created as a result of officers proceeding on leave, or on deputation for a shorter period, training, etc., should not be taken into account for the purpose of preparation of a panel. In cases where there has been delay in holding DPCs for a year or more, vacancies should be indicated yearwise separately.

Calculation of vacancies. It has been decided that for preparation of a select panel, Ministries/ Departments may calculate the vacancies for reporting to DPC on financial yearwise where ACRs are written financial yearwise and calendar yearwise where ACRs are written on calendar yearwise.

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8. In case of Y.V.Rangaiah, (supra) it was held that vacancies which occurred prior to amended rules have to be governed by old rules and not by new rules. In combination with DoPT OM extracted above it would mean that preparation of panels yearwise is a mandatory requirement. Advance action for calculation of yearwise vacancies and preparation of panel every year as a mandatory requirement was confirmed in the case of M.R.Banerjee (Supra). In view of the fact that applicant had in his additional affidavit in OA 1649/95 averred regarding existence of 7 vacancies in 1991 and further vacancies in 1992, 1993, 1994, 1995, 1996 and 1997 which has not been denied by the respondents and further that in the DPC meeting held on 21.11.1997 the vacancies till 1997 were bunched together instead of considering and making panels on yearwise basis, the action of the respondents is clearly illegal and in violation of departmental instructions.

9. Having regard to the reasons recorded and discussions made above the panel made on the basis of DPC held on 21.11.97 regarding 10 vacancies in the grade of Deputy Director in the Engineering discipline is quashed and set aside. The respondents are directed to hold a review DPC for considering the eligible candidates alongwith the applicant for the post of DDI w.e.f. 1991, 1992, 1993, 1994 and 1995 on the basis of yearwise vacancies and in accordance with the Recruitment Rules existing at the relevant time and if the applicant is found fit appoint him as DDI on that basis with consequential benefits. The respondents are further directed to comply with the above

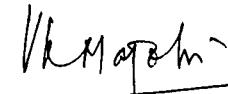
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instructions within a period of 4 months from service of these orders. Promotions made on the basis of panel made on 21.11.1997 shall remain unaffected till a fresh panel on the basis of review DPC is finalised in the above terms.

10. OA is disposed of as above. No costs.


(Kuldip Singh)
Member (J)

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(V.K. Majotra)
Member (A)