

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

New Delhi this 27th the day of February 2001.

OA NO.277/2000

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri C.S. Rawat,
s/o Late Shri B.S. Rawat,
Technical Officer,
Indian Institute of Petroleum
Dehradun

.....Applicant

(By: Shri B.S. Mainee, Advocate)

Versus

1. The Secretary,
Ministry of Science & Technology,
1 Rafi Marg, New Delhi
2. The Director General,
Council of Scientific &
Industrial Research,
Rafi Marg, New Delhi.
3. The Director,
Indian Institute of Petroleum
Dehradun (U.P.)
4. Shri V.K. Arora,
Technical Officer 'A'
Indian Institute of Petroleum,
Dehradun

.....Respondent

(By: Shri Manoj Chatterjee, Advocate)
Ms. K. Iyer, Advocate.

O R D E R

By Shri Govindan S. Tampi, Member (A)

Shri C.S. Rawat the applicant has moved this application challenging the promotion w.e.f. 26.11.80 of his junior Sh. V.K. Arora, as Jr. Technical Assistant Grade 8 and seeking coverage under Scheme 71-B with all consequential benefits including fixation of pay in the next higher grade and grant of arrears.

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2. Relevant facts stated in brief are that the applicant, who joined Indian Institute of Petroleum, Dehradun, a unit of C.S.I.R. as Electrician on 18.6.196 was promoted as Electrician Special Grade in 1978 and became eligible for being considered for promotion as J.T.A. However the D.P.C. which met on 21.11.1980 recommended for promotion one V.K. Arora (respondent No.4) who was accordingly promoted on 26.11.80. Following protests on the above promotion, respondents examined the matter and promoted one Shri Tulsi Ram as J.T.A., on 5.9.82, but w.e.f. 21.11.80. Subsequently Scheme 71-B under which promotions were held was replaced by a new scheme NRAS but a number of seniors including the applicant represented for being brought under Scheme 71-B and for promotion prior to 1981. A Committee set up on 18.6.96, by the Director I.I.P. to enquire into the matters of promotions, recorded in their findings dated 15.9.97, that respondent 4's promotion superseding the applicant was irregular and advised that applicant also be promoted w.e.f. 21.11.80. As nothing happened thereafter, applicant represented to the respondents on 11.11.97. Though he was informed by the respondents on 15.2.99 that the matter was under examination, no further action has been taken. With the result respondent 4 continues to enjoy the benefit of the ill gotten promotion. Hence this application.

3. In the Counter, respondents point out that as the applicant had originally desired to be under NRAS, his case was not considered under 71-B Scheme. Respondent 4's promotion 26.11.80 was on temporary basis and against a S.C. vacancy, as the SC candidate Tulsi Ram was under suspension at the relevant time. Once his suspension was revoked Tulsi Ram has also been promoted. According to the

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respondents the applicant cannot in law challenge the promotion of respondent No. 4 at this belated stage, especially as his promotion has since been regularised and he has since then earned two further promotions. Even otherwise, the vacancy which arose in November 1980, having been a S.C. vacancy, the applicant could not have been selected for the same, even if Respondent 4's promotion was set aside.

4. Heard the counsel for the applicant and the respondents. Sh. B.S. Mainee learned counsel for the applicant states that he has been denied the promotion in November 1980, which was given to his junior, V.K. Arora, (though he got it subsequently in February 1981). Though the Enquiry Committee had observed in 1997 that the said promotion was irregular, respondent 4 was continuing to reap the benefit out of the wrong promotion at the applicant's cost and detriment; as the same was not cancelled. Sh. Manoj Chatterjee, learned counsel for the respondents, fairly concedes that respondent 4's promotion in 1980 was wrong, but he states that the same would not give any right of promotion to the applicant at that time, as the relevant vacancy which was wrongly filled by Respondent 4 could not have been filled by the applicant.

5. We have carefully considered the matter. Respondents' objection that the applicant has come at a belated stage against the promotion of his junior, ordinarily would have been upheld. However, in the circumstances of the cases, when the respondents themselves have in 1996, re-opened the question of promotion ordered in November 1980, and examined the issue in DPC subsequently, and examined the fresh representation and replied to it on

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15.2.99, the ^{objection} ~~case~~ of limitation cannot be upheld. As far as the merits of the case are ^{concerned, the} findings in the report of the Committee, constituted by the Director, Indian Institute of Petroleum, on 18.6.96, to go into the promotion of some Group II Staff are quite revealing as far as this application is concerned. Relevant portion of the same is as under:

"However, in the case of Instrumentation Group, a marked deviation was made which vitally affected the result. In this case the marks for length of service was not counted on totally untenable premise that as per CSIR's decision the posts of Electrician & Sr. Electrician have been merged into one. Rather it was much more simpler to count length of service of both the candidates which is w.e.f. 18.6.65 in case of Mr. C S Rawat & 19-1/2-70 in case of Mr. V K Arora. This situation leads to Mr. Rawat getting 24 marks for experience whereas Mr. Arora getting 14 marks. Thus Mr. Rawat would have got a total of 37.5 marks (with 13.5 marks for CRs) and Mr. Arora would have got 33.5 marks (with 19.5 marks for CRs). Hence Mr. C S Rawat would have been selected in place of Mr. Arora. (Page 66-71 of file 3A (307)/80-Selece./Estt.)"

Moreover, the manipulation does not end here. It involves the concealment of a vital fact also. The fact that Mr C S Rawat was serving IIP at one rank higher in comparison to Mr. Arora since 1978 (Mr. Rawat was working as Electrician (Selection Grade) in the pay scale of Rs. 365-680 since 1978 whereas Mr. Arora was working till the Interview/Trade Test date as Sr. Electrician in the pay scale of Rs. 380-640 was not brought to the notice of the selection Committee (DPC) which would have significantly tilted the balance in favour of Mr. C S Rawat. Thus it is crystal clear that the deviation in procedure has wrongly been done to favour a particular candidate and to harm others."

In view of the above the Committee recommended the following:-

"Revert back Mr. V K Arora to the post of Sr. Electrician in 1980 by annulling the proceedings of DPC held on 21.11.1980 which are full of malice & manipulations against some candidates in order to favour one individual."

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As it may be administratively difficult to deprive an employee of the promotions/benefits already given, the second best possible action will be to remove the genuine grievances caused by such a wrong promotion. Hence it is recommended that all the employees of IIP in grade of RS 380-560/- Rs. 380-640 on or before 15.1.70 (the joining date of Mr. V K Arora) be promoted to the post of Tech. Asstt. Gr. VIII w.e.f. 21.11.1980 and consequently be entitled for further promotion under 71(B) scheme of 5 yearly promotions. In fact this has been the root cause of grievances/unrest among many employees which resulted into Director constituting this committee for inquiring into the matter and provide solutions. It is noted from the proceedings that the following candidates are now eligible for promotion to the post of Tech. Asstt. Gr. VIII w.e.f. 21.11.1980."

i) Mr. C. S. Rawat (18.6.65) "

6. Evidently applicant has been wronged by the improper and incorrect promotion accorded to his junior. Still he could not have been correctly considered for promotion in November 1980, as the vacancy which arose then fell into ~~SC~~ S.C. category. Therefore the applicant's promotion to that post, as on that date would have been as illegal as the promotion of respondent 4's has been. Once Tulsi Ram, the SC candidate became available for promotion, on the revocation of his suspension, he was promoted on 5.8.92, but with effect from 21.11.80, the day on which Respondent 4 was wrongly promoted. In fact, w.e.f. the day Tulsi Ram was promoted, respondent 4 should have been reverted and should have been made to wait for his turn for promotion on a subsequent date. This did not take place. Not only that he was permitted to continue in the post but was allowed to earn two further promotions. This *has* compounded the mistake. The respondents have attempted to get round this fauxpas through a review DPC which met on 19.10.2000 and recorded the following finding:-

"The review DPC has taken note of the contents of CSIR Legal Advisor's DO letter No. 28(5)?99-LA dated 10.2.2000 and also the proceedings of the DPC held on 21.11.80. From the proceedings of DPC held

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on 21.11.80 it is established that the post was reserved for Scheduled Caste. It was also mentioned that Mr Tulsi Ram (Scheduled Caste) was under suspension on that date. The promotion of Mr. V K Arora was also mentioned as temporary. In view of the reservation policy only the reserved candidate should have been considered for promotion and the result should have been kept in sealed cover.

The committee has also taken cognizance of the fact that Mr Tulsi Ram was promoted with effect from 21.11.80 vide No. 3-A(307)/80-Select/Estt. dated 5.8.92.

Since the post was reserved for Scheduled Caste, no general candidate should have been considered (S/Sh. V K Arora and C S Rawat). Prima facie the promotion of V K Arora was also erroneous. However, the committee noted that Mr V K Arora has been declared as quasi permanent and he has been promoted to the posts of STA, TO-A & TO-B. Taking into account the fact that unsettling a settled matter at this belated time will be injurious to the welfare of the employee. This view was taken duly taking into account the cognizance of various verdicts of the Hon'ble Supreme Court "that settled matters should not be disturbed over a period of time", the committee recommends that the competent authority may treat the promotion of Mr V K Arora as personal to him."

Needless to say the review DPC has also fallen in to the same trap as its predecessor has done in November 1980 and has set the seal of approval on Respondent 4's irregular promotion; on the mere ground that "settled matters should not be disturbed over a period of time", clearly overlooking the fact that a mistake committed should be rectified, even if it would deny future benefits to someone who has enjoyed ill gotten benefits for too long for comfort. Accepting this finding would mean denying the applicants legitimate claim for all days to come. Such an attitude or action cannot be countenanced in the interests of administrative justice and fairplay. It should be rectified, is our considered view.

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7. In view of the above the application succeeds to a substantial extent and is disposed of with the following directions:

- a) The applicant's promotion as T.A. grade-III will correctly date from February 1981, when he was actually promoted but he will be declared senior to the Respondent 4 who was wrongly promoted in November 1980, with consequential benefits of promotion ahead of Respondent No.4. The applicant would be entitled for notional fixation of pay in the higher grades from the date(s) on which Respondent No. 4 got further promotions subject to fitness and fulfilment of the conditions prescribed in the relevant rules, but he would be entitled for drawing the pay and allowances only with effect from September 1999 when he filed this application. He would also be entitled for reckoning the seniority ahead of Respondent No. 4 for consideration of promotion.
- b) Respondents 2 and 3 are directed to take steps for implementing the above orders and granting the monetary benefits to the applicant within 3 months from the date of receipt of this order.
- c) Respondents are further directed to conduct enquiries to ascertain as to how wrong and improper promotion came to be granted to

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respondent 4 and to take corrective steps including disciplinary proceedings if necessary against the concerned officials to restore the fair name of their Organisation.

- d) Respondents are also ordered to pay cost quantified Rs.2,000/- in favour of the applicant.

(Govindan S. Tampa)
Member (A)

Patwal/

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)