

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 726/2000

(B)

New Delhi, this the 18th day of September, 2001

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. M.P. SINGH, MEMBER (A)

Shri V.K. Naithani
S/o Shri S.P. Naithani,
Aged about: 48 years,
R/o ARC, Doom Dooma,
Distt Tinsukhia, Assam,

AND EMPLOYED AS:
Senior Field Officer in the
Aviation Research Centre,
Cabinet Secretariat,
ACR, DOOM DOOMA,
Distt. Tinsukhia, Assam. Applicant

(By Advocate: Ms. Arti Mahajan proxy counsel for
Shri S.S. Saberwal)

V E R S U S

1. Union of India through the
Additional Secretary (SR),
Cabinet Secretariat, Government of India,
Bikaner House (Annexe),
New Delhi-110 001.
2. The Director,
Aviation Research Centre,
Cabinet Secretariat,
Block -V East, R.K. Puram,
New Delhi-110066.
3. Shri Bagat Ram,
S/o Late Shri Kartara Ram,
aged about 50 years,
EMPLOYED AS:
Asstt. Director,
H.Q. Estt.22,
C/O 50 APO. Respondents

(By Advocate: Shri N.S. Mehta for Respondent Nos.1 and 2
Shri S.C. Saxena for Respondent No.3)

ORDER (ORAL)

Shri M.P. Singh, Member (A):

The applicant by filing the present OA has claimed
the following reliefs:-

- (i) Grant of orders/direction to the
respondent to convene review DPC immediately
to fill up 5th post of Assistant Director in

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ARC/SFF (Executive) Service as per existing RR following vacancy based roster meant for promotion by considering the promotion of eligible officers as per Govt. latest guidelines before inducting any officer by means of deputation for whom no vacancy in the roster exists at present;

(ii) Grant of orders/directions to the respondents to count this period of delay in conveying DPC of applicants toward their eligibility period in the next higher post of Deputy Director so that the unjustified delay caused to them by denying timely promotion does not harm them for their further promotion for not completing their eligibility period;

(iii) Grant of orders/directions to the respondent to refix the seniority of SFOs as per guidelines issued by the Hon'ble Supreme Court by its judgement dated 16.9.99;

(iv) Grant of orders granting any other relief which this Hon'ble Tribunal deems appropriate and necessary in the facts of the case; and

(v) Grant of cost of this application to the applicant.

2. Brief facts of the present case are that the applicant is working as Senior Field Officer (Executive) (hereinafter called 'SFO') in the Ministry of Home Affairs. According to the applicant, he is eligible for his next promotion to the post of Assistant Director (hereinafter called 'AD'). As per the Recruitment Rules those SFOs who were holding the post in the year 1990 are eligible for promotion to the post of AD with six years of service. The applicant was promoted to the post of SFO in the year 1990. There are six vacant posts of AD which are available to be filled up by way of promotion/ deputation. These six vacancies fall at point nos. 39, 41, 43, 45, 46 and 47 in the roster maintained by the department for filling up the post of AD. The Recruitment Rules further provides that the appointment to the post of AD will be to the extent of 50% by deputation/ transfer and 50% by promotion of SFOs.

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with six years of service, who were holding the post of SFO on 1.3.1990 with the stipulation that in case one system fails then the percentage of the other system can be increased. The department has already filled up vacancies in the roster by means of deputation up to point no.44, whereas in the case of promotion, it has filled up to roster point no.37. According to the applicant, many officers with requisite service in the feeder grade are eligible for promotion, as such it is essential for the department to fill up all the vacancies by way of promotion. As per the roster maintained for the rotation of vacancies point nos.39, 41, 43, 45 and 47 are reserved for promotee quota. Thus out of six vacancies only one vacancy is falling at point no.46, which is earmarked to be filled up by way of deputation. The applicant has also stated that his seniority in the grade of SFO is required to be refixed in terms of the judgement of the Hon'ble Supreme Court in the case of Ajit Singh Vs. State of Punjab reported as JT 1999 (7) SCC 153. As per this judgement if the candidates belonging to scheduled caste category are appointed earlier by way of accelerated promotion, the general category candidate although promoted later with earlier seniority will become senior to the candidates belonging to scheduled caste category. As per the details given in para 4 (vii) of the OA, Respondent No.3 was promoted to the post of FO on 15.10.1984 whereas the applicant was promoted to the post of FO on 27.2.1985. The applicant although appointed to the post of FO later than Respondent No.3, became senior as he was senior to the Respondent No.3 in the grade of DFO. Thereafter, the seniority in the grade of FO was required to be

refixed. Accordingly the applicant's seniority in the grade of SFO will also undergo a change in view of the Hon'ble Supreme Court's judgement in Ajit Singh's case (supra). This has not been done by the respondents. Aggrieved by this, the applicant has filed this OA claiming the aforesaid reliefs.

3. The respondents in their reply have stated that there are eleven sanctioned posts of AD and one post of Under Secretary has been transferred temporarily for a period of three years. Therefore, there are 12 posts of AD. As per the provisions of the Recruitment Rules, 50% are to be filled by promotion and 50% by deputation and, therefore, twelve posts are required to be divided into two groups of 'six' each. As on 31.12.1999, there were six vacancies in the grade of AD. Since four departmental officers were already holding the posts of AD on promotion basis, only two posts could have been got filled from out of promotion quota. But considering the fact that officers had been stagnating in the feeder grade, the department approached the Govt. for diversion of two posts from deputation quota to promotion quota, which was agreed to, thus raising the promotion quota posts from two to four and, accordingly, the promotion orders were issued in favour of four SFOs and two posts were filled up by deputationists against deputation quota. According to the respondents, the vacancies are to be filled up on post-based roster from 2.7.1997 and not vacancy-based roster on rotation basis which was followed earlier. It is stated by the respondents that department cannot follow both post-based roster as well as vacancy-based roster

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simultaneously. When both methods of promotion and deputation exist in the Recruitment Rules, it always happens that the promotion quota vacancy gets filled up faster as eligible departmental candidates available in the feeder grade are considered and got promoted accordingly and for deputation longer time is taken because the process involves, seeking nominations from external organisations. It is further stated by the respondents that four posts of AD were already held by the promotee officers and thereafter another four posts have been filled up. On the other hand, only two posts are held by the deputationists and another two posts by convening the DPC in 1999 have been filled up by appointing deputationists.

4. Heard Ms. Arti Mahajan proxy counsel for Shri S.S. Sabarwal, learned counsel for the applicant, Shri N.S. Mehta, learned counsel for Respondent Nos.1 and 2 and Shri S.C. Saxena, learned counsel for Respondent No.3 and perused the records.

5. During the course of the arguments, learned counsel for the applicant submits that the post-based roster, which has been introduced from 2.7.1997 in pursuance of the judgement of the Hon'ble Supreme Court in the case of R.K. Sabharwal and Ors. Vs. State of Punjab and Ors. [(1995) 2 SCC 745], is required to be maintained for the purpose of giving reservation to the SC and ST community. In this case the vacancies are required to be filled up between promotee and deputationist. Therefore vacancy-based roster is required to be maintained in terms of the judgement of

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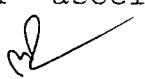
the Hon'ble Supreme Court in the case of State of Punjab Vs. R.N. Bhatnagar, [JT 1998 (9) SC 7]. She, therefore, submits that vacancy-based roster maintained for the purpose of appointment to the post of AD shows that point nos.39, 41, 43, 45 and 47 are required to be filled up by promotee quota, whereas only point no.46 is earmarked for deputationist quota. Accordingly out of six vacancies, five are required to be filled up by promoting the SFOs to the post of ADs and only one vacancy can be filled up by a person on deputation basis. Apart from it the Govt. has already diverted two vacancies from deputation quota to promotion quota and, hence, all the six vacancies are to be filled by way of promotion. As regards the seniority of the applicant viz-a-viz Respondent No.3, it may be seen from the statement/ chart given in para 4 (vii) that the applicant has been promoted to the post of FO on 27.2.1985 at a time when Respondent No.3 was already holding the post of FO. Therefore, the applicant, who was senior to Respondent No.3 in the feeder grade of DFO will regain his seniority in the grade of FO in pursuance of the judgement of the Hon'ble Supreme Court in the Ajit Singh's case (supra). Consequently the seniority of the applicant will have to be revised in the grade of SFO and the applicant will rank senior to Respondent No.3 in the grade of SFO.

6. On the other hand, the learned counsel for the Respondent Nos.1 and 2 submits that the matter relating to re-fixation of seniority of the applicant in terms of the judgement of the Hon'ble Supreme Court is

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concerned, it cannot be re-opened now as the same is time-barred. As regards the filling up of vacancies in the grade of AD, ~~is concerned~~, eight posts out of twelve posts are already held by the promotee officers. The learned counsel for Respondent No.3 also submits that the issue relating to re-fixation of seniority between the applicant and Respondent No.3 in terms of judgement of the Hon'ble Supreme Court in Ajit Singh's case (supra), ~~it~~ has become time-barred. Even if the issue of seniority is to be re-opened, the seniority of Respondent No.3 is required to be re-fixed in accordance with law, rules and instructions.

7. After hearing the learned counsel for the parties and perusing the records, we find force in the contention of the applicant that six vacancies in the grade of AD are required to be filled up in accordance with the vacancy-based roster. As per this roster, the vacancies falling at point nos. 39, 41, 43, 45 and 47 are of promotion quota and one vacancy falling at point no.46 is for deputation quota. It is an admitted position that two vacancies had already been diverted from deputation quota to promotion quota. Therefore, all the six vacancies are required to be filled up by way of promotion by convening the Review DPC to review the proceedings of the DPC held in the year 1999. As regards the seniority of the applicant is concerned, this is required to be refixed in terms of the Hon'ble Supreme Court's judgement in Ajit Singh's case (supra), which provides that in case a person belonging to SC and ST community is appointed to a higher grade earlier by way of accelerated promotion, the general category



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person although promoted on a later date will regain his seniority of the feeder grade and will rank senior to the person belonging to SC/ST community. Therefore, the applicant's seniority is required to be refixed in the grade of SFO by holding a review DPC.

8. For the reasons stated above, we allow this OA and direct the respondents to refix the seniority of the applicant in the grade of SFO in pursuance of the judgment of the Hon'ble Supreme Court in Ajit Singh's case (supra) and thereafter convene a meeting of review DPC to review the proceedings of the DPC held in the year 1999 and fill up all the six vacancies of AD by way of promotion within a period of three months from the date of receipt of a copy of this order. No costs.

M.P. Singh
(M.P. Singh)
MEMBER (A)

Ashok Agarwal
(ASHOK AGARWAL)
CHAIRMAN

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