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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1431/89.

New Delhi, this the 18th day of May, 1994.

SHRI J.P. SHARMA, MEMBER(J).

SHRI B.K. SINGH, MEMBER(A).

Shri D. Majumdar,
son of late Dr. B.N. Majumdar,
working as Analyst, Delhi Milk Scheme,
West Patel Nagar, New Delhi-110008,
resident of 18/261, D.M.S. Colony, Hari Nagar,
New Delhi-110064. ...Applicant

By advocate : Shri Ashish Kalia for Shri R.L. Sethi.

VERSUS

1. Union of India, through
The Secretary,
Ministry of Agriculture & Cooperation,
(Deptt. of Agriculture), Krishi Bhavan,
New Delhi.
2. The General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110008. ...Respondents

By advocate : Shri V.S.R. Krishna.

O R D E R (ORAL)

SHRI J.P. SHARMA :

The applicant joined as Analyst in Delhi Milk Scheme on 14-6-1971. From the seniority list shown at the time of hearing of this application of the Analyst of D.M.S., the date from which the applicant held this post regularly is shown as 1-7-74. The applicant was promoted as Senior Analyst on ad hoc basis on 28-4-1975. However, he was reverted to the post of Analyst w.e.f. 21-9-1976. It appears that one Shri Ram Swaroop joined

as Bacteriologist on 6-3-1972. After reversion of the applicant, he was given promotion as Senior Analyst on the fact that the date of regularisation of the applicant as shown in the seniority list is 1-7-74 and the date of regular service of said Shri Ram Swaroop is w.e.f. 6-3-1972. The applicant, however, continued to serve as Analyst until, as averred in the application, he ^{learned that} the promotion to the post of Senior Analyst ^{of the} said Shri Ram Swaroop, who belongs to SC category, was not on a reserved category post but on a general category post. The applicant, therefore, made a representation which was rejected by the impugned order of 3-3-1989 informing the applicant that when the post of Senior Analyst falls vacant, it will be filled up on regular basis and applicant shall be considered for that post. Not being satisfied, the present application was filed on 18-7-1989 and the applicant prayed for the grant of the reliefs that the impugned memo be withdrawn and the reversion of the applicant from the post of Senior Analyst to that of Analyst w.e.f. 21-9-1976 be quashed and the applicant should be deemed to have continued on the post of Senior Analyst.

2. The respondents in the reply stated that Ram Swaroop having been senior to the applicant as Bacteriologist was promoted after the initial mistake of promoting the applicant to that post was detected as said Shri Ram Swaroop was senior to the applicant. The applicant, therefore, according to the respondents, has no case. The fact that Ram Swaroop was promoted on a reserved category post has been denied.

3. The applicant has also filed a rejoinder and he reiterated the fact that his regular appointment to the

post of Analyst be deemed to be w.e.f. 14.6.1971 and, as such, he cannot be said to be junior to Shri Ram Swaroop, Bacteriologist. He reiterated the grounds taken in the original application.

4. Shri Ashish Kalia for the applicant has been heard at length and the applicant has also projected his case during the hearing. The court can help only the ^{negligent} ~~punishment~~ and the indolent has to suffer for his own fault. The applicant has not challenged the reversion of 1976 before the competent forum at the relevant time. It is no excuse that the applicant was satisfied that since Ram Swaroop being S.C. was promoted and he presumed that to be a reserved category post of Senior Analyst, then notions he gathered have decided his luck and service career. Normally, a person who enters afresh in the Government service from particular date, the date of entry in the service is the normal guide to judge the seniority in that grade. When the applicant's post continued for years together and he was never reverted, his initial appointment may have been termed as ad hoc but it was regular for all purposes. The initial appointment as Analyst was also through proper selection considering all other eligible candidates too. Thus, the applicant would earn his seniority from 14.6.1971. Shri Ram Swaroop entered as Bacteriologist w.e.f. 6.3.1972. He cannot, therefore, if there is a combined seniority of Analyst and Bacteriologist, be placed junior to Ram Swaroop. Length of service in the absence of any specific rule of seniority would judge the seniority in the grade. The grade of Bacteriologist and of Analyst is the same and both these posts are feeder posts for promotion to

the next higher grade of Senior Analyst. For the post of Senior Analyst, 3 years regular service in the grade is required. The applicant had already completed that part of service in that grade when he was initially promoted by the order of April, 1975.

5. The Tribunal cannot exercise its jurisdiction over matters where cause of action has arisen 3 years earlier to the enforcement of the Administrative Tribunals Act, 1985, i.e., before 1-11-1982. The cause of action to the applicant initially arose when in the seniority list his date of regularisation was shown as July, 1974 and subsequently by the order of reversion with effect from September, 1976. The applicant did not assail any of these grievances at the relevant point of time. The delay and laches defeat the right if not exercised at an appropriate time. The applicant may have a good case but, at this point of time, the Tribunal cannot assume jurisdiction which cannot be exercised under the statute, i.e., Administrative Tribunals Act, 1985.

6. The shortcoming in the application is that Ram Swaroop has not been made a party. Ram Swaroop would have been continuously working and more than 18 years have since passed. He cannot be condemned unheard and reverted at this point of time. Ram Swaroop had already filed some original application before the Tribunal and obtained a direction of getting the regular entry to the service w.e.f. 6.3.1972. The Tribunal cannot sit over the judgment delivered in the case of Ram Swaroop. The applicant has already been treated junior to said Ram Swaroop and now he cannot be pushed up at this point of time.


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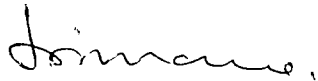
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7. Another hurdle that lies in the way of the applicant for grant of the relief is that there is no post of Senior Analyst. The departmental representative Shri Shyam Lal, L.D.C., appearing along with counsel for the respondents has stated that the S.I.U. has already reduced the cadre from 16 to 6 and the persons have been declared surplus having been absorbed in other wings. The applicant, therefore, at this point of time, cannot aspire any chance of promotion to the post of Senior Analyst as there exists no post.

8. The learned counsel for the applicant argued that the applicant should be considered on the first available vacancy. In fact, the recruitment rules provide for filling up of the post also by direct recruitment to the extent of 75%. We are not aware that any direct recruitment has taken place since then or not. In view of this, the argument of the learned counsel cannot be taken for granted.

9. The application, therefore, is disposed of, as said above, without granting any relief to the applicant, but, at the same time, the respondents should consider the applicant, as and when a vacancy of Senior Analyst occurs, along with other eligible candidates, giving the applicant the seniority w.e.f. 14-6-1971. The application is, therefore, disposed of, accordingly, with no order as to costs.


(B.K.SINGH)
MEMBER(A)


(J.P.SHARMA)
MEMBER(J)

'KALRA'