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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1952/89.

Date of decision. 17.5.1994.

HON'BLE SHRI B.N. DHOONDIYAL, MEMBER (A)

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

K.C. Bhatia,
s/o late Shri Ushnaki Ram Bhatia,
Licensing Assistant, under
Joint Chief Controller Imports
& Exports (CLA),
117/L 444, Kaka Deo,
Kanpur (UP)

... Applicant

(By Advocate Shri G.D. Bhandari)

versus:

1. Union of India through
The Secretary,
Ministry of Commerce,
Udyog Bhawan,
New Delhi.
2. Chief Controller of Imports & Exports,
Udyog Bhawan,
New Delhi.
3. Joint Chief Controller of
Imports and Exports, (CLA),
Indra Prastha Estates,
New Delhi.
4. Joint Controller,
Imports & Exports (CLA),
117/L, 44 Kaka Deo,
Kanpur (UP) ... Respondents

(By Advocate Shri M.L. Verma)

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[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]_7

The applicant being aggrieved with the seniority-
list of non-gazetted staff (Group 'C') in respect of
Section Head grade in Central Licensing Area dated 1.1.1988
has filed this application claiming that his name has

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been excluded while many juniors noted at serial nos. 8, 9 and 10 have been included in the list.

2. The brief facts of the case are that the applicant, who was appointed as Lower Division Clerk on 2.3.1953, had been promoted as Upper Division Clerk on 1.11.1956. According to the applicant, he had been performing the job of Licensing Assistant from January, 1966 till he was reverted on 9.7.1974 and again promoted with effect from 11.7.1974. The Respondents had issued a seniority list of UDCs in which he has been shown at S.No. 8. He states that consequent upon certain investigations by police and later criminal cases, he was reverted from the post of Licensing Assistant to UDC on 15.4.1975. The disciplinary proceedings taken against him ended in his favour and the Respondents had set aside the punishment given to him of reversion in this case. In another case filed by the C.B.I. against one Shri S.N. Kaul, the applicant was also one of the co-accused. In this case, the proceedings are still pending as Shri Kaul has obtained a stay order from the Hon'ble Supreme Court.

3. The applicant's main grievance in this application is that ever since the aforesaid criminal proceedings pending in the court, he has been continuously ignored for promotion to higher grades i.e. Licensing Assistant, Section Heads and Controller though he fulfilled all the requisite

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qualifications.

4. The Respondents have stated in their counter reply that the applicant had been appointed as Licensing Assistant on ad hoc basis with effect from 13.1.1975 on purely temporary and local seniority basis vide office order No. 4/75, dated nil and again with effect from 15.4.1975 on the same post and on the same basis. He was again reverted to the post of UDC w.e.f. 16.7.1975 and thereafter he has remained as UDC for a period of more than 13 years. Thereafter, he has been promoted on purely temporary and ad hoc basis as Licensing Assistant vide order dated 21.7.1988. They have stated that his case for promotion to the post of Licensing Assistant on a regular basis has been duly considered by the DPC whose recommendations are placed in a sealed cover as per the prescribed procedure. According to them, since the court proceedings are still pending against him, he could not be promoted on regular basis. It was because of this reason also that the applicant has been superseded in matter of promotion by his erstwhile juniors in the grade of UDC.

5. The learned counsel for the applicant drew our attention to the instructions contained in the Department of Personnel & Administrative Reforms O.M.No.22011/1/79-Estt(A), dated 30.1.1982. According to him, the Respondents

have failed to consider the applicant's case for regular promotion merely because the DPC has kept its recommendations in a sealed cover as far back as 1982 thereby disregarding the instructions. The relevant portion of paras. 3(iii)&(iv) of the DP&AR O.M.No. 22011/1/79-Estt(A), dated 30.1.1982 are reproduced below :-

" 3. It has been noticed that sometimes the cases in the courts or the departmental proceedings take unduly long time to come to a conclusion in spite of all efforts and the officers undergo considerable hardship, even where it is not intended to deprive them of promotion for such a long time. In the circumstances, Government have had under consideration, in consultation with the Union Public Service Commission, the question how the hardship caused by the long pendency of disciplinary/court proceedings to the Government servants, in whose case sealed cover procedure has been followed, could be mitigated. xxx xxx xxx

(iii) After the findings are kept in a sealed cover by the Departmental Promotion Committee, subsequent D.P.Cs, if any held after the first

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D.P.C. during the period the disciplinary/ court proceedings may be pending, will also consider the officer's case and record their findings which will again be kept in sealed cover in the above manner.

(iv) However, in some cases the disciplinary/court proceedings may not be concluded even after the expiry of two years from the date of the D.P.C. which first considered the officer for promotion and whose findings are kept in the sealed cover. In such cases, provided the officer concerned is not under suspension, the appointing authority may review his case to consider :-

- (a) whether the charges are grave enough to/warrant continued denial of promotion and the promotion of the officer will be against public interest.
- (b) whether there is no likelihood of the case coming to a conclusion in the near future; and
- (c) the delay in the finalisation of proceedings, whether departmental or in a court of law is not directly or indirectly attributable to the official concerned.

6. We have gone through the records of the case and heard the learned counsel of both the parties. The applicant has since filing of the application in 1989, retired as ad hoc Licensing Assistant on 31st July, 1992. On

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perusal of the reply of the Respondents, it is seen that the applicant has already been considered and promoted on ad hoc basis to the post of Licensing Assistant on 21.7.1988 as per the Government of India's instructions dated 12.1.1988. His case for promotion to the post of Licensing Assistant on a regular basis was duly considered by the DPC whose recommendations are placed in a sealed cover. However, since the court proceedings referred to above have been extended beyond the period of 2 years and have yet to be concluded, it appears that instructions contained in DP & AR O.M. dated 30th January, 1982 have been considered by the Respondents. As per these instructions, the Appointing Authority may allow the promotion to the official against whom court proceedings are pending beyond a period of 2 years on ad hoc basis only and not as claimed by the applicant, on regular basis.

7. In the circumstances, it is clear that the Respondents have duly considered the case of the applicant for promotion to the next higher grade i.e. Licensing Assistant in 1988 on ad hoc basis in which post he has since retired. Since the criminal case is stated to be still pending against him, his claim for promotion can be considered by the DPC only on ad hoc basis. Therefore, as

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applicant was holding the post of Licensing Assistant only, on ad hoc basis, his further claim for promotion to the post of Section Head/Controller is without any basis and untenable.

8. In the result, the application is dismissed.

There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

B.N. Dhoundiyal
(B.N. Dhoundiyal)
Member (A)