

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA No.2059/89

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New Delhi this the 8th day of February, 1996.

Hon'ble Sh. N.V. Krishnan, Acting Chairman
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Fateh Singh,
S/o Sh. Sarjeet Singh,
Assistant Director,
Computer Centre,
Dept. of Statistics,
Ministry of Planning,
East Block No.10,
R.K. Puram,
New Delhi.

...Applicant

(By Advocate Sh. G.D. Gupta)

Versus

1. Union of India through
Secretary, Department of
Statistics (Ministry of Planning),
New Delhi.
2. Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi.
3. Sh. Kanhiya Lal,
Deputy Director,
Computer Centre,
Dept. of Statistics,
East Block 10,
R.K. Puram,
New Delhi.
4. Sh. J.P. Verma,
Deputy Director,
Computer Centre,
Department of Statistics,
East Block 10,
R.K. Puram,
New Delhi.

...Respondents

(By Advocate Sh. P.H. Ramchandani)

ORDER

(Hon'ble Mr. N.V. Krishnan, Acting Chairman)

The applicant, who belongs to a Scheduled Caste (SC) and who was holding the post of Assistant Director in the Computer Centre, Department of Statistics, Ministry of Planning, has filed this application assailing the Annexure A-1 memorandum

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dated 11.10.88 by which his representation that his date of appointment as Assistant Director be treated as 2.9.77 was rejected and the Annexure A-2 memorandum dated 11.9.89 by which his representation regarding his seniority in the grade of Assistant Director and reversion from the post of Deputy Director was rejected.

2. The brief facts of the case are as follows.

2.1 The applicant was appointed as Programm Assistant/Console Operator under the respondents in the Department of Statistics in 1972. The next higher post is that of Assistant Director. In accordance with the Computer Centre (Class I and Class II Posts) Recruitment Rules, 1972 (Annexure A-3) 50% of the posts of Assistant Director are required to be filled up by promotion from Programme Assistants/Console Operators.

2.2 To begin with, rules provided that the promotion will be given to officers who have 5 years of regular service in the feeder grade. The rules were amended so as to reduce the requirement of five years regular service to three years service and notified on 30.8.75. Thus, after the amendment came into force on 30.7.75, the applicant became eligible for consideration for promotion as Assistant Director.

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2.3 The applicant alleges that in May, 1975 there already existed two regular vacancies of Assistant Directors and a third vacancy also arose on 31.5.75 consequent upon the exit of Sh. D.D. Kanojia, Assistant Director, on his appointment as Senior Programmer in the Planning Commission. If all the three vacancies had been notified the first and the third vacancies would have been filled up by promotion and the second vacancy would have been filled up by direct recruitment. It is also admitted that one vacancy which already existed fell in the 40 point reservation roster at a point reserved for a promotion of SC.

2.4 It is, however, alleged that the Ministry reported only one vacancy to the UPSC to be filled up by promotion. A DPC meeting was held in August, 1976. Though the vacancy fell at reservation point for SC, it could not be reserved, being a single vacancy and hence it was filled up by a general candidate and the vacancy for SC was carried over. Sh. K.B. Ramdass was promoted against this vacancy on the recommendation of this DPC.

2.5 It is further alleged that, in 1977, there were two regular vacancies, one in the direct recruitment quota and the other in the promotion quota, both reserved for candidates belonging to SC. The reserved vacancy in the promotion quota was the one which was carried over in 1976. In addition to these two vacancies, the respondents also reported the existence of four vacancies consequent upon the

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deputation of officers to other Departments. There were six vacancies in all. The DPC met in August, 1977 and prepared a panel of the following officers:

- (i) Sh. Kanhiya Lal (respondent No.3)
- (ii) Sh. Brij Kishore
- (iii) Sh. J.P. Verma (respondent No.4)
- (iv) Sh. P.C. Aggarwal
- (v) Sh. Mahipal Singh (SC)
- (vi) Sh. Fateh Singh (SC)

All these officers were promoted on a temporary basis w.e.f. 2.9.77 (Annexure A-4).

2.6 Subsequently, the Annexure A-5 notification was issued on 6.3.80 in which the applicant who was appointed from 2.9.77 on a temporary basis was regularly appointed from 31.5.75 in the vacancy of Sh. D.D. Kanojia, Assistant Director who is deemed to have resigned from 31.5.75. By the same order, Sh. Kanhiya Lal, the third respondent who was appointed on a regular basis as Assistant Director from 1.2.79 in the vacancy of Sh. Pandurang, Assistant Director who had voluntary retired. However, this notification was subsequently cancelled by the notification dated 27.12.84 (Annexure A-8). The seniority list of the Group 'A' officers as on 1.5.80 in the Computer Centre was issued by the Annexure A-7 memorandum dated 10.5.83. Therein the date of appointment of the applicant as Assistant Director was shown as 2.9.77. He was, however, shown junior to Sh. Kanhiya Lal and Sh. J.P. Verma who

are shown as having been appointed regularly from 1.2.79 and 18.1.80 though they were also officiating from 2.9.77.

2.7 A seniority list as on 1.10.86 was issued (Annexure A-10) in which the applicant's date of birth was shown wrongly but what is more important is that his date of regular appointment has been shown as 1.3.80 and three persons are shown senior to him viz. Kanhiya Lal, S.A. Kamble and J.P. Verma, who are shown as having been given regular appointment as 1.2.79, 4.7.81 and 1.3.80. When this seniority list was issued the applicant made a representation on 29.10.86 (Annexure A-11) asking the respondents to correct his date of birth and also to show that his regular appointment as Assistant Director was from 2.9.77 and not from 1.3.80. It is in regard to this representation that he was informed by the impugned Annexure A-1 order as follows:-

"Reference Shri Fateh Singh, Deputy Director (ad-hoc) representation dated 29.10.1986 and 15.2.1988 regarding his seniority in the grade of Assistant Director, as indicated in the draft seniority list circulated by the Computer Centre O.M. No.A-23020/1/83-CC dated 22.10.1986. The representation has been considered by the Deptt. of Statistics, who have advised that the correction in the date of birth as 11.7.1938 has been taken note of. His request for showing the date of his appointment to the grade of Assistant Director in regular basis is 2.9.1977 has also been considered by the Deptt. of Statistics in consultation with the UPSC and the Deptt. of Personnel & Training. In the light of the advice tendered, his request cannot be acceded to. A corrected list of seniority will be issued by the Deptt. of Statistics separately."

3. The second grievance of the applicant, in regard to the reversion from the post of Deputy Director, has arisen as follows:

3.1 It is stated that the applicant was officiating on an ad hoc basis as a Deputy Director since July, 1984. The U.P.S.C. had convened a meeting of the DPC to consider the names of Assistant Directors for promotion to the post of Deputy Director in December, 1985. Apparently, the name of the applicant was not considered as an eligible officer for consideration in view of the low position assigned to him in the seniority list. The applicant, however, claims that as there were five vacancies of Deputy Director fifteen officers should have been considered and even according to the revised seniority list his name figured at serial No.7 and hence, his name should have been considered.

3.2 The applicant was reverted from the post of Deputy Director by the notification dated 7.6.89 (Annexure A-13) alongwith another officer Sh. S.C. Kambli, a person senior to him in that seniority list. He alleges that in the DPC which met on December, 1985 instead of considering names for promotion, only the names of the 5 seniormost persons who were officiating viz. S/Sh. Bhaskara Rao, I.P. Mukhija, T.C. Chawla, Kanhiya Lal and J.P. Verma were considered and they were appointed on regular basis by the Annexure A-14 notification dated 25.6.86. This was improper as a DPC should have been considered all names which fall in the zone of consideration.

3.3 Apparently the applicant submitted a representation in this regard also which has been rejected by the impugned Annexure A-2 order dated 11.9.89, which reads as follows:-

"With reference to his application dated 15th June, 1989 addressed to the Secretary, Deptt. of Statistics regarding his seniority in the grade of Assistant Director, Computer Centre, Shri Fateh Singh, Assistant Director, Computer Centre, is hereby informed that his case has again been examined in the Department of Statistics. The action taken in the matter during the year 1977 was in conformity with the instructions of the Deptt. of Personnel & Training and the UPSC. It has accordingly been decided with the approval of the Hon. Minister of Planning that the matter may be treated as closed.

Regarding his reversion from the ad-hoc appointment to the grade of Dy. Director, Computer Centre, Shri Fateh Singh is informed that this vacancy was required to be filled up by direct recruitment by a candidate belonging to ST failing which by a candidate belonging to SC. UPSC recommended a SC candidate for appointment against this vacancy. This candidate has been appointed as Dy. Director resulting in reversion of Shri Fateh Singh. In taking this action, recent instructions as part of the Special Recruitment Drive for SC/ST have been kept in view."

4. It is in these circumstances that he has sought the following reliefs in respect of his seniority seniority as Assistant Director and his reversion:

"In view of the facts stated and the submissions made above, it is respectfully prayed that the Hon'ble Tribunal may be pleased to quash and set aside the impugned orders at Annex.A-1 and A-2 with suitable directions or orders to the Respondents that the Applicant be notionally appointed, w.e.f. 31.5.75, against the vacancy in the post of Assistant Director, reserved for Officers belonging to the Scheduled Castes which became available since 31.5.1975.

(ii) The Respondents be further directed to suitably amend the seniority lists of the Assistant Directors assigning to the Applicant inter se position in the Seniority List, with reference to his notional date of appointment viz: 31.5.75;

(iii) The orders regarding reversion of the Applicant from the post of Dy. Director (Annex.A-13) be quashed with suitable directions to the Respondents to continue the Applicant as Dy. Director against a vacancy available which has wrongly been shown as 'occupied' by Shri Bhaskara Rao.

Or

The Hon'ble Tribunal may pass such further orders which it may think appropriate in the circumstances and facts of the case."

5. The respondents have filed a reply denying these allegations. It is necessary to notice only the following averments made by them.

- i) There was only one regular vacancy in 1975 when the Department took up the matter with the UPSC for the second time on 21.10.75 after the Rules were amended.
- ii) The regular vacancy caused by the exit of Sh. D.N. Kanojia did not arise on 31.5.75. He was on deputation then. His lien in the Department of Statistics was continued as he ^{is was} quasi-permanent. This was terminated on 16.8.79 (Annexure R-10 of reply dated 5.1.86) and he was declared to have resigned on 31.5.75.
- iii) The applicant was placed in a panel of 6 persons for promotion as Assistant Director. His was the sixth position. The UPSC has advised that irrespective of the appointment to a reserved

vacancy, which might have arisen / than the vacancies to which others were appointed, he cannot be placed in the seniority list above them. His seniority will follow his rank in the panel.

iv) The Annexure A-5 order dated 6.3.80 was cancelled on 27.12.84 (Annexure A-8), because this principle of seniority was violated therein.

v) The applicant was promoted to the post of Deputy Director only on adhoc basis.

as Deputy Director

vi) In regard to regular promotion / the respondents have stated as follows:

"the UPSC convened a meeting of the DPC on 13.12.85, for recommending a panel of names for filling up four vacancies of Deputy Directors (2 of 1980 and 2 of 1983). The final panel, however, contained seven names since three of the recommended officers were not expected to be available for regular promotion. As the eligibility criteria was at least five years of service on regular basis as Assistant Director, the applicant, appointed to the grade of Assistant Director w.e.f. 2.9.77, was not eligible for consideration for the two vacancies of 1980. He was eligible, and was considered, for the two vacancies of 1983. But on the basis of the position and assignment to the DPC his name did not figure in the final panel recommended by the DPC. Promotions on the basis of the recommended panel were ordered on 13.12.85."

vii) As the two vacancies of 1983 could not be filled up by regular appointment Sh. Kambli and the applicant were continued on an ad hoc basis. They were finally reverted on 6.7.89 when direct recruitment could be made to these vacancies.

6. We have heard the learned counsel for the parties in great detail on a number of occasions. Though the paper book has become bulky we feel that the main issue is whether the applicant has a claim to be considered for appointment against vacancies which arose in 1975, along with Sh. Ramdass, who was appointed against the only regular vacancy reported for 1975 on the basis of the DPC held in August, 1976.

7. The applicant would have a case only if three vacancies of Assistant Directors arose in 1975. For, in that case the first vacancy would be reserved for a scheduled caste for promotion, the second vacancy would have to be filled up by direct recruitment and the third vacancy will again have to be filled up by promotion. As there will be two vacancies for promotion, the applicant could also have been considered by the DPC which was held in August, 1976. Instead, that DPC was advised that there was only one regular vacancy which was on the reservation point and being a single vacancy it had to be de-reserved and a general candidate Ram Dass was selected.

8. In this connection, the applicant states that two vacancies existed in May, 1975 in para 4.5 of the OA and a third also arose on 31.5.75 due to the D.N. Kanojia. The question is whether this is substantiated.

9. Admittedly, the first vacancy to arise was due to the promotion of Sh. Sonawala on 16.8.74. The second is a disputed vacancy viz. that of D.D. Kanojia. The applicant contends that D.D. Kanojia was already appointed in the Planning Commission on a regular basis by direct recruitment and hence when he was relieved on 31.5.75 a regular vacancy arose. This is disputed by the respondents who claim that it was deputation vacancy until he was deemed to have resigned from 31.5.75 by an order issued on 16.8.79.

10. In regard to the third vacancy the applicant had mentioned in his rejoinder that it arose from 17.2.75 on the issue of the notification dated 27.4.77 accepting the resignation of Sh. Gajinder Kumar w.e.f. 17.2.75 (Annexure 2 to the rejoinder). More details are given about Sh. Gajinder in MA-73/96 filed by the applicant. Annexure A-17 is a letter dated 11.1.96/ nil of November 1974 which is an offer of appointment from the Fertilizer Corporation of India Ltd. to Sh. Gajinder Kumar, Assistant Director Computer Centre. While this offer of appointment did not indicate that it is an appointment on deputation, this has been made clear by the respondents in their reply dated 11.1.96/ It is stated that consequent on his selection, the terms of his deputation on foreign service were communicated to the Accountant General, Central Revenues on 10.5.76 (Annexure R-12) with copies to the Corporation and to Sh. Gajinder Kumar. Further, it is clear from the Annexure-R-13 notification dated 27.4.77 that Sh. Gajinder Kumar had given an undertaking that he would revert to the

post of Assistant Director on 17.2.77 from the Fertilizer Corporation of India. As he did not abide by that undertaking the notification dated 27.4.77 (Annexure R-13) was issued, deeming him to have resigned from the post of Assistant Director, Computer Centre, w.e.f. 17.2.75.

11. It is thus clear that the respondents have established that Sh. Gajinder Kumar was on deputation. He was to return from deputation on 17.2.77. Therefore, this vacancy was not reported to the UPSC when Government initiated steps to hold the DPC by sending the letter dated 27.10.75, as a result of which the first DPC was held in August, 1976. Therefore, it cannot be held that, on 17.2.75, a vacancy attributable to the exit of Sh. Gajinder Kumar had already arisen when the DPC met in August 1976. That vacancy arose only when the notification was issued on 27.4.77. That vacancy was considered by the DPC of 1977 as available for direct recruitment. The case of Gajinder Kumar is, therefore, totally different from that of D.D. Kanojia. Therefore, it cannot be said that three vacancies arose in 1975.

12. In the circumstance we do not find any need to decide whether Sh. D.D. Kanojia was on deputation on 31.5.75, as claimed by the respondents or he was regularly appointed as a direct recruit in the Planning Commission, and, therefore, a regular vacancy had arisen on 31.7.75, as contended by the applicant. For, even if we assume for argument's sake, that this vacancy arose on 31.5.75, there would have been only two vacancies in 1975 of which one will be

for promotion and one for direct recruitment. Hence, there is no change in the position because, the one vacancy meant for promotion would have to be de-reserved and filled up by general candidate. This is what was done by the DPC held in August, 1976.

13. This knocks the bottom of the applicant's case. Therefore, his claim for consideration for appointment in 1975 has no basis. His OA in this regard has to be dismissed.

14. We are also unable to find any mistake in the contention of the UPSC that the persons appointed from a merit list prepared by it shall get seniority only on the basis of their position in the merit list, irrespective of the vacancies to which they are appointed. Therefore, the applicant cannot claim seniority over the others who have been placed above him in the panel prepared by the UPSC. In the circumstances, we do not find any merit in so far as the appointment to the post of Assistant Director and the seniority thereunder are concerned.

15. In so far as the reversion from the post of Deputy Director is concerned, it is quite clear that the applicant was appointed along with three others, as a Deputy Director purely on ad hoc basis by the order dated 1.8.84. This order made it clear that this would last till 10.1.85 or till the posts are filled up regularly, whichever is earlier. The adhoc appointment was continued upto 1989 for the reasons mentioned by the respondents vide sub para (v) to

(vii) of para 5 supra. It is clear that he too was considered for appointment to the two vacancies of 1983. He did not make the grade. He was, therefore, continued on an adhoc basis till he was reverted on 6.7.89.

16. In view of the fact that we have found that the applicant could not be held to be senior to the person selected by the UPSC for appointment as Assistant Director, we do not find that he had a right to be appointed as Deputy Director in preference to any of them. Therefore, his reversion cannot be called in question.

17. In the circumstances this OA is dismissed.
No costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

'Sanju'

N.V. Krishnan
(N.V. Krishnan)
Acting Chairman