

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. CA-5247/89

Date: 1.6.1990.

Shri Arvind Kumar Raizada Applicant

Versus

Union of India & Another Respondents

For the Applicant Shri Rajan Saluja, Advocate

For the Respondents None

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*

2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, who is working as a Technical Supervisor in the Regional Design and Technical Centre, Office of the Development Commissioner (Handicrafts), Ministry of Textiles, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, being aggrieved by lack of any promotional avenues for him though he has worked for more than 12 years in the Office of the respondents. He is presently aged 32 years only and has many more years left in Government service. He has not, however, challenged any particular order passed by the respondents, which is a prerequisite for entertaining an application filed under Section 19 of the Administrative Tribunals Act, 1985. In our opinion, the application should not be dismissed in limine on this ground as the issue raised by him deserves adjudication.

2. Despite the service of notice on the respondents, they have chosen not to enter appearance or file their counter-affidavit.

3. We have heard the learned counsel for the applicant and have gone through the records of the case carefully.

4. The respondents advertised the post of Technical Supervisor in the scale of Rs.550-900 in the Employment News dated 4th November, 1976. It was mentioned in the advertisement that the post was temporary but likely to continue indefinitely. The applicant applied for the post and on selection, was given an offer of appointment, wherein it was stated, inter alia, that his appointment will not confer any claim for appointment in the regular cadre of establishment of the office of the respondents, that the post was purely temporary and did not carry the benefit of pension or Contributory Provident Fund, and that the President of India reserved the right to alter or add other clause or clauses in the agreement which would be binding upon him. The applicant accepted the offer of appointment and joined the post of Technical Supervisor in the field of Mechanical Engineering Trade w.e.f. 14.3.1977. He is still continuing in the said post.

5. The applicant has passed the three-year Diploma Course in Mechanical Engineering in 1975. Before he joined the office of the respondents, he had worked in a private concern.

6. The applicant has stated that the respondents have not provided any promotional channels from the post of Technical Supervisor (Mechanical Engg.) to any higher post. As against this, they have made provision for promotion in respect of all other categories of their

employees. He has annexed as Annexure A-9, a list of the posts for which the Office of the Development Commissioner has provided promotional posts (vide p. 26 of the paper-book). The posts in respect of which such a provision has been made, are that of Lower Division Clerk, Stenographer, Upper Division Clerk, Investigator, Handicrafts Promotion Officer, Assistant Director (H), Deputy Director, Jobber, Skilled Worker, Assistant Craftsman, and Assistant Design Artist. He has drawn attention to the instructions issued by the Department of Personnel, the views of the Union Public Service Commission, and the Fourth Central Pay Commission, all stressing the need for providing promotional avenues and discouraging creation of isolated posts for which there will be no promotional avenues. He has contended that this is grossly unjust and unfair and creates frustration.

7. There is considerable force in the grievance of the applicant. The upper age-limit prescribed for direct recruitment to the higher posts, is stated to be 25-30 years. The applicant has already attained this age. Therefore, he has no prospects for direct recruitment to higher posts in the office of the respondents. The experience gained by him in the office of the respondents, will hardly have any relevance for other departments.

8. In this context, we may refer to the judicial thinking of the apex Court on the subject. In Raghunath Prasad Singh Vs. Secretary, Home (Police) Department, Government of Bihar, A.I.R., 1988 S.C. 1033 at 1034, the Supreme Court has observed that "reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters

the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly." Accordingly, the Supreme Court directed the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the Wireless organisation within six months from the date of the judgement by appropriate amendments of the rules.

9. In C.S.I.R. Vs. K.G.S. Bhatt, 1989 (2) SCALE 395, at 398, the Supreme Court again reiterated the same view. The following observations made by the Supreme Court are pertinent:-

".....It is often said and indeed, adroitly, an organisation, public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well (See : Principles of Personnel Management by Flipo Edwin B. 4th Ed. p.246). Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors". (See : Personnel Management by Dr. Udai Pareek, p.277). There cannot be any modern management much less any career planning, man-power development, management development etc. which is not related to a system of promotions. (See : Management of Personnel in Indian Enterprises by Prof. N.N. Chatterjee, Chap. 12 p. 128)."

10. Reference may also be made to the decision of this Tribunal in Zia-Ud-din Vs. Delhi Administration & Another, 1990 (1) ATLT (CAT) 445 to which one of us (P.K. Kartha) was a party. In that case, an officer of the Delhi Admn.

had worked in the same post for several years and the Tribunal directed the respondents to encadre the post held by him to the mainstream cadre and consider him for appointment against the same in accordance with the rules with consequential benefits. If the respondents felt that any officer in the Service was thereby to be adversely affected, the Tribunal directed that a supernumerary post might be operated in the relevant cadre for the applicant which might be allowed to lapse with his retirement on superannuation.

11. At the same time, we recognise that the promotion policy and the need to ensure a satisfactory career progression in the Government service has received special attention after the recommendations of the Fourth Pay Commission. Some of the tangible measures taken in this regard are as follows:-

(a) Introduction of improved span in case of some pay-scales. The scale of Rs. 550-25-75-E8-30-900 (13 years) has been replaced by a scale of Rs. 1640-60-2600-E8-75-2900 which works out to 20 years' span. The improved span of pay scales will reduce the problem of stagnation.

(b) Grant of one stagnation increment on completion of every two years at the maximum of the respective scale upto a maximum of three such increments.

12. Neither reducing the possibility of stagnation nor removal of stagnation, however, is substitute for the normal human aspiration for promotion commensurate with experience and skills achieved and general economic pressures. It is, therefore, imperative that isolated

posts which are "likely to continue indefinitely" are created duly keeping in mind the long-term impact of such an action. A conscious effort is required to be made to identify the cadres in which such posts can be fitted in. If an attempt in that direction fails, the alternative would be to devise a scheme for a time-bound promotion, say, after 15/16 years of service to grant the next higher grade by upgrading the isolated post itself. In fact, something similar has already been implemented in the P & T Department. It will also be in the interest of justice and fairplay, as by working in a particular job for a period of time the skill of the employee improves considerably and grant of promotion to the next higher grade gives a fillip to his efficiency. Promotion in such situations where an isolated post does not lend itself to encadrement, can be arranged on the pattern of "flexible complementing".

13. Following the ratio in the aforesaid judicial pronouncements, and in the context of the above discussion, we order and direct that the respondents shall encadre the post of Technical Supervisor to one of the existing cadres and consider the appointment of the applicant against one of the said posts at a suitable time. The experience acquired by him in his present post as Technical Supervisor should also be kept in view while amending the rules. It appears that there are only two posts of Technical Supervisor and both the incumbents, including the applicant, have made representations to the respondents in this regard. Even though the other colleague of the applicant is not before us, we hope that the respondents will consider his

case also for similar encadrement. If the post of Technical Supervisor cannot be encadred for some insurmountable reasons, we further direct that the applicant should be considered for promotion to the next higher grade following the principle of "flexible complementing" by granting the next higher scale of pay to the applicant in the same post preferably not later than on completion of 15 years of service.

14. The respondents shall comply with the above directions within a period of six months from the date of communication of this order.

There will be no orders as to costs.

D. K. Chakravorty
(D. K. Chakravorty)

Administrative Member

1/6/90

P. K. Kartha
(P. K. Kartha)
Vice-Chairman (Judl.)

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