

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

O.A.No.233/89

Date of decision:15.09.93.

with

✓ O.A.No.234/89

Shri K.M. Agrahari

....

Applicant

versus

Union of India & Ors.

....

Respondents

Coram:-

The Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman

The Hon'ble Mr. B.N. Dhoundiyal, Member(A)

For the applicant : Sh. J.P. Verghese, counsel

For the respondents : Sh. Pawan Bahi, counsel

JUDGEMENT

(delivered by Hon'ble Mr. B.N. Dhoundiyal, Member(A))

These O.As: have been filed by Sh. K.M. Agrahari while working as Asstt. Employment Officer(Tech.) under the Directorate of Employment, Delhi Administration. In the original O.A., the reliefs claimed were that the applicant be deemed to have been continued as SREO(T) w.e.f. 1.6.1973 and be deemed to have promoted as Asstt. Director w.e.f. 1.7.1979. Later on, a number of M.Ps. were filed mainly seeking either intervention of Tribunal in disciplinary proceedings or requesting the Tribunal to restrain the respondents from promoting others to the higher post. In M.P.No.59/92 the applicant sought permission to modify the application to provide for the following reliefs.

- (1) This Hon'ble Tribunal may be pleased to hold and declare that the applicant be deemed to have been continued as S.R.E.O.(T) w.e.f. 1.6.1973 and direct the respondents to pay the arrears of pay and allowances;
- (2) That the mode of Recruitment Rules to the post of SREO(T) as direct Recruitment notification dated 20.11.1968 may be set aside and hold/ declare as by promotion as per 1963 Rules thus action of the respondents are ultravires to Article 14,16,19(1)(G), 38D, 39 A, 41 of the India Constitution;
- (3) Direct the respondents to provide a channel of promotion to the post of SREO(T) for the post of AEO(T) as was provided in 1963 rules with retrospective relief w.e.f. 3.9.1969;
- (4) Direct the respondents to promote the applicant to the post of SREO(T) with retrospect effect 1.7.1972 including pay and allowances; (the date from which the DPC has promoted on ad hoc basis).

- (5) Direct the respondents to further promote the applicant as Assistant Director w.e.f. 1.7.1979 including pay and allowances resulting thereby;
- (6) Direct the respondents to further promote the applicant as Joint Director w.e.f. 1.2.1989;
- (7) Any other order/orders which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

As mentioned later this M.P. is opposed by the respondents. Similar reliefs have been sought in O.A.No.234/89.

The facts of the case are these. The applicant was appointed to the post of A.E.O.(T) through U.P.S.C. on 3.9.1969. He was assigned the duties of next higher post of SREO(T) in addition to his own duties on 17.11.1971 and was later appointed as S.R.E.O.(T) on ad hoc basis w.e.f. 1.7.1972 vide letter dated 1.11.1972. It is the contention of the applicant that one of his seniors, Sh. R.N. Puri manipulated his reversion from the post of S.R.E.O.(T) by recalling Sh. D.P. Aggarwal back to the department. Even when Sh. Aggarwal was promoted as Asstt. Director w.e.f. 1.6.1973, the applicant's promotion in his place was withheld at the instance of Director Employment (Sh. R.N. Puri). On 10.4.1975 the applicant was dismissed from service on the basis of the charge sheet issued on 1.3.1974. He challenged the

dismissal order in the High Court and the orders of dismissal were set aside in March, 1980. Another charge sheet was issued to him on 24.1.1981, and on 5.4.1982 he was completely exonerated of the charges after the enquiry. The post of S.R.E.O.(T) was advertised through U.P.S.C. and the selection was challenged by the applicant in the High Court which passed an interim order on 20.10.1983 that any sub selection will be subject to the decision of the writ petition. The result of the selection to S.R.E.O. was declared by U.P.S.C. on 19.11.1982. The applicant was not selected. His main grievance is that he has been deprived of his promotion as S.R.E.O.(T) which had affected the chances of promotion for the next higher grades of Asstt. Director and Joint Director. The amendment proposed in M.P.No.59/92 interalia challenged the notification dated 20.11.1968 providing for the direct recruitment to the post of S.R.E.O.(T) and exclusion of promotion to this post from the cadre of AEO(T) as provided in 1953 Rules. The applicant has made numerous representations seeking promotional avenues to the authorities.

The amendment to the original O.A. (as per M.P.No.59/92) has been opposed by the respondents on the ground that such amendments would tantamount introduction of new issue and new cases. As regards the question of recruitment rules, these issues have been adjudicated by the Delhi High Court in their judgements dt. 8.11.1976 and 27.5.1981. They have also pointed out that the recruitment rules for the post of S.R.E.O.(T) was notified on 20.11.1968 i.e. well before the date of applicant's appointment as Asstt. Employment Officer(T) on 3.9.1969. He cannot therefore claim to be governed by the earlier

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rules. However, we allow the M.P. partially to consider the promotional avenues which the applicant claims on the basis of seniority list published on 11.5.1993.

We have gone through the records of the case and heard the learned counsel for the parties.

Sh. J.P. Verghese appearing on behalf of the applicant stated that the major grievance of the applicant has been resolved by the respondents by assigning him seniority at Sr.No.1 in the combined seniority list of A.E.O.(T), OTO/ACC ex-cadre in the pay scale of Rs.1640-2900/- as on 1.11.1988. He contended that as the applicant has now been exonerated from all the charges levelled against him and his dismissal from service has also been set aside, his case for promotion should be reviewed by the respondents so that consequential benefits of his revised seniority as per notification of 11.15.1993 may be made available to him. While considering the matter, the jurisdiction of the Tribunal is limited under Section 21(2)(a) of the Administrative Tribunals Act, 1985 that if the cause of action has arisen before 1.11.1982, the Tribunal has no jurisdiction to entertain the petition. Moreover, it is not clear what shape of seniority list of 11.5.1993 would take after objections having been disposed of by the respondents. Both the counsel agreed that the matter could best be dealt with by applicant's submitting a detailed representation to the respondents which should be considered by them within a time bound period. If, as claimed by the applicant the seniority has rightly fixed,

we have no reason to doubt that any benefit flowing from the revised seniority list will be denial to him by the respondents.

In view of the afore mentioned discussions, *hence* these O.As. are, therefore, disposed of with the direction that the applicant shall be allowed to submit a fresh representation within a period of 3 weeks from the date of receipt of certified copy of this order regarding his various claims including promotion. The respondents shall consider this representation in the light of rules within a period of 3 months after the submission and pass speaking orders.

There shall be no orders as to costs.

B.N. Dhandiyal
(B.N. Dhandiyal)

Member (A)

S.K.
(S.K. Dhaon)

Vice-Chairman