

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 365/89

198

T.A. No.

DATE OF DECISION

19.11.90

Karam Chand Batra

Petitioner

Shri R.K.Kamal,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri M.L.Verma,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member(Administrative).

The Hon'ble Mr. J.P. Sharma, Member(Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *YB*
2. To be referred to the Reporter or not? *YB*
3. Whether their Lordships wish to see the fair copy of the Judgement? *M*
4. Whether it needs to be circulated to other Benches of the Tribunal? *M*

MGIPRRND-12 CAT/86-3-12-86-15,000

J.P. Sharma
(J.P. Sharma)
Member (Judl.)

P.C. Jain
(P.C. Jain)
Member (Admn.)

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Central Administrative Tribunal
Principal Bench: New Delhi.

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Regn.No.OA-365/89	Date of Decision: 19.11.90
Shri Karam Chand BatraApplicant.
Vs.	
Union of India & Ors.Respondents.
For the applicantShri R.K.Kamal, Advocate.
For the respondentsShri M.L.Verma, Advocate.

CORAM: Hon'ble Shri P.C.Jain, Member(Administrative)
Hon'ble Shri J.P.Sharma, Member(Judicial).

JUDGEMENT

(Delivered by Hon'ble Shri J.P. Sharma)

The applicant, since retired as Chief Goods Clerk, Agra moved this application under Section 19 of the Administrative Tribunals Act, 1985, having the grievance that in spite of having been empanelled by the DPC for promotion to the grade of Rs.2000-3200 on regular basis on 3.7.1987, he was not given posting and promotion while those who were empanelled but were below the applicant, were promoted in the said grade. The applicant has prayed for the following reliefs:

- a) The applicant be declared promoted in accordance with his position in the panel for regular promotion with effect from 1.9.1987 when persons junior to the applicant were promoted to the scale of Rs.2000-3200 with all consequential benefits.
- b) The respondents be directed to pay all arrears of salary, allowance etc. with interest at the rate of 18 per cent per annum from 1.9.1987.
- c) The respondents be directed to refix the pension payable on the revised salary and arrears with interest with other consequential final settlement dues..

2. The relevant facts, in short, are that the applicant was working as Chief Goods Clerk in the grade of Rs.550-750 (revised to Rs.1600-2660) at Agra. He was ordered to be promoted on ad.oc basis in 1986 to the grade of Rs.700-900/-

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(revised to Rs.2000-3200) and transferred from Agra to Agra Cantt. as Chief Booking Supervisor. In view of the fact that he was transferred on a temporary ad hoc promotion, he submitted his willingness for being ignored for ad hoc promotion, according to the Rules in force. This request was considered by D.R.M., Jhansi, and the applicant was retained as Chief Goods Clerk at Agra in the lower grade of Rs.550-750/-. However, subsequently on 3.7.1987 when a DPC met, the applicant was placed on a panel for regular posting in the grade of Rs.2000-3200 after proper selection. However, the applicant learnt that the persons who were junior to him in the said panel prepared by the DPC on 3.7.1987 were promoted under the impugned order dated 2.9.1987 (Annexure A-1) but the name of the applicant was omitted from the regular promotion list. The applicant made a representation on 16.9.1987 (Annexure A-4). It is further stated by the applicant that he wanted his posting at Agra due to certain family circumstances but he was not given the posting at Agra on the promotional post though one Shri Nek Ram (who was not even approved by the DPC for regular promotion in the scale of Rs.2000-3200) was working on ad hoc basis at Agra. The applicant made a further representation in November, 1987 (Annexure A-5) stating that his earlier refusal for ad hoc promotion could not be a bar for promotion to higher grade on regular basis after being selected by the DPC. The applicant also stated in the application that the posting of some other persons at Agra or the nearby stations of Agra area but that is not relevant for the purpose of this case. The case of the applicant, therefore, is that in spite of repeated representations which were recommended for favourable consideration, the applicant was not given justice and fairplay by not promoting him to the grade of Rs.2000-3200/- and was compelled to retire in lower grade as Chief Goods Clerk on 31.1.1989.

3. The respondents contested the application on the ground that the application is not maintainable under law as the same

is barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985. The applicant filed this application in 1989 praying for the relief with effect from 1.9.1987 and so the application is belated and liable to be rejected on this account. The applicant himself refused to have his promotion on transfer. Now after retirement he cannot challenge the same. Since the applicant refused promotion, therefore, he was retained at Agra in the grade of Rs.1600-2660 (revised pay scale). The name of the applicant was omitted from the promotion orders issued on 1.9.1987 as he had earlier refused his promotion and normally the applicant could have been considered in his turn for promotion after only one year of refusal. The name of the applicant was included in the proposal for promotion in the grade of Rs.2000-3200 vide letter No.P.328/10/A/CA dated 1.2.1988 and he was again promoted and posted as CBPS, Lalitpur. The applicant did not join at Lalitpur and wanted his posting at Agra. His request was not acceded to and he himself gave up his promotion as is evident from Annexure A-7 wherein he has written "I regret that I am unable to go on transfer on promotion.....". As regards the posting of Shri Virender Nath who was similarly promoted in the grade of Rs.2000-3200, it is stated by the respondents that the applicant never made a request for posting at Belanganj where Shri Virender Nath was transferred and posted. The applicant after having been promoted on regular basis on 1.2.1988, and having refused to join at the transferred place on promotion cannot now claim any relief. So ultimately, he stood retired on superannuation on 31.1.1989. According to the respondents, the applicant has no case and the application has no merit and is liable to be rejected.

4. We have heard the learned counsel for the parties at length and have gone through the records of the case. The name of the applicant is included in the panel (Annexure-2) prepared after selection by the DPC on 3.7.1987 but his name

was excluded from the posting order dated 1.9.1987 (Annexure A-1) and the reason given by the respondents is that since the applicant had refused his ad hoc promotion with effect from 29th October, 1986 so he could not have been considered within one year i.e. till October, 1987 for being posted on the promotional post. However, this contention of the respondents is against the circular No.831-E/63/2-XII(Eib) dated 12.4.1985, (N.R. Circular No.8703) which is at page 15 of the paper-book and is reproduced below:

REFUSAL OF PROMOTION

"The aforesaid instruction of debaring an employee for further promotion for one year in case he refuses promotion are also applicable if an employee refuses ad hoc promotion.

However, in such case the employee refusing promotion on ad hoc basis may not be considered only for further ad hoc promotion within the period of one year but may be considered for promotion on regular basis even within a period of one year from the refusal of promotion on adhoc basis, if he becomes due for that."

5. Thus, the period of one year does not debar further promotion in the event of regular promotion. However, in the present case, the applicant was promoted again in February, 1988

6. The grievance of the applicant occurred by the omission of his name from the office order, Annexure-1, dated 1.9.87, and his name was not included in the list of promotees to the higher grade of Rs.2000-3200. The applicant did not file any proceedings within the time except that he made a representation on 16.9.1987 (Annexure A-4) followed by another representation on 17.11.1987 (Annexure-A-5) and the applicant should have filed the application sometime in 1988 itself but he allowed the time to pass till his superannuation on 31.1.1989 and after that he filed the present application in February, 1989. In view of these facts the applicant's application regarding the grievance of omission of his name from the promotion list is hopelessly barred by time and hit by Section 21 of the Administrative Tribunals Act, 1985

which allows one year's time from the date of the order and in case a representation has been made in time then an additional period of 6 months for awaiting the disposal of the representation. By any angle of calculation, the application does not come within the limitation provided under Section 21 of the Administrative Tribunals Act, 1985.

7. Regarding the non-promotion of the applicant on a regular basis, the applicant was promoted in the grade of Rs.2000-3200 by the order dated 1.2.1988 and he was posted as CBPS, Lalitpur. This fact is not denied by the applicant. The applicant, however, made another representation on 3rd February, 1988 (Annexure A-7). In this representation, the applicant had again given up his promotion showing his intention not to go on promotion to Lalitpur. The relevant promotion of the representation dated 3.2.1988 (Annexure A-7) is reproduced below: -

"I am fully aware and understand that my above refusal on promotion on transfer would make me as ineligible for promotion to any post in the said grade for a period of one year in terms of Railway Board's Order contained in their letter No.1(IG)GI-FL-CC dated 31.1.1965 as amended from time to time and that on my re-promotion my seniority in the promotion grade would be reckoned only from the date of re-promotion."

A perusal of the above will show that the applicant himself did not like to join at the place where he was posted on promotion.

8. The fault of the respondents lies in the fact that when a DPC was held and the applicant was duly selected and a panel was drawn on 3.7.1987 then he should have been given promotion along with his juniors in the panel and should not have awaited for one year as has been the defence taken by the respondents, presumably, ^{wrongly} /misunderstanding the circular of the Northern Railway dated 12.4.85 referred to above. The circular, discussed in earlier part of the judgement, only debars ad hoc promotion for one year

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but is not a bar to regular promotion. In the circumstances, of the case since respondents have at another time in February, 1988 promoted the applicant and posted him to Lalit pur in the grade of Rs. 2000-3200 as CBPS, Lalitpur, the fault on the part of the respondents will not make the wrong to continue, which has been once committed in 1987, and the applicant cannot draw any advantage out of that. Further, the intention of the applicant was only to remain posted at Agra Railway Station even after his promotion. However, the applicant cannot have any such right to assert his posting on the promotional grade at Agra. The respondents have not discriminated the applicant in any manner whatsoever in the matter of giving him promotion to the next higher grade of Rs. 2000-3200. Regarding the grievance of his not posting at Agra itself after promotion the applicant should have come at the relevant time, which he has not done.

9. In view of the above discussion, the application is devoid of merit and is dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J.P. Sharma)
Member (Judl.) 19.11.90

P. C. Jain
(P.C. Jain)
Member (Admn.) 19/11/90