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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.1300/88

Dated: 21.10.73

S.R. Dhankani

Applicant

Vs.

Union of India through Ministry of
Surface Transport and Others.

Respondents.

Present: Applicant in person

Shri M.L. Verma counsel for the Respondents.

CORAM

1. Hon'ble Mr. J.P. Sharma, Member (J)
2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGMENT

(Delivered by Hon'ble Mr. B.K. Singh, Member (A))

This CA No.1300/88 is directed against Order No. EST/ECS (87)/85 dated 20th May 1988 (annexure 14) passed by the Secretary to the Government of India, Ministry of Surface Transport regarding denial of grant of proforma promotion to the applicant in terms of second Proviso to FR-30(1), Next Below Rule.

2. As a result of limited combined departmental competitive examination held in 1976 by UPSC the applicant was appointed as CSSS Grade 'D' Stenographer on the cadre of the Ministry of Shipping Transport (now called Ministry of Surface Transport) w.e.f. 27.11.77 (annexure 1). Prior to this he was working as permanent Grade 'C' Stenographer in the Ministry of Shipping Transport. He was appointed as Stenographer Grade 'A' on ad hoc basis w.e.f. 21.11.80 vide notification No. EST/ECS(27)/80 dated 16.1.1981 (annexure 2).



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3. As per provision of Rule 11 of CSSS Rules 1969 Department of Personnel vide their O.M. No. 5/1/83-CS-II dated 30.7.83, Stenographers Grade 'B' upto 1977 ^{was} included in the select list for promotion to Grade 'A' on a substantive basis. The applicant was considered fit and was included in the select list of Grade 'A' officers of CSSS for promotion on a substantive basis to Grade 'A'.
4. For want of a regular vacancy in the Surface Transport Ministry the applicant opted to go to some other Ministry/Department of Government of India on promotion to Grade 'A' on a regular basis stipulating in his option that he would like to revert to his parent department, i.e. Surface Transport Ministry, whenever the first vacancy in Grade 'A' of CSSS occurred there. He also stipulated that while his name was being considered and a vacancy occurred in the Ministry of Surface Transport, he would like to be considered for that vacancy.
5. It is alleged that the applicant did not get any information from the Surface Transport Ministry about his promotion to Grade 'A' on regular basis in or outside the Ministry of Surface Transport. The Ministry of External Affairs had conducted a limited test of Grade 'B' Stenographers for Indian Missions abroad. As a result of this examination the applicant was selected and he received an offer of deputation from the Ministry of External Affairs to Kabul under their TTEC Programme. He was relieved by the Surface Transport Ministry to join his new assignment in Kabul vide their letter No. EST/ECS(40)/84 dated 28th August 1984 (Annexure 5).
6. Even during the period of deputation for two years the applicant has stated that he was never informed about any vacancy in Grade 'A' in the Surface Transport Ministry. On return from

deputation on 10th September 1986 he was appointed as Stenographer Grade 'A' on a regular basis vide notification No. EST/ECS(87)/85 dated 25.9.1986 (annexure 6). It was then that the applicant discovered that his juniors, Shri Raj Mal (Respondent No.3) and Shri I.L. Malhotra (Respondent No.4) have been promoted w.e.f. 3.12.85 and 8.4.86 respectively as Grade 'A' Stenographers whereas he was promoted w.e.f. 10.9.1986 (annexure (7)). The gradation list, as on 21.2.86, the applicant figures at Sl. No.1 whereas the respondents No.3 and 4 are at Sl.14 and 15 respectively. The applicant was included in the select list of Grade 'A' Stenographers in 1983 since he belonged to 1976 batch and respondents No.3 and 4 belonged to 1978 and were included in the select list of 1985 when zone of consideration was extended. Thus the applicant ranked senior to them in Grade 'A' also. Rule 11 (1) of CSSS Rules 1969 (annexure (9)) stipulates that appointments to substantive vacancies will be in order of seniority unless somebody is declared unfit and reasons therefor are recorded. The applicant states that he was senior-most Stenographer in Grade 'A' and he should have been given regular promotion to Grade 'A'. Since he was on deputation abroad he should have been given proforma promotion under FR-30. He should have been declared promoted w.e.f. the date his immediate junior was promoted to Grade 'A' in the Surface Transport Ministry. By not doing so the Surface Transport Ministry violated the FR-30 to favour the respondent No.3 who was working as Private Secretary to Secretary, Surface Transport. Under proviso to FR-30 (1) and Government of India's Order No. 5 he was entitled to be given promotion even under this order under 'Next Below Rule'. On his return he filed a representation and the Surface Transport Ministry agreed to his contention and issued Order No. 1-26022/1/86-EST dated 21.10.86 (annexure 11) and fixed his pay

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accordingly and he was declared promoted w.e.f. 3.12.85 the date on which his immediate junior, respondent No.3, was promoted.

7. After 10 months the applicant's pay was reduced and fixed at a lower stage vide Ministry of Surface Transport Order No. G-25014(1)/87 dated 8.6.1987 (annexure 13). The benefit of NBR was withdrawn and the pay and allowances already availed of by the applicant were recovered from him. The date of appointment as Grade 'A' was also shown as 10.9.86 and he was shown junior to respondent No.3 in the final seniority list as on 1.3.87 (annexure 14). Reasons why this was done so has been indicated in letter No.EST/ECS(87)/85 (Part) dated 17.2.1988, which is reproduced below:-

"With reference to his representation dated the 8th Feb. '88 regarding grant of proforma promotion in terms of FR 30(1) - Next Below Rule, Shri S.R. Dhankani, Stenographer Grade 'A' is informed that on the basis of the zone for promotion from Grade 'B' to Grade 'A' of CSSS extended by the Deptt. of Personnel and Trg. he was asked to give his willingness or otherwise for going to some deficit cadre. He had opted to go outside the Ministry of Surface Transport. However, when the Deptt. of Personnel nominated him first to the U.P.S.C. and then to the Deptt. of Mines, he showed his unwillingness to go out of this Ministry, purely on his personal reasons viz. for his deputation abroad. Had he not gone on deputation he would have been given promotion in his normal turn. Since Shri Dhankani refused promotion in the cadre to which he was allocated, his request for proforma promotion cannot be acceded to."

8. The applicant has sought the following reliefs:

- (i) that the respondent No.1 be directed to fix the date of promotion of the applicant as 3.12.85, the date from which his immediate junior, respondent No.3 was promoted to that grade and his name in the seniority list as on 1.3.87 should be revised and restored to his pristine form.



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(ii) that the respondent No.2, Ministry of Personnel, should be directed to show the name of the applicant correctly in the combined gradationlist published by them vide their D.M. No.10/6/87-CE-II dated 16th July 1987 (annexure 20) and not to promote other Stenographers of merged grades 'A' and 'B' of CSSS to a new higher scale of pay of Rs.3000-4500 pending decision on this application.

9. Heard the applicant in person and the learned counsel for the respondents, Shri M.L. Verma and perused the records of the case along with pleadings and annexures. The learned counsel for the respondents maintained that the petition was misconceived and was not maintainable being time barred. These issues must have been considered before the application was admitted and as such it is not necessary to adjudicate on these issues.

10. The fact that the applicant got ad-hoc promotion to Grade 'A' w.e.f. 1980 which got extended from time to time is admitted by the respondents. It is also admitted by the respondents that the applicant's name was included in the zone of promotion to Grade 'A' in 1983 for regular appointment. This is also admitted that he had opted to go out since there were no vacancies immediately available in the Surface Transport Ministry and in the light of his option it is admitted that his name was sent to UPSC and subsequently to Department of Mines but in the meanwhile he received an offer to go on deputation to Kabul from the Ministry of External Affairs which he accepted. It is also ^{admitted} that he had not been promoted in a regular manner in UPSC or in the Department of Mines. It was vigorously contested that the applicant was fully kept informed about the developments verbally and in writing, but there is nothing on record to show that the applicant was kept abreast of the developments regarding his nomination to UPSC or to Department of Mines.

There is only one extract in the file where the notings of the Under Secretary/Deputy Secretary of the Surface Transport Ministry are available which go to show that since the applicant was going on deputation to Kabul there was no point in sending his CR dossiers to Department of Mines and accordingly the decision was taken in the Surface Transport Ministry not to send his dossiers to the Department of Mines. The applicant rebutted the argument that he was kept informed of the various developments taking place in the Surface Transport Ministry regarding his promotion on a regular basis. He was never informed either in writing or verbally. This contention appears to be correct since we do not find anything on record to show that he was kept informed except, as stated above, some notings on the file that the applicant is proceeding to Kabul on deputation and there is no point in sending his CR dossiers to the Department of Mines and accordingly the decision was taken to nominate his junior Shri S.P. Wahi to that Department. Shri Wahi was relieved to join the Department of Mines as Stenographer Grade 'A' on 12.7.84. There is no question of approaching respondent No.1 for nomination as alleged by the learned counsel for respondents. The respondent No.1 should have gone by seniority of the applicant and nominated him and if the applicant had declined to accept his nomination or to join the UPSC or Department of Mines then he would have been automatically debarred from promotion for a period of 3 years as envisaged in the circular of DOPT. This is no plea that the applicant was waiting for his deputation and was not interested in joining the Department of Mines. The applicant would have been pinned down and debarred from promotion for declining the same. He was never given

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an option to join the Department or Ministry and as such we do not find anything on record to show that he was ever debarred for 3 years from promotion. There is no notification to that effect either from Ministry of Personnel or from the Ministry of Surface Transport. There is also nothing on record to show that he was first nominated to UPSC and thereafter to the Department of Mines and that he refused promotion. In the same breath the learned counsel for the respondents argued that the applicant was debarred for 3 years and that the said period was over when he returned on 10.9.1986 and as such the bar was over and he was promoted. This is not borne out by facts because the period of deputation was only for a couple of years. He returned to India after completion of 2 years and was promoted. Thus the ban on his promotion for 3 years is neither on record nor is substantiated by the action of the respondents in promoting him. The thrust of the argument of the learned counsel was that because of the embargo put on his promotion for 3 years S/Shri S.P. Wahi, Raj Mal and I.L. Malhotra became senior to him.

11. As stated above, we do not find anything to show that the applicant was debarred from promotion for declining the same. There is a specific rule in the circular of the DOPT that if somebody declines his nomination to avail of promotion he will be debarred and there will be notification to that effect. Nothing of the sort has happened in the case of the applicant and as such it is difficult to place reliance on the argument that he was debarred from promotion for three years, especially when there is nothing on record to show this.

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12. The files also do not contain any speaking order about the various transactions. Although the State or its officials need not always make a ~~reason~~^{reasoned} order of appointment, ~~the~~ reasons relevant to the rules must animate the order. Moreover, the obligation to consider every qualified candidate is implicit in the concept of 'equal opportunity' enshrined in Article 14 and 16 of the Constitution. Promoting a candidate out of any consideration whether he is one's own PS is altogether illegal. If the applicant has the eligibility under the rules and regulations, his exclusion or non-grant of proforma promotion, even when he was abroad, is absolutely unjustified and against the rules. Being at Sl. No. 1 in the seniority list, he was entitled to proforma promotion under FR 30(1) and also under the circular governing the rules of 'Next Below Rule'. It is also surprising and shocking to find that the contention of the applicant is accepted and his proforma promotion w.e.f. date his immediate junior in the Department was promoted and then the same is withdrawn without recording adequate reasons. It amounts to reversion of the applicant without giving him any show-cause. It is against the principles of natural justice and attracts Art. 311³¹¹ of the Constitution, and as such a detailed proceedings was needed before he was reverted. The principles of natural justice envisage that the applicant should have been afforded full opportunity before the orders regarding his promotion w.e.f. date his next immediate junior was promoted were withdrawn. It has also been vociferously argued by the applicant that he was victimised because of the manipulation of Shri Raj Mal, the present PS to Secretary, Surface Transport. In such cases of selection for promotion posts if a senior official is passed over without any adequate reason, it is natural for him to complain that

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his non-selection or nongrant of proforma promotion from the date his immediate junior was promoted, is mala fide. There are enough facts and pleadings on the file to give a glimpse of the working of the mind of respondent No.1 who was selecting the authority in this case. A man does not work as a computer in such selections and is influenced by some subjective consideration in the favour of persons who were working in close proximity with him. The possibilities of bias is in the normal course of conduct. This is a frailty which influences the mind of the selecting authorities.

13. Taking the total view of the facts and circumstances of the case we find that the action of the respondent No.1 is arbitrary and unreasonable and is thus liable to be set aside. His Lordships of the Supreme Court while dealing with Kraipak's case Vs. Union of India (1969) 2 SCC 262, placed reliance on the following dicta of Lord Parker, C.J.:

"Good administration and honest and bonafide decision must, as it seems to me, require not merely impartiality, not merely bringing one's mind to bear on the problem but acting fairly..... Duty to act fairly is the sine qua non of principles of natural justice. The principles of natural justice are meant not only to secure justice but to prevent miscarriage of justice."

14. In the light of what has been stated above, the application is allowed with the following ^{directions} ~~orders~~:

- (i) The applicant would be deemed to have been promoted w.e.f. 3.12.85. His seniority is restored to its pristine form and he will be deemed senior to his immediate juniors, respondent Nos. 3 and 4 in the seniority list.




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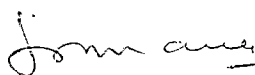
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(ii) The applicant will be entitled to grant of increment from the date his immediate junior, Shri Raj Mal (respondent No.3) got promotion and was allowed to count it for purposes of increments. The increment in the promotion post would be available to the applicant w.e.f. 1.12.1986. He would be entitled to draw his pay in the revised pay-scale of Rs. ²⁰⁰⁰⁻3000-₃₅₀₀ 4500/- from the date he joined his duties on this post, i.e. 10th September, 1986.

Corrected.
vide order dt.
16.11.93
Jomane

Costs on parties.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

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