

9

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI.

O.A.No.1345 of 1988      Date of Decision: 22.10.1993

Wing Commander V.B.Sawant .....Appellant.

Versus

Union of India & others .....Respondents.

CORAM:

Hon'ble Mr.Justice V.S.Malimath, Chairman.

Hon'ble Mr.S.R.Adige, Member(A)

For the applicant:      Shri B.B.Raval, Counsel.

For the respondents:      Shri P.P.Khurana, Counsel.

JUDGMENT

(By Hon'ble Mr.S.R.Adige, Member(A).)

In this application, Wing Commander V.B. Sawant(Retd) has prayed for

- i) a direction to be issued to the respondents to prepare and circulate a finalised seniority list as prepared and supplied to the DPC, for considering and preparing the Select List for ordering promotions in April, 1982;
- ii) promoting the applicant to the post of Director along with his batch-mates of the same year of allotment in his own turn or alternatively under Next Below Rule first as a Director and then as a Joint Secretary;
- iii) paying him differences of pay and allowances and other monetary benefits as well as perks consequently flowing from there; and
- iv) striking down the stipulation of five years qualifying service as Director for eligibility as Joint Secretary in RAW.

2. Admittedly, the applicant retired from IAF on 1.7.75 and was re-employed in RAW on 24.11.75 as Assistant Director. This re-employment was initially for one year and was extended annually. The RAW(RC&S) rules were enacted from 21.10.75, which provided for constitution of a Class I Executive Service and defined the category of people who could be considered for absorption in service at its initial constitution. It appears that a Selection Board was constituted by the Government in 1976 which as a preliminary step, invited willingness from all the eligible Officers for examining their suitability for absorption in new service. The applicant conveyed his willingness on 20.5.76 but the submission of willingness by an Officer did not amount to his final selection as the letter inviting option did not hold any assurance. Meanwhile the applicant continued on re-employment on the then existing terms and conditions of contractual appointment and the department had no obligation to continue his services if it decided not to renew his tenure.

3. In the counter-affidavit, it has been stated that the Selection Board constituted in 1976 to consider suitability of the eligible Officers for absorption in the new service which was to be constituted held its first meeting in October, 1976. Thereafter, a series of meetings were held and the recommendations were finalised only in 1977. However, these recommendations were kept in abeyance by the Government and not acted upon. Thereafter, in 1981 the Head of the Organisation directed that the eligible re-employed officers may be considered for promotion to the next higher rank of Deputy Director under the provision of Rule 7 of RAW(RC&S) Rules which prescribed an eligibility criterion of three years' service or more

9

in the Organisation. Schedule 1 of those rules provided that an officer with five years' service in the rank of Under Secretary/equivalent would be eligible for promotion to the next higher grade. The Head of the Organisation, therefore, approved that the re-employed Officers with five years of <sup>the</sup> service in the Organisation be considered for promotion. As the Organisation had three posts belonging to the defence services, it was decided that the DPC may consider filling up three posts in the rank of Director from the eligible officers. As the defence service officers were inducted into RAW not only through re-employment but also through deputation, and some who attained retirement in their parent service while on deputation to RAW were also re-employed in the Organisation subject to their suitability, it was necessary to prepare an interse seniority list on a rational basis, as a deputationist officer who had put in a number of years in the Organisation and was then absorbed would become junior to an Officer who had been directly re-employed from an earlier date than the date of his absorption but had put in lesser number of years of service in the Organisation. It appears that since the post of Assistant Director (re-designated as Under Secretary) in RAW was equated with Major/Commander/Lt. Commander in the defence services, it was decided that the interse seniority should be determined with reference to their dates of appointment as substantiv major or its equivalent. The DPC considered all nine re-employed officers serving in the Organisation who had worked in the feeder rank for five years or more

10

including the applicant and recommended the officers Nos.1,2,3 and 4 as shown below for appointment to the next higher grade;

| Sl.No. | Name                 | Date of Commission | Date of substantive appointment as Major equivalent. |
|--------|----------------------|--------------------|--|
| 1.     | Col.R.G.Sawhney      | 12.10.46           | 12.10.59   |
| 2.     | Cdr N. Radhakrishnan | 1.05.51            | 16.6. 61   |
| 3.     | Lt. Col.B.Swarup     | 11.12.49           | 11.12.62   |
| 4.     | Lt.Col.Manohar Lal   | 22.11.50           | 22.11.63   |
| 5.     | Wg.Cdr.V.B.Sawant    | 17.01.53           | 17.01.64   |

4. It is clear that the officers nos.1 to 4 stood senior to the applicant as per details furnished above. Hence, he was not recommended for promotion by the DPC against the three available vacancies.

5. While the recommendations of the Selection Board submitted in 1977 were kept in abeyance, it appears that a review Selection Board was constituted in 1983 to review the recommendations of the original Selection Board in view of the long period of time that had elapsed. The review selection board had submitted its recommendations in 1984 and consequent upon their acceptance by the Government, fresh options were invited from the officers concerned latest by September, 1984. The applicant gave his unconditional willingness to be absorbed in new Research & Analysis Service (RAS) and the final notification appointing the officers to various scales/grades of the service at its initial constitution was issued from April, 1985 onwards, which showed the year of applicant's seniority as 1957.

6. Admittedly, the applicant was posted abroad in June, 1983. Prior to his foreign posting, the applicant's option was asked for. He was informed that as per the extant rules, he would not be granted appointment

to the next higher grade during his tenure abroad. As per rules he was also required to give a written undertaking that in case he was posted abroad, he would not make any claim for promotion and after his final selection for posting abroad, the applicant did give such an undertaking not to claim promotional benefits during his tenure abroad. The respondents showed us the relevant file containing the said undertaking and we are satisfied that it was given by the applicant. According to the respondents, this undertaking is taken from the officers selected for assignment in abroad to make them aware that under the prevailing rules and regulations, RAW officers posted abroad cannot be granted in-situ promotion. Thus, the applicant cannot deny that he proceeded on foreign assignment in full knowledge that he would not get any promotion that may accrue during his tenure abroad and he would be given the benefit of any promotion for which he is approved only on return to his Head Quarters.

7. It appears that after the Research & Analysis Service was notified in April, 1985 and the applicant was given 1957 as the year of allotment, a DPC was held very soon thereafter, in May, 1985 itself, to consider the suitability of officers in the RAS for promotion to next higher post which was that of Director. The applicant's case was considered by the DPC along with the cases of others, and he was considered fit for promotion. However, the applicant at that point of time was still on assignment abroad and was promoted to the rank of Director immediately upon his return to Head Quarters on 18.9.86 but as his immediate junior had been promoted as Director w.e.f. 10.5.86, the applicant was also given the benefit

(12)

of next below rule and his promotion as Director was made effective from 10.5.86. Five years' service as Director is required under the existing rules and regulations to become eligible for consideration of posting as Joint Secretary but in the meanwhile, the applicant sought voluntarily retirement in itself.

8. The above facts make it clear that the Research & Analysis Service Rules came into effect only in April, 1985 which determined the applicant's year of allotment to be 1957. Prior to April, 1985, there was no regular Research & Analysis Service, and the status of the applicant in RAW was that of a re-employed Officer, whose term of re-employment was extended annually. Even so, in 1981 itself, it appears that the efforts were made to promote those re-employed/deputationist officers from the defence service with more than five years of service in the Organisation. In the absence of any common seniority list, the date of their substantive appointment as Major/Wing Commander/Lt. Commander which was equivalent to the post of Assistant Director, was taken as the base, and the applicant's case was considered with the others, but as there were only three vacancies and the applicant was 5th in order of seniority, he was not promoted.

9. The applicant cannot have any legitimate grievance, if the date of substantive appointment as Major/Wing Commander/Lt. Cdr., which is equivalent to Asstt. Director in RAW was taken as the basis for determination of the seniority of Defence Service Officers in the absence of any combined seniority list, and this cannot be held to be arbitrary or discriminatory and / hence

13

violative of Articles 14 and 16 of the Constitution. In fact, if the date of joining RAW had been taken as the basis of reckoning seniority, no common seniority list could have been rationally worked out between the re-employed officers and the deputationists, and this would itself lead to arbitrariness and thus violative of Articles 14 and 16 of the Constitution. Further more, the applicant has produced no evidence to establish that his substantive appointment as Wing Cdr. on 17.1.64 was prior to the date of substantive appointment to the rank of Wing Commander or its equivalent of the other four officers mentioned in paragraph 3 above and under the circumstances, we have no reason to disbelieve the date of substantive appointment as Major/Wing Cdr./Lt. Cdr. as given by the respondents in paragraph 3 above. Further more, /within a month of the Research & Analysis Service coming into effect in April, 1985, the applicant's case was considered for promotion to the rank of Director, although he was on foreign assignment at that time, and upon his return to Head Quarters on 18.9.86, he was promoted, and the promotion was made effective from 10.5.86 under NBR. Here again the applicant can have no legitimate grievance because strictly speaking, in the background of undertaking that he gave in writing, the respondents were well within their right to grant this promotion only w.e.f. 18.9.86 .

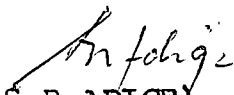
10. Before concluding, we may refer to the promotion of Commodore Kunte as Joint Secretary in RAW, who, according to the applicant, was junior to him. The position has been clarified in the Cabinet Secretariat Memorandum dated 15.9.87 (Annexure- from which it is clear that the seniority of the applicant vis-a-vis Commodore Kunte could be reckoned

14

only after the initial constitution of RAS in April, 1985 and the attendant benefits could, therefore, flow only after that date. At that point of time, the applicant held the post of Assistant Director/Under Secretary and as stated above he was immediately considered for promotion as Director. On the other hand, Commodore Kunte, who was a serving officer and had come on deputation to RAW, was holding a post in the Navy which was equivalent to that of Director in RAW for more than five years and hence his services in the Navy in a rank equivalent to that of Director was allowed to count for his eligibility for promotion to the rank of Joint Secretary. The case of the applicant was different as he has retired from service and had come on re-employment and had never held the post equivalent to Director till 1986.

11. Five years of qualified service as Director is, as per rules, one of the eligibility conditions for promotion to the post of Joint Secretary in RAW. These statutory rules have been made in pursuance of Article 309 of the Constitution and can in no way be deemed to be violative of Articles 14 and 16 of the Constitution.

12. In the facts and circumstances of the case, therefore, none of the reliefs prayed for are admissible under law. The application has no merit and it is accordingly dismissed. No costs.

  
(S.R. ADIGE)  
MEMBER (A)

  
(V.S. MALIMATH)  
CHAIRMAN.

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