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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

D.A. No. 1366/1988.

Date of decision: October 20, 1993.

D.K. Sharma

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Petitioner.

Vs.

Secretary,
Ministry of Agriculture
Department of Fertilizers,
Shastri Bhawan,
New Delhi-110001.

Respondents.

The Secretary,
Ministry of Agriculture,
Deptt. of Agri. & Coopn,
Krishi Bhavan,
New Delhi-110001.

CORAM:

HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.

HON'BLE MR. S.R. ADIGE, MEMBER (A).

For the petitioner

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Shri R.L.Sethi, counsel

For the respondents

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Shri P.P.Khurana, counsel

JUDGMENT (ORAL)

(By : Mr. Justice V.S. Malimath, Chairman)

The petitioner, Shri D.K. Sharma started his career as Junior Accountant in the Department of Agriculture and Co-operation on 6.11.1980. The Recruitment Rules providing for promotion to the cadre of Accountants etc. came into force on 29.11.1983 (Annexure A-4). For the Junior Accountants, the next promotional post is that of the Accountant which is required to be filled up, 50% by promotion ^{by selection,} failing which by transfer on deputation and 50% by transfer on deputation. Qualifying service for earning eligibility is 5 years regular service in the grade of Junior Accountants. A seniority list of Junior Accountants was prepared in the Department of Agriculture and Cooperation on 23.8.1985 as per Annexure A-3, in which the petitioner is placed at Sl.No.6, Shri Nahar

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Singh at Sl.No.8, Shri Rama Nand Mallick at Sl.No.7 and Shri Libnus Bara at Sl.No.10. It is the case of the petitioner that ignoring his legitimate seniority and good confidential records of service, his juniors were promoted as Accountants w.e.f. 10.11.1987. So far as the petitioner is concerned, he was only given ad hoc promotion on 10.11.1987. He came to earn regular promotion on 12.1.1989 whereas his juniors have earned regular promotion in the year 1987 as already stated above. It is also necessary to state that the petitioner was working in the Fertilizer Division of the Department of Agriculture & Cooperation and the same item of work was transferred to the Department of Fertilisers along with the incumbents vide Office Order No.8 of 1986 dated 6.3.1986 (Annexure A X). The petitioner has alleged that his transfer was without his consent and that his juniors' promotion is arbitrary and illegal, the same having been made without considering his seniority and superior merit. He has also alleged that the confidential records pertaining to the petitioner might have been written by officers under whom he did not function, which might have resulted in securing poor grades in the confidential records, thereby affecting his future career. It is in this background that the petitioner has challenged the action of the respondents in not giving him regular promotion in the year 1987 and in the alternative, he has prayed for his being reverted to his parent department of Agriculture & Cooperation.

On the question as to whether the petitioner's case has been given due and proper consideration, we directed the respondents to place before us the proceedings of the Departmental Promotion Committee as also the confidential records of the petitioner and those of Shri Rama Nand Mallick and Shri Libnus Bara. On a

perusal of the same, we notice that the Departmental Promotion Committee has borne in mind that the post is required to be filled up by the process of selection. Among the names considered by the said D.P.C., the petitioner's name is placed at the top. They have recorded reasons for according promotion to Shri Rama Nand Mallick and Shri Libnus Bara on regular basis. There were only two vacancies, one of which was reserved for the members of the Scheduled Castes. As there was no S.C. candidate, in accordance with the relevant instructions, the said vacancy could be made available to a Scheduled Tribes candidate. Shri Libnus Bara belongs to the S.T. category. His case was considered and he was accommodated in the reserved vacancy. In the only other vacancy which was available for meritorious candidates, Shri Rama Nand Mallick was selected in preference to the petitioner on the ground that he has earned better grade from the confidential records of service than the petitioner. We have compared the confidential records of the petitioner as also of S/Shri Rama Nand Mallick and Libnus Bara. We find that whereas the general assessment of the petitioner is as 'Good', the general assessment of S/Shri Rama Nand Mallick and Libnus Bara is 'Very Good'. As the posts were required to be filled up by the process of selection, more meritorious among the persons in the zone of consideration have to be preferred to the one who is less meritorious and that procedure has been properly followed. On consideration of the confidential records and the D.P.C. proceedings, we are satisfied that the D.P.C. has discharged its function fairly and satisfactorily.

As regards the contention of the learned counsel for the petitioner that his confidential records might have been written by the wrong persons who did not have occasion to watch his performance is concerned, the respondents have stated in the reply that when a complaint

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in this behalf was made by the petitioner, the same was forwarded to the Department of Agriculture and Cooperation where he was functioning during the relevant point of time and the said authorities after due verification have reported that the confidential records of the petitioner have been written by the appropriate authorities. As it is a confidential matter, the stand taken by the respondents is that it is not in public interest to disclose the names of those who have actually written the confidential records of the petitioner. There is no good reason in the circumstances to doubt the statement of the respondents that the confidential records of the petitioner were written by the authorities who were competent to write the same during the relevant period of service of the petitioner. There is absolutely no basis for the surmise of the petitioner that the confidential records might have been written by persons who did not have the right to write the same. It is, therefore, not possible to accept this contention of the petitioner either.

It was lastly contented that if the petitioner cannot get due recognition for the good work he is doing in the Department, and he is denied promotion to which he is entitled to, he would like to go back to his parent department of Agriculture and Cooperation. It is his case that his option was not taken when he was transferred to another Department and that, therefore, the unilateral action by the authorities in transferring him is not legally binding and, the same should be annulled and he be repatriated to the Department of Agriculture and Cooperation. The respondents pointed out that the question of taking consent of the petitioner did not arise for the reason that the entire Fertilizer Division of the Department of Agriculture & Cooperation in which the petitioner was engaged to work stood transferred to the Department of Fertilisers along with the posts and the incumbents of the said posts. The entire Section in which

the petitioner was working having been transferred, the question of ascertaining individual volition did not arise. It was only a question of rearranging the departmental functioning. There is no transfer of the petitioner in the ordinary sense. There was, therefore, no need according to the respondents to seek the consent of the petitioner. As the entire Division stood transferred, the question of retaining the petitioner in the Department of Agriculture and Cooperation does not arise as the work for which he was engaged itself stood transferred to the Department of Fertilisers. In the circumstances, it is not possible to accede to the contention of the petitioner that he should be directed to be transferred to the Department of Agriculture and Cooperation.

For the reasons stated above, this Application fails and is dismissed. No costs.


(S.R. ADIGE)
MEMBER (A)


(V.S. MALIMATH)
CHAIRMAN

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