

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

(Registration (OA) No.1516 of 1988)

Date of Decision: March 27, 1990

Shri O.N.Lashkari Applicant

Versus

Union of India and others Respondents

CORAM : HON'BLE SHRI P.C.JAIN *** MEMBER(A)
HON'BLE SHRI J.P.SHARMA ** MEMBER(J)

For the applicant : In person

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

(Judgement of the Bench delivered by
Hon'ble Shri J.P.Sharma, Member(J))

The applicant, Assistant Inspecting Officer, DGS&D, New Delhi, moved the application under Section 19 of the Administrative Tribunals Act, 1985 for the proper implementation of the Judgement of the Central Administrative Tribunal, New Delhi, in case No. T.A. 328 of 1985 decided on 24.8.1987 and claimed the relief : proforma promotion as Inspecting Officer/ Assistant Director Inspection w.e.f. 12.4.1983 with arrears of salary and interest on the same at 18% per annum with exemplary costs.

Contd.....2/-

2. The facts of the case are that in the case T.A. 328 of 1985 O.N.Laskari vs Union of India the following direction was issued :-

" In view of the foregoing, we quash the order of DGS&D dated 18.4.1970 and restore the original order dated 8.12.1969 promoting the applicant to the post of Assistant Inspecting Officer with all consequential benefits."

In compliance with the above direction of the Tribunal the promotion, as Assistant Inspecting Officer, and confirmation, in the said post, of the applicant has been effected from 1.1.1970 and 1.11.1972 respectively. The applicant has been given seniority above S/Sri N.K.Dhondekar, J.V.Jois, A.M.Sathe, S.Natrajan, A.M.Mathur and others. In this view of the matter the applicant claims benefit of "Next Below Rule" w.e.f. 12.4.1983 when Sri A.M.Mathur and others, juniors to him, were promoted as Inspecting Officers. As these promotions were made solely on the basis of seniority without any Department/^{al}Promotion Committee so he contends that his case for similar promotion has to be considered w.e.f. 12.4. 1983.

Contd.....3/-

3. The respondents contested the application and in their reply stated that the promotions were made to the grade of Assistant Director of Inspection on ad-hoc basis of available willing officers. This order ^{of promotion} ~~can not~~ be reckoned for the purposes of "Next Below Rule". The post of Assistant Director of Inspection/Inspecting Officer(Engineer) is a "Selection" post which is filled by seniority-cum-merit. Since the applicant did not come in the zone of consideration for promotion to the grade of Assistant Director of Inspection even after getting the retrospective promotion in the grade of Assistant Inspecting Officer(Engineer) on implementation of the Judgement dated 24.8.1987 of this Tribunal, ^{so} he has not been considered for promotion to the post of Assistant Director of Inspection/Inspecting Officer. That article 16 of the Constitution is not attracted. Further it is said that the applicant has been issued a charge-sheet on 8.6.1988 and the Disciplinary Proceedings for imposition of major Penalty are still pending against him. In view of this he could not be considered even on ad-hoc basis.

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4. We heard the applicant in person and learned counsel for the respondents at length and perused the record. In fact the applicant should have filed a C.C.P. for proper implementation of the Judgement. By the time the applicant came in this O.A. on 19.8.1988, when this application was admitted, the charge sheet for a major penalty had already been served on him. The applicant retired on superannuation on 30.9.1988. Unless the applicant stood cleared from the vigilance angle he could not be given promotion to the selection post in the higher grade of Assistant Director of Inspection/Inspecting Officer.

5. The applicant has placed reliance on the case of Dr.Y.P.Gupta vs Union of India AIR -1984-SC-1905; That is on the point of the declaration of seniority the direction was given in the earlier Judgement (AIR-1984-SC-541) which was not implemented on the principle of "Next Below Rule". In the present case, however, the applicant was ordered to be given promotion in O.A. 328 of 1985 as Assistant Inspecting Officer. The promotional post of Assistant Director of Inspection/Inspecting Officer is a selection post of higher grade to be filled up on the basis of seniority.

Contd.....5/-

and merit. So the facts of that case are different and the authority can-not be applied.

6. The applicant also relied on judgement delivered in T.A. No. 71 of 1985 Daulat Ram vs Delhi Administration, where notional promotion was given on the basis of the seniority. That was the case decided on different facts, when the applicant of that case ^{was demoted even initial} ~~after~~ promotion. In the present case, the direction of the judgement is to give the promotion to the applicant to the post of Assistant Inspecting Officer with consequential benefits. No further direction was issued. That judgement for all purposes has become final. The applicant has come very late to the Tribunal when already he was facing an enquiry for a major charge and further now he has since retired so the application of the "Next Below Rule " in the case of the applicant can-not be applied. The applicant never worked on the selection promotional post.

7. The applicant also relied on the Judgement of T.A. No. 1188 of 1985 decided on 19.12.1986 Smt. Ginder Kaur vs Delhi Administration. The facts of that case are totally different and do not in any way lay down the scope and ambit of "Next Below Rule". That was a case where before appointment to the post for which selection was made, the post was up-graded with higher qualification. The direction for creating supernumerary post was issued. In the present case the Assistant Director of Inspection is a

selection post.

8. The respondents have clearly stated that the applicant was not in ^{the} a zone of consideration and the promotion effected are solely on ad-hoc basis in April, 1983. The decision of the Tribunal in the case of applicant is of 1987. The applicant in the earlier O.A. could have sought this relief of further promotion also and now that relief can-not ~~be~~ in any case be deemed to have been granted by the decision of the judgement of that O.A. The direction in that case can-not be now interpreted as desired by the applicant for the up-graded post of Assistant Director of Inspection/Inspecting Officer which is a selection post.

9. The application, therefore, is devoid of merit and is dismissed. The parties will bear their own costs.

J.P. Sharma
(J.P.SHARMA)
Member(J)

P.C. Jain
(P.C.JAIN)
Member(A)

Pronounced in open Court.

P.C. Jain
(P. C. Jain)
Member (A)
27.3.1990