

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA No.1950/88

Date of decision: 31.12.1990

Shri Surjit Singh

...Applicant

## Versus

Union of India & Ors.

### ... Respondents

Coram:

Hon'ble Mr. Justice Amitav Banerji, Chairman

Hon'ble Mr. I.K. Rasgotra, Member (A)

(Judgement of the Bench delivered by Hon'ble

Mr. I.K. Bassotra Member (A.S.)

Shri Surjit Singh, Section Officer, office of the Development Commissioner, Small Scale Industries, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 impleading besides the Government respondents a private respondent Shri Rajendra Bist, Deputy Director, Small Scale Industries. The applicant has raised two issues for consideration. First that respondent No.5 although ineligible was considered and appointed to the post of Deputy Director in the pay scale of Rs.650-1200 (pre revised), Small Scale Industries and secondly, only one post of Deputy Director (GDA)was advertised but two appointments were made on the basis of the applications received against the first advertisement.

The applicants submits that the above factors militated against his chance for getting promotion to the post of Deputy Director. *g/s*

The relevant facts of the case are that the Development Commissioner, Small Scale Industries Department of Industrial Development vide notice No.A-32012/2/86/Admn.(G) dated 5th September, 1986 called for applications of the candidates for filling one post of Deputy Director (GAD) on deputation basis. The said circular prescribed that the candidates who have 8 years' of service in the scale of Rs.650-1200(pre-revised) attached to the post of Section Officer would be eligible for the post. The applicant also applied for the post although he fell short of 8 years' service by about a month. The applicant contends that Shri Rajendra Bist had also not completed 8 years' service but he was considered for the post. Further there was only one post for which applications were invited but actually two posts were filled up. It was the second post which was offered to Shri Rajendra Bist. The applicant submits that he had completed more than 8 years' service on the date of the selection and was senior to Shri Bist, yet he was denied the opportunity.

By way of relief he has prayed that proceeding of the Departmental Promotion Committee (DPC) in the appointment of Shri Rajendra Bist be declared null and void and the second appointment made on the basis of applications invited for one post be set aside.

2. The respondents admit that applications were invited only for one post of Deputy Director (GAD) and that all the applications received were sent to the Union Public Service Commission for selecting an officer for the post of Deputy Director (GAD). The applicant, however, could not be considered as he had not completed 8 years' service in the grade of Rs.650-1200. He took charge of the

post of Section Officer w.e.f. 5.12.1978 although his order of promotion was issued on 30.10.1978. The applicant was on leave from 30.10.1978 till he took charge of the post. Had he taken over charge on 30.10.1978, he would have fulfilled the condition of eligibility for the post of Deputy Director. Admittedly, the applicant is senior to Shri Rajendra Bist but the seniority is relevant for promotion in the cadre posts and not for the posts outside the cadre of the Central Secretariat Service. The respondents also admit that after circulation of one vacancy of Deputy Director (GAD) another vacancy became available due to the voluntary retirement of an incumbent. Hence the competent authority requested the UPSC to consider filling up both the posts. The closing date for the receipt of the applications was 4.10.1986. The respondents affirm that as per the circular Shri Bist was working as Section Officer w.e.f. 1.7.1978 and he had thus completed 8 years' of service.

3. The applicant who appeared in person submitted that if the second post had been circulated when the vacancy arose he would have become eligible for the post of Deputy Director even according to the reckoning of the respondents but this was not done and thus the action of the respondents resulted in the denial of an opportunity for career progression of the applicant. He contested the statement that Shri Rajendra Bist was officiating as Section Officer w.e.f. 1.7.1978. He may have held purely adhoc appointment from 1.7.1978 but he had become regular Section Officer only w.e.f. 19.8.1980. (Annexure 2)

A-5). He has, therefore reaffirmed that Shri R.S. Bist was ineligible.

4. Shri N.S. Mehta, Senior Standing Counsel for the respondents very fairly agreed that the applications were invited only for filling up one post of Deputy Director (GAD) and that the second post should not have been filled up on the basis of the applications received in response to the circular dated 5.9.1986 which was only for one post of Deputy Director (GAD). A fresh circular should have been issued to invite applications from the eligible candidates for the second vacancy when it arose. The learned Counsel however, submitted that the applicant himself has since been promoted in his own cadre as Under Secretary and would, perhaps, have no interest in the post of Deputy Director (GAD), Small Scale Industries as the post is outside the cadre.

5. In view of the above revelation we asked the applicant to precisely spell out the relief which he was seeking from the Tribunal. The applicant conceded that at this stage he will not get any relief as prayed for by him in his application if this application is allowed. The fact, however, remains that an irregularity was committed on the part of the respondents and respondent No.5 was accommodated as Deputy Director much before he was promoted as Under Secretary in his cadre. On another query from the Bench the applicant conceded that respondent No.5 would not get any benefit of having worked in the higher grade in a post outside the cadre, for fixation of pay, promotion etc. in the present cadre. He will have to take his place as

assigned in the seniority list in the Central Secretariat Cadre. He however insisted that an irregularity perpetrated to the disadvantage of the applicant at the relevant time should not be allowed to pass muster and must be brought to book.

We have heard the applicant in person and the learned Senior Standing Counsel for the respondents. We are of the view that no order in the nature of mandamus can be issued in this application as no specified act has to be performed by the respondents.

None the less, the fact remains that having circulated only one post of Deputy Director (GAD) it was not proper on the part of the respondents to select two persons for appointment. The second vacancy which arose later should have been circulated to all concerned and proper selection held as prescribed in the Recruitment Rules for the said post. The applicant in this case would thus have been entitled to be considered against the second post along with the others who would have applied for the second vacancy. The material before us does not show by what warrant the respondents exercised the power to select respondent No.5 against a vacancy which was not circulated and which had not arisen when the circular letter of 5.9.1986 had been circulated.

There is a well established authority for the view that a decision of long standing should not be lightly disturbed by a Court, not strictly bound itself by the decision. We, therefore, are not inclined to set aside the selection and appointment of respondent No.5 at this point of time as it is not

likely to help the applicant in any manner. Nor is he any longer interested in the post in question. Ordinarily, we would have had no hesitation in setting aside the DPC to the extent the DPC considered the candidates who applied for one vacancy circulated under circular dated 5.9.1986 for the second vacancy also, which arose later and for which fresh applications were not invited. However, the initial appointment to the said post of Deputy Director (GAD) was for a period of three years as seen from the appointment letter dated 22nd June, 1987 relating to respondent No.5 (Annexure-A-2). Normally this deputation period would have expired on June 21, 1990, and DPC proceedings lose their impact. In case the deputation period of respondent No.5 is extended/proposed to be continued beyond the period of three years after June, 1990, it will tantamount to perpetuating an illegal action. We, therefore, order and direct that the respondents shall hold a fresh selection for filling up the second post of Deputy Director (GAD), if the post is to be continued, to be operated, in accordance with the rules.

There will be no order as to costs.

*I.K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER (A) 31/12/1988

*Amitav Banerji*  
31.12.90  
(AMITAV BANERJI)  
CHAIRMAN

/SKK/