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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 710/1988.

DATE OF DECISION: 9th June, 1989.

C.S. Ramakrishnan Applicant.

V/s.

Union of India Respondents.

CORAM: Hon'ble Mr. Ajay Johri, Member (A).
Hon'ble Mr. G. Sreedharan Nair, Member (J).

None for the parties.

(Judgement of the Bench delivered by
Hon'ble Mr. Ajay Johri, Member (A).)

JUDGEMENT

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant is working as Additional Collector Central Excise at Kanpur. He is aggrieved by an order dated 2.4.87 passed by the Ministry of Finance rejecting his request for giving him the benefit of fixation of pay in the grade of Deputy Collector with effect from the date of ad-hoc promotion of his juniors. The applicant's case is that the respondents did not hold any D.P.C. after August, 1978. The only D.P.C. held after 1978 was in November, 1982 which considered the vacancies of 1979, 1980 and 1981 and formed panels for these years in accordance with the DP&AR O.M. dated 24th December, 1980 and 20th May, 1981. After the formation of these panels, orders were issued by the Ministry of Finance dated 27.1.1983. The applicant was found fit for promotion against the vacancy of 1979 and was placed at Sl. No.2 of the regular promotion order dated 27.1.1983. He was deemed to have been promoted against the vacancy of 1979. The order dated 27.1.1983 promoting him on a regular basis said that he is promoted to the grade of Deputy Collector with effect from the date he takes over charge of the post and until further orders. In regard to some of the officers who were promoted as Deputy Collectors on ad-hoc basis vide

Ministry of Finance Order dated 7.2.1980 were also promoted on regular basis vide Order of the Ministry of Finance dated 27th January, 1983. The applicant represented that some of his juniors were promoted on ad-hoc basis earlier to him and therefore his promotion as Deputy Collector should also be made effect from February, 1980 and his pay fixed as on 7.2.1980. The respondents have, however, refused to allow him his regular promotion on the basis of the vacancy which arose in 1979 and rejected his claim for the arrears of pay between 7.2.1980 and the date of his actual promotion and for counting the intervening period for the increments on the ground that no benefit could be allowed of the basis of "No work No Pay" which is incorporated in para (d) of the instructions dated 24.12.1980 and 20.5.1981 (Annexure V to the application). These instructions of 24.12.1980 and 20.5.1981 lay down that while promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancy relates to an earlier year. This O.M. was issued in the background of the instructions that D.P.C. should meet at regular intervals for preparation of the select list and where no such meeting is held in any year, a certificate that there were no vacancies to be filled during the year had to be recorded by the appointing authority. But where for reasons beyond control D.P.C. could not be held in any year (s) even though the vacancies arose during that year (s), the first D.P.C. that meets thereafter should prepare the select list for each year starting with the earliest year onwards. The applicant relies on the pronouncements by the Hon'ble Supreme Court in STATE OF MYSORE Vs. C.R. SESHADHRI (AIR 1979 SC 462) and in MRS. ASHA RANI LAMBA Vs. STATE OF HARYANA AND OTHERS (1983 (1) SLR 400) and some other decisions of this Tribunal where similar provisions were set aside and reliefs were granted from the dates of due promotions. The applicant's prayer is that

he may also be considered to have been promoted from the due date when the vacancy arose for which no D.P.C. was held.

3. Though repeated opportunities have been given to the respondents, one Shri K.N. Khattar, Assistant in the Respondents Department made appearance on 30.8.88 and 10.10.88 as also on 1.11.88, but no counter was filed against the application, nor anybody presented himself thereafter. The case has been adjourned repeatedly and a number of opportunities have been given to the respondents to file their counter, but they have failed to file any reply. There has been no representation from the side of the applicant also after 16.12.1988 when his counsel Shri J.K. Srivastava was present. In view of the fact that the case has been adjourned a number of times, we have decided to peruse the record of this case and give a decision on the material available in the paper book.

4. It is seen from the averments made by the applicant that ad-hoc promotions were made to the posts of Deputy Collector from 7.2.1980 onwards and that the applicant was not considered in the first ad-hoc promotions. The applicant was promoted on ad-hoc basis only on 16.11.1982. However, the D.P.C. which met in November, 1982 and which prepared the yearwise panels, he was placed at Sl. No.2 in the select list and was deemed to have been declared fit for promotion for the vacancy of the year 1979. The applicant's grievance is that even on 7.2.1980 his juniors were promoted, but he was not considered for that promotion though it was only ad-hoc and his ad-hoc promotion came only on 16.11.82. According to the applicant, the D.P.C. which met in August, 1978 prepared a panel of 36 officers, the last of whom was promoted in June, 1979 and the panel was exhausted. The first two vacancies that arose thereafter were filled up by ad-hoc promotion of Smt. Nisha Chaturvedi and Shri A.K. Sarkar vide the Respondents' orders dated 7.2.80 (Annexure III to the application).

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5. Nothing is before us to throw any light on the circumstances under which the respondents could not prepare the panels in 1979, 1980 and 1981. Their action in preparing the panels for these years in the D.P.C. which met in 1982, will go to indicate that there was administrative failure in holding the meetings of the D.P.C. to prepare panels for the vacancies likely to arise after the exhaustion of the panel declared in 1978. The applicant and some of his juniors were, however, promoted as Deputy Collector to man the posts which fell vacant. Since the respondents had failed to hold the D.P.C. meetings at due time and they have not put-forth any cogent and satisfying reason to explain the delay, we feel that the applicant has been unnecessarily denied his due promotion against the vacancy for which he has now been declared selected by the panel declared on 27.1.83. We feel that the applicant is entitled to be considered for regular promotion from the date the vacancy arose and he will also be entitled to the consequential benefits like increments and fixation of pay etc. The application, therefore succeeds.

6. In the above view, we direct that the respondents will consider the applicant having been promoted in accordance with his seniority in the panel announced on 27.1.1983 from the date the second vacancy arose and he will also be entitled to be granted increments and fixation of pay on that basis. He will also be entitled to arrears of pay from 20.11.82, the date on which he was promoted on ad-hoc basis. We dispose of the application with the above direction and leave the parties to bear their own costs.

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G. Sreedharan Nair
Member (J)

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(Ajay Johri)
Member (A)