

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

766/ 1988

DATE OF DECISION 21.12.1988.

B.M. Sabharwal ~~Petitioner~~ Applicant.

Shri R.L. Sethi Advocate for the ~~Petitioner(s)~~
Applicant.

Versus

Union of India & Cr. Respondent


Shri N.S. Mehta & Shri Baldev Malik Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether to be circulated to other Benches? *No*


(KAUSHAL KUMAR)
MEMBER (A)


(P.K. KARTHA)
VICE CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 766/1988.

DATE OF DECISION: 21.12.1988.

B.M. Sabharwal Applicant.

V/s.

Union of India & Or. Respondents.

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A).

For the applicant Shri R.L. Sethi, Counsel.

For the respondents Shri N.S. Mehta, Sr. Stand-
ing Counsel.

Shri Baldev Malik, Counsel.

(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGEMENT

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is a Joint Assistant Director (A/Cs) in the Pay & Accounts Division, B.S.F., New Delhi, has called in question the order dated 21.4.1988 rejecting his representation regarding discrepancy in the Seniority List of Group 'B' Officers (GAZ) Joint Assistant Director (Accts.).

2. The brief facts giving rise to the present application may be noticed below:

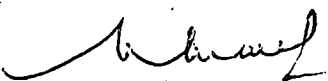
The applicant was a substantive holder of the post of Assistant Superintendent with effect from 19th July, 1975 and respondent No.2 was junior to him. The applicant was promoted to the post of Junior Accounts Officer in an officiating capacity on 30.3.1978 and substantively with effect from 1.5.1982. Even in this post, respondent No.2 continued to be junior to him. The applicant was further promoted to the post of Joint Assistant Director (Accounts) / Accounts Officer with effect from 24.11.1983, but respondent No.2, although considered by the D.P.C. was not promoted because disciplinary proceedings were pending against him and the sealed cover procedure was adopted in his case.

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Respondent No.2 was subsequently exonerated in the disciplinary case and in accordance with the recommendations made by the Departmental Promotion Committee at its meeting held on 15th November, 1983, respondent No.2 was promoted to the post of Joint Assistant Director in an officiating capacity with immediate effect vide order dated 26th February, 1986. The said order also envisaged that respondent No.2 would reckon his seniority in the grade of Joint Assistant Director as if he had been promoted in accordance with his position in the Select List / Panel drawn on 15th November, 1983 by the Departmental Promotion Committee. In accordance with his position in the panel, respondent No.2, although actually promoted on 26.2.1986 was treated as notionally promoted as Joint Assistant Director (A/Cs) with effect from 24.11.83 and shown senior to the applicant.

3. The case of the applicant is that he having been promoted from an earlier date and having been senior to respondent No.2 throughout in the earlier positions of Assistant Superintendent and Junior Accounts Officer, his seniority vis-a-vis respondent No.2 should not have been disturbed on promotion as Joint Assistant Director (A/Cs) especially when the date of his actual promotion was also much earlier than the date of promotion of respondent No.2.

4. The case of the respondents is that the promotion to the post of Joint Assistant Director (A/Cs) is regulated in accordance with the provisions contained in the Recruitment Rules notified vide G.S.R. No. 1098 dated 5.10.74, filed as Annexure R-1 to the counter-affidavit. The post of J.A.D. (A/Cs) is shown as a 'Selection' post under column 5 in the Schedule attached to the Rules titled "the Directorate General Border Security Force (Class-II Gazetted posts) Recruitment Rules, 1974". The post being



a 'Selection' post, the promotion had to be made on the basis of merit-cum-seniority. In the Departmental Promotion Committee meeting held on 15.11.1983, the names of the applicant as also respondent No.2 were considered along with one other departmental candidate (Shri C.B. Jain). Since some departmental proceedings were pending against respondent No.2, the D.P.C. kept the result of his selection and position vis-a-vis the applicant in a sealed cover. The minutes in that regard read as follows: -

"The Departmental Promotion Committee took note of the fact brought to its notice that disciplinary proceedings under Rule 14 of Central Civil Services (Classification Control and Appeal) Rules were pending against Sh. Gurcharan Singh. The findings of the committee in regard to the suitability of this officer for promotion and his place in the select list have been reached on the basis as if Sh. Gurcharan Singh's conduct has not been under investigation and these have been placed in the enclosed sealed cover which may be opened on the termination of disciplinary proceedings."

In terms of the recommendations of the D.P.C., the applicant was promoted as J.A.D. (A/Cs) with effect from 24.11.83. Respondent No.2 was exonerated from the charges framed against him vide order dated 21.2.1986, filed as Annexure R-2 to the counter-affidavit. Thereafter the sealed cover was opened and respondent No.2 was promoted to the post of J.A.D. (A/Cs) vide order dated 26.2.86, filed as Annexure R-3 to the counter-affidavit, and he was accorded seniority in accordance with his position in the Select List / Panel drawn on 15.11.1983 by the D.P.C.

5. Learned Counsel for the respondents Shri N. S.

Mehta produced the original record containing the minutes

of the D.P.C. from which we are satisfied that respondent No.2 was placed above the applicant by the D.P.C. and accordingly they were correctly assigned their seniority in accordance with the recommendations of the D.P.C. The learned counsel for the respondents also relied on the instructions contained in para 2 of the D.P.&A.R. O.M. dated 30.1.82 filed as Annexure R-7 to the counter-affidavit. The said instructions read as follows: -

"2. If, on the conclusion of the departmental/ court proceedings, the officer concerned is completely exonerated, and in case he was under suspension, it is held that the suspension was wholly unjustified, the sealed cover is opened and the recommendations of the Departmental Promotion Committee are acted upon. If the officer could have been promoted earlier, he is promoted to the post earlier filled on an officiating basis, the arrangements made earlier being terminated. On his promotion, the officer also gets the benefit of seniority and fixation of pay on a notional basis with reference to the date on which he would have been promoted in the normal course, but no arrears are allowed in respect of the period prior to the date of actual promotion."

The above instructions leave no doubt whatsoever that if on the conclusion of the departmental proceedings, the officer concerned is completely exonerated, he on his promotion gets the benefit of seniority and fixation of pay on a notional basis with reference to the date on which he would have been promoted in the normal course, but no arrears are allowed in respect of the period prior to the date of actual promotion.

6. Learned counsel for the applicant Shri Sethi contended, on the other hand, that even though respondent No.2 might have been placed above the applicant by the D.P.C. at its meeting held in November, 1983, the case of respondent No.2 should have been reviewed by the D.P.C. meetings which were held in subsequent years. In this

Shri Sethi

connection, he referred to paras 2.1 and 2.2 of the Government of India, Dept. of Per. & Trg. Office Memo No. 22011/2/86-Estt.(A), dated the 12th January, 1988, reproduced on pages 115-116 of the Swamy's Compilation on Seniority and Promotion in Central Government Service (First Edition). Paras 2.1 and 2.2 read as follows: -

"2.1 Procedure to be followed by DPC in respect of those under cloud.- The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending or contemplated against them or where the investigation is in progress. The assessment of the DPC including 'Unfit for Promotion', and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of.....in respect of Shri.....(name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution/investigation against Shri.....The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

"2.2 Procedure by subsequent DPCs.- The same procedure outlined in para. 2.1 above will be followed by the subsequent Departmental Promotion Committee convened till the disciplinary case/criminal prosecution/investigation pending or contemplated against the Government servant concerned is concluded."

Para 3 of the said Office Memo, however, reads as follows:

"Action after completion of disciplinary case/criminal prosecution.-

On the conclusion of the disciplinary case/criminal prosecution, or an investigation which results

in dropping of allegation or complaints against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior but he will not be allowed any arrears of pay for the period preceding the date of actual promotion."

7. The instructions in para 3 cited above make it clear beyond doubt that in case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and the date of promotion of his next junior on the basis of such position. Admittedly, the applicant was placed next to respondent No.2 in the panel recommended by the DPC in November 1983 and, therefore, not only the promotion of Respondent No.2 has to take effect from the date when the applicant was promoted but also his seniority assigned in accordance with his position in the panel as per the recommendations of the D.P.C. The post of Joint Assistant Director (A/Cs) being a 'Selection' post, and the Respondent No.2 having been placed above the applicant in the panel, the fact that the applicant was senior to respondent No.2 in the lower posts would not advance his case. Recommendation of any subsequent DPCs in regard to Respondent No.2, irrespective of the fact whether his case was reviewed by them or not, would not be relevant in this case since Respondent No.2 had in fact been selected and placed in the panel above the applicant by the D.P.C. at its meeting

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held in November, 1983.

8. In view of the above discussion, the application fails and is accordingly dismissed with no order as to costs.



(KAUSHAL KUMAR)
MEMBER (A)



(P.K. KARTHA)
VICE-CHAIRMAN.