

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA No. 1192/88

Date of decision: 12.10.1993

Shri P.S. Mehta

..... Petitioner

Versus

Union of India through  
the Ministry of Home  
Affairs

..... Respondents

Coram:-

The Hon'ble Mr. C.J. Roy, Member (J)

The Hon'ble Mr. V.K. Seth, Member (A)

For the petitioner None for the Applicant.

For the respondents Ms. Pratima Mittal proxy  
Counsel for the Respondents.

JUDGEMENT (ORAL) BY HON'BLE  
Mr. C.J. Roy, Member (J)

This case ~~is~~ coming is an old matter and, therefore, we are disposing same on merits and Ms. Pratima Mittal for the Respondents is present.

2. We have heard Ms. Pratima Mittal Counsel for the Respondents and perused the records.

3. This is an application filed by the applicant under Section 19 of the Administrative Tribunal Act, 1985, claiming a relief that the name of the applicant be considered for inclusion in the panel for promotion as Joint Assistant Director on the basis of 1984 DPC.

4. Precisely, stated the facts of the case are the applicant was promoted to the grade of Deputy Central Intelligence Officer in 1968, after DPC has recommended him. He claims that in the seniority list placed by the respondents on 21-10-83, his name figured at serial No. 39. He also gives the Recruitment Rules for the post of Joint Assistant Director. He further avers that these posts were filled up partly by deputation and partly by promotion on the grade of Deputy Central Intelligence Officer (DCIO) referred to as DCIO. It is an admitted fact that on 13th August, 1984, under the Chairmanship of a Member of the UPSC, a DPC was held for filling up the existing and future

vacancies of Joint Assistant Director posts by Promotion.

5. It is averred that the DPC considered only DCIOs to serial No. 38, but not the applicant who figured at serial No. 39. It is further stated that the respondents ignoring the eligibility included the names of the two officers who figured at serial No. 34 and 36 who had been serving outside the department with the another organisation. The applicant contends in this application that the above two names should not have been included in the eligibility list because these two persons at serial No. 34 and 36 were absorbed in the other department, therefore, it resulted in illegal consideration of the two officers which caused his loosing ~~consideration of~~ the seniority <sup>by</sup> DPC. When he represented against this, he was informed that it was only on 31-8-84 orders of their permanent absorption were issued by R & AW retrospectively w.e.f. 1-3-83. Then in such circumstances, his promotion is denied. The respondents included in the eligibility list the names of two officers (who figured at S.NO. 34 & 36), who had been serving outside the department with another organisation, viz., the Research & Analysis Wing and their names were also approved for promotion to the rank of JAD by this DPC.

6. That, the above two names should not have been included in the eligibility list as before and holding of the DPC they had already been permanently absorbed in the R & A.W, w.e.f. 1-3-83 vide order No. E-3/1/5/79 dated 2-8-84 issued by them. Since they did not hold a lien in the IB on a post of DCIO on 13-8-84 when the DPC met, the consideration of their names alongwith other DCIOs for promotion as JAD in the IB was highly irregular and unjust.

7. The Research & Analysis Wing had issued orders absorbing the two officers in their organisation on 2-8-84. A copy of this letter had been endorsed to the Intelligence Bureau. The Intelligence Bureau, on their part also issued the formal order

terminating their lien on 21-9-84. The DPC was held on 13-8-84 and on that date the lien of the two officers already stood transferred to R & AW and hence they could not be treated as officers serving in the cadre of DCIO of the Intelligence Bureau.

7. We have heard Ms. Pratima Mittal for Respondents and perused the records.

8. The contention of the applicant is that in the gradation list his name appears at serial No. 39 and that there were only 10 vacancies. Therefore, the Respondents have considered upto 39 only including two persons who are at serial No. 34 and 36, and that they are Shri V.K. Chibber and Shri S.S. Pandey <sup>but</sup> they are not absorbed on that date and their consideration in the special DPC, it is correctly in accordance with the then DPC proceedings.

9. This absorption order was issued on 21-9-84 with retrospective effect from 1-3-83. It, therefore, follows the non-consideration of the applicants at the time when the DPC was held i.e. on 13-8-84, there was no order of absorption to serial No. 34-36 candidates Shri V.K. Chibber and S.S. Pandey. On careful consideration, we find that the retrospective effect of the order which takes back w.e.f. 1-3-83, he is considered then the applicants will also be eligible to be included in the panel to be considered by the DPC the fact that the DPC has not considered at the time, then there is no order is passed but the subsequent notification with retrospective effect gives rise to the applicant which creates a grievance of his over-looking. Therefore, we feel that the applicant has made out the case for himself to be considered after inclusion of his name in the panel of the relevant zone of consideration. We are justified in giving the following directions.

10. We, therefore, direct the respondents to constitute the review DPC and consider the case of the applicant after including

the name of the applicant in the zone of consideration and if he is selected in accordance with the Recruitment Rules, the benefits may be given to him. This exercise may be completed within a period of 4 months; after the receipt of the copy of the judgement, no order is to costs.

V.K. SETH

(V.K. SETH)  
MEMBER(A)

12-10-93

ROY

(C.J. ROY)  
MEMBER(J)

12-10-93