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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 1321/87

DATE OF DECISION 23. 5. 1990

SHRI TIRATH DASS

APPLICANT

R.K. KAMAL

ADVOCATE FOR THE APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

P.P. KHURANA

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

JUDGEMENT

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

Shri Tirath Dass Joint Director of Census Operations (JD^{CO}), Office of the Registrar-General-cum-Census Commissioner, New Delhi, has filed this application aggrieved by the Office Memorandum No. 21/1/86-Ad.I dated 13th August, 1986 (page 21 of the paper book) advising him that he had not been found suitable for promotion to the post of JD^{CO} by the Review Departmental Promotion Committee, under section 19 of the Administrative Tribunals Act, 1985.

2. The case of the applicant is that he was promoted as JD^{CO} in the Office of Registrar General-cum-Census Commissioner, "on purely temporary and adhoc basis for a period not exceeding

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one year w.e.f. 14.7.1983 or till the post is filled in on a regular basis, whichever is earlier" vide notification No. 11/72/88-Ad.I dated 5th August, 1983 (page 12 of the paper book). After his reversion to the post of Deputy Director of Census Operation (DDCO) w.e.f. 19th September, 1985 (afternoon) vide order dated 20th September, 1985 (page 13 of the paper book), he submitted a representation to the President of India on 4th February, 1986 stating that he was the senior most permanent DDCO who had been denied promotion; he also alleged that complete list of eligible officers was not supplied to the DPC, in accordance with the seniority list. He, further, gave a catalogue of commendations and merit certificates, he had received during his service and particularly as JDCO, to highlight the meritorious service rendered by him. He apprehended that his annual confidential report apparently did not reflect an accurate and objective assessment of his record of service.

The said representation was answered by the Additional Secretary, Ministry of Home Affairs (page 19 of the paper book) vide OM dated 20.3.1985 advising him that he had been duly considered by the DPC for promotion to the post of JDCO but was not found suitable for promotion. The applicant submitted another representation to the President of India on April 3, 1986 covering more or less the same ground as in the earlier representation. He also added that he had an impression that the DPC was not convened under the chairmanship of a Member of the Union Public Service Commission. The representation was again answered by the Additional Secretary, Ministry of Home Affairs on 13th August, 1986 (page 21 of the paper book) - informing the

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applicant that he had not been found suitable for promotion to the post of JDCO by the review DPC. Not satisfied with the response received from the respondents, the applicant has approached the Tribunal seeking the following reliefs:

- (a) The Tribunal may look into the basis of promoting him on adhoc basis on 5.8.83 instead of on a regular basis in accordance with the recruitment rules.
- (b) The order of reversion dated 20.9.1985 may be set aside as the complete list of eligible officers was not submitted to the DPC for consideration. The Tribunal may also look into whether the DPC was chaired by a member of the UPSC.
- (c) The applicant be treated as officiating JDCO till the time of his retirement on 31.3.1986 and paid full pensionary benefits accordingly.

3. The respondents in their written statement have submitted that in accordance with the recruitment rules 66.2/3% of the posts were to be filled by promotion, failing which by transfer on deputation (including short-term contract) and failing both by direct recruitment. The remaining 33.1/3% are to be filled by transfer on deputation (including short-term contract), failing which by direct recruitment. There are 9 posts of JDCOs as per Recruitment Rules. The 6 posts falling under the promotion quota were already filled by promotion. Out of the remaining three posts falling in the deputation quota, 2 were filled up by transfer on deputation. One fell vacant due to

the retirement of one of the incumbent (deputationist). Thus, there were two posts of JDCO vacant in the deputation quota. One vacancy in the deputationist quota was decided to be filled up by promotion on adhoc basis and Shri Tirath Dass, the applicant, who was the seniormost DDCO was appointed on purely temporary and adhoc basis for a period not exceeding one year or till the post is filled on regular basis, whichever is earlier. The applicant could not have been promoted on regular basis as all the 6 posts falling on the promotion quota were already filled up. The respondents have further submitted that the DPC was supplied complete list of the 8 eligible officers as required. As the applicant was the seniormost DDCO, his name was also in the list. The post of JDCO is a selection post and is filled on merit with due regard to seniority. The DPC on the basis of assessment of the performance graded 2 officers junior to the applicant, S/Shri J.C. Kalra and S.R. Luhadia as superior to the applicant. Shri Tirath Dass, the applicant therefore did not find a place in the select list. The review DPC was later held as the name of one eligible officer who was already appointed to the post of Assistant Registrar General (pre-revised scale of Rs. 1500-1800) was omitted from the list of eligible DDCOs, as he was holding the post which carried the same scale of pay as that of JDCO. As the particular officer was having lien in the post of DDCO, it was necessary to consider him for appointment to the grade of JDCO by promotion. This omission was rectified as per advice of the UPSC by convening the review DPC. The DPC held in September, 1985 and the review DPC held by circulation of papers in May, 1986

did not recommend the applicant for promotion to the post of JDCO as the performance of the other candidates was graded superior to that of the applicant. The DPC and the review DPC, both were held under the chairmanship of the same Member of the UPSC.

4. The learned counsel for the applicant drew our attention to heading of column 11 of the schedule attached to the Recruitment Rules which reads as under:

"Column-11 - Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer & % age of the vacancies to be filled by various methods:

- i) 66.2/3% by promotion failing which by transfer on deputation (including short-term contract) or failing both by direct recruitment
- ii) 33.1/3% by transfer on deputation (Including short-term contract) failing which by direct recruitment.

The learned counsel for the applicant submitted that the percentages fixed for promotion quota and deputation quota are to be applied to the vacancies and not the posts in the cadre. He contended that at the relevant time at least one vacancy was available in the promotion quota on a regular basis. The applicant, therefore, cannot be denied promotion on regular basis on the plea that the promotion quota was already full. He cited the case of M.V. Rangaiah and Others Vs. J. Sreenivasa Rao & Others [1983 (3) SCC - 285] to buttress his case.

5. Reacting to the above argument the learned Counsel for the respondents pleaded that the vacancies in the cadre were

determined on 17.8.1982. On the crucial date, according to the quota fixed for promotees and deputationists, vacancies against slots No. 1,2,4,5,7 & 8 were to be filled up by promotees. This is exactly what was done. Slots No. 3 & 6 were to be filled by the deputationists and they were already occupied by deputationists at the relevant time. The only vacancy left unfilled on 17.8.1982 was the 9th slot which was in the deputationist quota. It was against this vacancy that the applicant was promoted on purely temporary and adhoc basis vide notification dated August 5, 1983. The applicant, therefore, had no case for regular promotion at the material point. One more post fell vacant subsequently and therefore convening of DPC in 1985 was the right course for the respondents to adopt.

6. We have heard the learned Counsel of both the parties. The vacancies as determined in 1982 were filled up in accordance with the quota roster in August, 1982. It was the vacancy falling in the deputation quota against which the applicant was promoted on purely temporary and adhoc basis and this cannot be found fault with. The applicant had no case for regular appointment at the relevant time. The DPC in September, 1985 and the review DPC in May, 1986 held under the Chairmanship of a member of the Union Public Service Commission considered the applicant alongwith others in the zone of consideration but did not find him suitable for promotion. The post of JDCO is a selection post and is to be filled by a positive act of selection, taking into account the totality of relevant factors

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in accordance with the well established procedure. Seniority is only one of such factors. The decision of the Hon'ble Supreme Court reported in 1983 (3) SCC 285 is of no assistance to the applicant as the facts and circumstances are distinguishable.

7. In the facts of the case we are of the view that promotion of the applicant in 1983 on temporary and adhoc basis against a vacancy carried forward from 1982 falling in the deputation quota was in order. Further clearance by the Departmental Promotion Committee is a pre-requisite for promotion on regular basis. The Departmental Promotion Committee held in 1985 and the review Departmental Promotion Committee held by circulation in early 1986, both did not find the applicant suitable for promotion on regular basis. There is, therefore, no merit in the claim of the applicant for regular promotion as JDCO. The application is dismissed accordingly.

There will be no orders as to the costs.

I.K. Rasgotra
(I.K. Rasgotra)
Member (A) 23/5/97

AB
(Amitav Banerji)
Chairman