

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

(19)

OA No. 137/87

Date of decision: 12.02.93

Sh. R.P. Sharma

Applicant

Versus

Union of India & Others

Respondents

For the applicant

Sh. R.P. Oberoi with Sh. R.R. Rai
Counsel.

For the respondents

Sh. K.C. Mittal, Counsel.

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Hon ble Sh. P.K. Kartha, Vice Chairman (J)

Hon ble Sh. B.N. Dhoundiyal, Member (A)

1. Whether Reporters of local papers may be allowed to
to see the judgement? *Yes*
2. To be referred to the Reporters or not? *Yes*

J U D G E M E N T

(Of the Bench delivered by Hon ble Sh. B. N. Dhoundiyal,
Member (A))

This application has been filed by Sh. R.P. Sharma under Section 19 of the Central Administrative Tribunals Act, 1985 against the failure of the respondents to regularise him as Senior Analyst. He has also challenged the seniority list circulated under memo dated 19.3.79.

2. According to the applicant, he was appointed as Bacteriological Assistant (Rs. 425-700) in the Quality Control Laboratory of the Delhi Milk Scheme on 9.4.1964. He possesses the qualifications of M.Sc. (Agr. A.H. and Dairying). He became eligible for the next higher post of Senior Analyst (Rs. 550-900) in 1967 against the promotion quota of

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25%. The essential qualification prescribed for the post was a degree in Dairying or Food Technology or M.Sc. in Chemistry or Bio-chemistry. Two additional posts of Senior Analysts were created in 1968 and one post had been lying vacant from 3 to 4 years earlier. One of the posts was earmarked for promotion and the applicant was the only — eligible candidate. He had represented for his promotion and was informed by letter dated 20.11.1968 that his case would be considered after decision was taken by the Ministry of Agriculture on the proposals submitted to them. He kept on representing and vide order dated 8.5.72, he was promoted to the post of Senior Analyst on adhoc basis. For the past 14 years he had been earning annual increments and had also crossed the efficiency bar. The applicant is also aggrieved by memo dated 19.3.79 circulating a seniority list where the wrongful inclusion of Dy. Managers (MC & CC) en-block senior to the applicant and higher placement of ~~his~~ ^{his} juniors had affected his seniority adversely. His representation against this seniority list dated 20.3.79 has remained unreplied. Had he been promoted as Senior Analyst in 1968, he would have been a rightful claimant for the post of Dy. Manager Quality Control (Rs. 1100-1800) when vacancies occurred in 1982 and 1984. His remaining adhoc and hence at the bottom of the seniority list has also made him liable to being rendered surplus due to reduction in posts recommended by the S.I.U. in 1983. He has prayed for the following reliefs:-

- (a) That he may be given regular appointment to the post of Senior Analyst w.e.f. 1968 when three posts were available and one of them was to be filled by promotion.
- (b) That the appointment to the post of Senior Analyst on the so-called adhoc basis since 12.5.72 may be deemed as regular service with all consequential benefits for the entire period of appointment as Senior Analyst.

(c) That the separate seniority list of Senior Analysts and Dy. Manager (MC & CC) may be prepared and only Senior Analysts may be made eligible for promotion to the posts of Dairy Chemists and Dairy Bacteriologists.

(d) That his position in the seniority list of Senior Analysts may be rectified and corrected according to his date of appointment and qualifications prescribed and required for the post."

3. On 7.5.1987, this Tribunal passed an interim order restraining the respondents from reverting the applicant till the decision of this case. While considering M.P. 1004/90, the Tribunal further restrained the respondents from declaring the applicant surplus in implementation of their order dated 29.3.90, till further orders. This Tribunal has also been informed that vide order dated 19.12.90, the applicant has been given regular promotion w.e.f. 3.12.84 along with his colleague Sh. R.P. Singh, who has filed a similar O.A. (No. ^{4w} 63/87).

4. The respondents have stated that there were 16 posts of Senior Analysts in the D.M.S. in August, 1974. The recruitment rules were notified in June 1964 and eight posts were filled up by direct recruitment through the U.P.S.C. upto November, 1970. No departmental candidate ^{4w} was eligible for promotion either because of inadequate length of service or lack of requisite educational qualifications. Seven officers including the applicant were promoted on adhoc basis against the promotional quota. Five such vacancies were identified and proposals for convening the D.P.C. were initiated in 1971. Due to administrative reasons, the D.P.C. could not be held and this post could not be filled on regular basis. The applicant could not be promoted due to another ^{4w} reason; he was under the shadow of a charge sheet issued on ^{10-4-90 D.C.} 5.11.71 and was ^{4-7-86 D.A.} ~~terminated~~ only on 28.11.74. In the seniority list all the regular appointees were shown senior to the applicant ^{as they 4w} had come through the U.P.S.C. in the Direct Recruitment quota. In December, 1984, the DPC decided that since 10 posts had been reduced, adhoc appointees may not be regularised as some of them were likely to be declared surplus. ^{4w}

5. We have gone through the records of the case and heard the learned counsel for the parties. Our attention has been drawn the judgement dated 18.11.92 of another Bench of this Tribunal in the case of Sh. Ram Swaroop Vs. Union of India (OA No. 893/87) where the question of regularisation of the similarly situated colleague of the applicant was considered. The following observations were made :

" As the material produced by the respondents themselves indicate that there were vacancies and proposals to hold the DPC did not ^{fractify} ~~fractify~~ we are left with the impression that no serious attempt was made to consider as to whether the petitioner could be promoted on regular basis w.e.f. earlier dates when the vacancies existed in the cadre of Senior Analysts."

6. We respectfully reiterate the same view and allow the application with similar directions as indicated below :

- (a) The respondents shall ascertain if there ^{bw} ~~were~~ vacancies available for being filled up by promotion ^{bw} ~~by selection~~ on dates earlier than 3.12.84.
- (b) If regular vacancies did ^{bw 12/12/93} ~~not~~ exist before 3.12.84, the respondents shall if the applicant was within the zone of consideration on those respective dates, get his case examined by the DPC and if he is found fit and suitable for promotion to grant him the deemed date of promotion. His seniority shall be fixed accordingly. ^{bw 12/12/93}
- (c) If deemed date of promotion is accorded earlier than 3.12.84 the applicant shall be granted all other consequential benefits, flowing from such a decision.
- (d) Let this be done expeditiously and preferably within four months from the date of ^{bw} communication of a copy of this Judgement. No costs.

R.N. Doundiyal
(B.N. Doundiyal) 12/12/93

Member(A)

P.K. Kartha
(P.K. Kartha) 12/12/93

Vice Chairman (J)