

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 149/87 128  
~~EXX XXo.~~

21-1-80

DATE OF DECISION

Shri N.K.Anand and another Applicant (s)

Shri N.D.Batra Advocate for the Applicant (s)

Versus

Union of India and others Respondent (s)

Shri M.L.Verma, Central Advocat for the Respondent (s)  
Govt.Standing Counsel

CORAM :

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. J.P.Sharma, Member(Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *N*
4. To be circulated to all Benches of the Tribunal ? *N*

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 6.2.87 filed under Section 19 of the Administrative Tribunals Act the two applicants who have been working as Senior Analysts in the Staff Inspection Unit of the Ministry of Defence have challenged the impugned order dated 23.4.86 rejecting their representation for retrospective promotion and have also challenged that the two notifications dated 8th April, 1983 (Page 26 and 27 of the Paper Book) reverting them from regular to the adhoc status of Senior Analyst should be set aside and that they should be appointed on a regular basis as Senior Analyst with effect from 3.1.75.

2. The brief facts of the case are as follows. The applicants have been working as Junior Analysts in the Staff

9/

Inspection Unit. 50 percent posts of Senior Analyst are to be filled up by promotion of Junior Analysts with three years of regular service. The DPC which met on 23.10.74 considered <sup>all the</sup> eligible Junior Analysts against two vacancies of 1974 and prepared a panel of five persons. The applicants were occupying the third and fourth position in the panel. The first two candidates were regularly promoted as Senior Analysts whereas the applicants were given adhoc promotion against the short-term/deputation vacancies continuously from 3.1.75. No DPC was held between 1974 and 1985. The applicants however, by virtue of their position in the 1974 panel <sup>were</sup> given regular promotion as Senior Analysts vide orders dated 6th December, 1975 and 25th February, 1977 (Pages 24 and 25 of the Paper Book) with effect from 27th November 1975 and 1st June, 1976 <sup>respectively</sup>. The respondents on reconsideration of their regular promotion passed orders dated 8th April, 1983 (Pages 26 and 27 of the Paper Book) reverting them back to their adhoc status and withdrawing the regular promotion given to them. Their representations remained ineffective. No meeting of the DPC was held after October, 1974 until 30.5.85. On the basis of the recommendations of the DPC <sup>which met on 30.5.85</sup> the applicants were given regular promotion with effect from 30.5.85 against two of the vacancies which arose in 1978. The applicants have challenged the impugned order rejecting their representation as being non-speaking and have argued that since they were appointed on a regular basis in 1975 against the regular vacancies they could not have been reverted to the adhoc status in 1983 retrospectively from 1975. Further they have argued that even if for the sake of argument they were to be reverted to the adhoc status from 1975 there is no reason why they should not have been promoted against the regular vacancies of 1978.

52

3. The respondents have conceded that the applicants were included in the panel by the D.P.C. on 23.10.1974 and the panel was duly approved by the UPSC. The applicants were graded as No. 3 and 4. The applicants were given adhoc promotions against the leave/deputation in promotion quota vacancies. New posts were available with effect from 8.9.78 and at that time the applicants were treated to have been regularly promoted against the two promotion quota vacancies without further consideration by the D.P.C. The whole matter was reconsidered when a Scheduled Caste candidate claimed the reserved vacancy and it was decided that without being assessed by another D.P.C. the applicants could not get benefit of promotion on the basis of the 1974 D.P.C. They have argued that reverting them from regular to adhoc status as Senior Analyst did not require following the principle of natural justice. The respondents have further clarified the position in following terms:

"The review DPC was held in May, 1985. This DPC prepared year-wise panels of 5 officers for 5 vacancies available in the grade (3 for 1978 and one each for 1981 and 1983). Petitioners were empanelled for vacancies for the year 1978 along with Shri Muthuswamy (a SC candidate against reserved point). Both the petitioners were ranked as first and second in the said panel. In accordance with the instructions contained in para 4 of Department of Personnel and Administrative Reforms O.P.No.22011/3/76-Estt(D) dated 24.12.1980 where, for reasons beyond control DPC would not be held in any year(s) even though the vacancies arised during that year(s), the first DPC that meets thereafter is required to prepare a year-wise consolidated select list. While promotion is to be made in order of consolidated select list, such promotion is made effective with prospective date, even in cases where the vacancy relates to an earlier year. Hence these officers have been given regular promotion w. e.f. 30.5.1985 only."

Fr

On the basis of the recommendations of the DPC held on 30.5.85 the applicants were appointed as Senior Analyst on a regular basis with effect from 30.5.85. Their representations for ante-dating their promotion with effect from 3.1.75 could not be accepted because Shri P. Muthuswamy a Scheduled Caste Junior Analyst who is an applicant in O.A. 293/87 and had not been promoted even on an adhoc basis till 1982 claimed retrospective promotion from 1978. It is interesting to note that Shri Muthuswamy was also considered by the DPC on 30.5.85 against the three vacancies of 1978 and was included as number 3 in the panel in which the two applicants before us were at number 1 and 2. It has also been indicated by the respondents that the applicants before us officiated on an adhoc basis against the vacancies which did not belong to the 50 percent promotion quota. It is because of this reason that they could not be considered for promotion as Jt. Director against the vacancy which fell on 1.9.86 as they had not put in five years of regular service as Senior Analyst. However the first application was promoted as Jt. Director on an adhoc basis with effect from 28.10.1986.

4. In the rejoinder the applicants have reiterated that they could not be reverted from regular to adhoc status in 1983 ie., 8 years after they are regularised without giving them a show cause notice. They have contended that they should be considered for promotion as Joint Director in which cadre there are four vacancies.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We are impressed by the argument of the learned counsel for the applicants that the principles of natural


12/


justice demand that before their regular status which was assigned to them in 1975 and 1977 could be taken away in April, 1983 i.e., 6 to 7 years after regularisation they should have been given an opportunity to protect their interest. The contention of the respondents that they have to be reverted because of the representation filed by a Scheduled Caste candidate Shri Muthuswamy who is the applicant in O.A. 293/87 is not very convincing in so far as <sup>not</sup> following the principles of natural justice is concerned. It has been admitted by the respondents that both the applicants have been officiating on an adhoc basis without any interruption right from 3.1.75 having been empanelled by the D.P.C. of 1974 which considered all eligible candidates at that time. The two applicants and Shri Muthuswamy the applicant in O.A. 293/87 had been considered for promotion against the three vacancies of 1978 and all the three were included in the panel, the applicants being at the top <sup>at no. 1 & 2 and</sup> ~~at the top~~ Shri Muthuswamy being No.3 in the panel. Even though they were included in the panel for the three vacancies of 1978 by the D.P.C. which <sup>met</sup> ~~on~~ 30.5.85, they were not given regular promotion w.e.f. the dates when the vacancies of 1978 materialised but were given prospective regularisation with effect from 30.5.85. The justification for this has been indicated to flow from the Deptt. of Personnel & Administrative Reforms O.M. of 24.12.80 which required the preparation of year-wise consolidated Select List and promotion to be effective with prospective dates where 'for reasons beyond the control D.P.C. could not be held in any years'. Again the learned counsel for the respondents indicated that the D.P.C. could not be held between 1974 and 1985 because of the representations given by the applicants

13

and Shri Muthuswamy. This appears to us to be absolutely unconvincing. The number of vacancies in 1978 was known and there was no <sup>valid</sup> reason why the D.P.C. could not meet in 1978. There was no litigation or stay order issued by any court. Accordingly we feel that the order of 24.12.80 that regularisation should have prospective effect from 30.5.85 <sup>-not</sup> can be invoked in this case to deprive the applicants' regularisation atleast from 1978 if not from 1975/1976. The learned counsel for the applicants however, agreed that the applicants will be satisfied if they are given notional regular promotion as Senior Analyst from 1978 itself against two of the three vacancies which arose in that year. The question of any arrears of pay because of their retrospective promotion will not arise because the applicants had already been officiating as Senior Analyst <sup>right</sup> from 1975 and drawing the pay of Senior Analyst.

6. In the facts and circumstances, we allow this application to the extent of declaring that the applicants are entitled to be regularised with retrospective effect from 1978 from the dates the first two vacancies of 1978 materialised with all consequential benefits of seniority and arrears of pay if any. Their service from those dates of 1978 should also be considered to be qualifying service for promotion as Joint Director. The impugned order dated 23.4.86 and the orders dated 8.4.83 (Pages 26 and 27 of Paper Book) will stand superseded and modified accordingly. There will be no order as to costs.

  
(J.P. Sharma)  
Member (Judicial) 24.9.90

  
(S.P. Mukerji)  
Vice Chairman 24.9.90