

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1757/87
T.A. No.

1987 =

DATE OF DECISION 20.10.1989

Shri U.K. Roy _____ Applicant (s)

Shri M.K. Gupta _____ Advocate for the Applicant (s)

Versus
the Secretary, Ministry of _____ Respondent (s)
Science & Technology & Anr.

Shri M.L. Verma _____ Advocat for the Respondent (s)

CORAM :

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

The Hon'ble Mr. P.C. Jain, Administrative Member.

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. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(of the Bench delivered by Hon'ble Shri P.K.
Kartha, Vice-Chairman)

The applicant, while working as Assistant Meteorologist in the Office of the Director General of Meteorology (Res.2), filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) to direct the respondents to promote him from the date his juniors were promoted in June, 1984 without placing his case before the Assessment Board as was done in three other cases, with all consequential benefits like arrears of pay, etc.;
- (ii) to direct the respondents to consider his case for promotion to the post of Meteorologist Grade I w.e.f. June, 1984 from the date of

*This prayer was not pressed by the learned counsel for the applicant during his arguments.2...
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promotion of his juniors, irrespective of the fact that he was retiring w.e.f. 31st December, 1987 and to grant all consequential benefits like arrears of pay, etc.; and

- (iii) to direct the respondents to give him all consequential benefits along with interest at the rate of 18 per cent.

2. The applicant joined the Indian Meteorological Department in 1950 as Senior Observer. In 1952, he was recruited directly to the post of Scientific Assistant. In 1964, he was promoted as Professional Assistant and in 1978, he was promoted as Assistant Meteorologist.

3. The applicant has a catalogue of grievances against the respondents in the form of frequent transfers from place to place and denial of promotion when it became due to him. However, in the present application, he is seeking relief only in regard to his promotion.

4. The respondents prepared and circulated a seniority list of Assistant Meteorologists on 26.8.1982. This was quashed by the Madras Bench of the Tribunal in its judgement dated 19.9.1986^{*} with the direction to the respondents to prepare a fresh seniority list in accordance with law in the light of the principles highlighted in the judgement. Thereafter, the respondents circulated a fresh seniority list on 8.7.1987. The applicant claims that his seniority improved very much under the seniority list of 1987 in which he attained the position at serial No.166 against serial No.205 in the seniority list of 1982. Viewed in the light of the fresh seniority list of 1987, a number of officers junior to him have been promoted as Assistant Meteorologists without considering his case for promotion.

*TA-789/86 - T.V. Vaidyanathan Vs. Union of India & Another.

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He was not called for assessment in 1984 or 1986. He has also contended that there were general relaxations in educational qualifications and qualifying service on all occasions of assessment in 1979, 1981, 1984 and 1986.

5. The respondents have contended in their counter-affidavit that the applicant was not eligible for promotion in 1984-85 and he did not come within the zone of consideration. He had not completed the required years of approved service. The promotions were made on the basis of the seniority list of 1982 and no person junior to him was promoted.

6. As regards the seniority list of 1987, which was prepared pursuant to the directions contained in the judgement of the Madras Bench of the Tribunal, the respondents have stated that the seniority list prepared in 1987 was only a draft and that no officer junior to the applicant has been promoted. The said seniority list was subject to approval by the Department of Personnel & Training. They have further contended that according to the decision of the Department of Personnel & Training, the retired officers could not be promoted and hence the case of the applicant for promotion could not be considered now (vide p.80 of the paper-book).

7. As to the contention of the applicant that relaxations were made by the Government in some other cases for promotion as Assistant Meteorologists, the respondents have stated that relaxation was given only in respect of officers who were within the zone of consideration. The applicant was not in the zone of consideration as he did not complete



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8 years of approved service required under the relevant rules. No person junior to him as per the seniority list of 1982 was promoted in 1984, 1985 and 1986. Some of the senior Assistant Meteorologists who were appointed directly by the U.P.S.C., had not completed 8 years of approved service but as their juniors had satisfied the conditions^{of 2} approved service, the Government relaxed the condition of 8 years of approved service in respect of those senior Assistant Meteorologists (directly recruited) as a special case. As regards the applicant, as no officer junior to him was assessed for promotion, it has been contended that he has no ground for grievance. In the case of some others, the Government relaxed the condition of assessment because they were on deputation/on duty abroad.

8. We have carefully considered the matter and have heard the learned counsel for both the parties. We may, at the outset, deal with the contention of the respondents that retired officers cannot be promoted and on that ground the case of the applicant, who has retired from Government service, cannot be considered for promotion. In this context, they^{are 2} referring to a decision taken by the Department of Personnel & Training. After the conclusion of the oral arguments, the respondents have produced a photostat copy of the note dated 22.12.1987 of the Department of Personnel & Training on the subject. In para.2 of the said note, it has been stated that "as the retired officers cannot now be promoted, even if they are considered fit for promotion by the Review D.P.C., this Department is of the view that such officers need not be considered by the Review D.P.C." The rationale

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of this decision is not clear. Neither the Department of Personnel & Training nor the respondents before us have brought to our notice any rule or administrative instructions debarring retired officers from being considered for promotion by a Review D.P.C. and giving them consequential benefits in terms of arrears of pay and allowances and recomputation of pension and other retirement benefits. We, therefore, reject the said contention raised on behalf of the respondents.

9. The further question is as to whether on the basis of the material on record there is any justification for directing the respondents to hold a Review D.P.C. and to consider the case of the applicant for promotion as in 1984 or in 1986. The factual position in the present case is that as the applicant was appointed as Assistant Meteorologist only in 1978, he did not possess the requisite years of approved service in 1984 or 1986 and as such, he can be considered for promotion only after relaxation of the prescribed qualifications. We cannot direct the respondents to relax the qualifications in the case of the applicant alone. The respondents have relaxed the qualifications only of officers who were in the zone of consideration in accordance with the seniority list of 1982. The applicant's name did not figure in the said zone of consideration.

10. The learned counsel for the applicant brought to our notice the judgement of the Madras Bench of the Tribunal in OA-307/88 (T.V. Vaidyanathan & Others Vs. Union of India & Others), wherein the Tribunal has directed the respondents to hold a Review D.P.C. to

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consider the case of the applicants therein for promotion as Meteorologists Grade I on the basis of the seniority list prepared in 1987. On a perusal of the judgement of the Madras Bench of the Tribunal dated 21.6.1989 in OA-307/88, it appears that neither the applicants nor the respondents brought to the notice of the Tribunal the fact of re-revision of the seniority list of 1987 in February, 1989 whereby the seniority has been changed in respect of some of the officers. The applicant in the instant case along with two of his other colleagues, has separately filed OA-727/89 in this Tribunal praying for quashing the impugned seniority list of Assistant Meteorologists issued by the respondents vide O.M. dated 28th February, 1989, which is a re-revision of the seniority list of 1987. We have disposed of the said O.A. on 20.10.89 with the following directions:-

"In the facts and circumstances of the case, we, therefore, direct the respondents to circulate the re-revised seniority list of 1989 among all the officers concerned within a period of two months from the date of communication of this order. The respondents shall consider the representations or objections raised by the officers concerned within a period of three months thereafter and finalise the seniority list after taking into account the representations/objections received by them. The application is disposed of with the above directions."

11. In view of the above, if in the seniority list as finalised by the respondents in accordance with the aforesaid directions, the applicant becomes senior enough to be included in the zone of consideration for promotion to the post of Meteorologist Grade I w.e.f. June, 1984 and subsequent years, his case for promotion by the respondents an should be considered by convening a Review D.P.C. and

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On the benefits of ~~relaxation~~ relaxation he should also be given relaxation in respect of qualifications, as was done in the case of some other officers. In case the Review D.P.C. finds him fit for promotion w.e.f. 1984 P.F. subsequent years, he would be entitled to notional promotion from the due date as adjudged by the Review D.P.C. In that event, he would be entitled to the recomputation of his pension and other retirement benefits from the due date. In the circumstances of the case, it will not be appropriate to give a direction to the respondents to pay to the applicant arrears of pay and allowances.

12. The application is disposed of with the above observations and directions. The parties will bear their own costs.

(cc-29/10/89)
(P.C. Jain)
Administrative Member

Amul
20/10/89
(P.K. Kartha)
Vice-Chairman (Judl.)