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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 63/87 .. Date of decision: 12.02.1993.

Sh. R.P. Singh .. 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.

CORAM

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 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))

The applicant, a senior Analyst working with the Delhi Milk Scheme is aggrieved that he has not been regularised from ^{1st} a regular the date he became eligible for promotion even though vacancy existed. He prays for the following reliefs :

- (a) Issue directions to the respondents to regularise him from August, 1968 without any delay when he was eligible for promotion against the promotion quota;
- (b) Direct the Respondents to modify the seniority list of the Senior Analysts drawn by them as on 19.3.79 and place him at Sl. No.8 of the seniority list;
- (c) Pass such other and further orders as deemed fit in the interest of justice."

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2. The applicant holds the degree of M.Sc.(Agri. A.H. and Dairying) and was appointed to the post of Bacteriological Assistant in the scale of Rs. 210-425/425-700 on 19.8.65. He was promoted as Senior Analyst (Rs. 325-575/550-900) on adhoc basis on 5.5.75 though he had become eligible on 19.8.68. Vide order dated 19.12.90 he was regularised at this post w.e.f. 3.12.84.

3. According to the applicant, vacancies in promotion quota for the post of Senior Analyst have existed ever since 1967. The recruitment rules provide for 25% of the posts to be filled up by promotion from feeder category of Analyst or Bacteriological Assistant with three years service. The following educational qualifications were prescribed :

" A degree in Dairying or Food Technology or M.Sc. in Chemistry or Bio-Chemistry or Dairy Chemistry of a recognised University or equivalent

OR

Associateship, in fats and oils of the Hereourt Buttler Technological Institute, Kanpur.

Qualifications relaxable at Commissions discretion in case of candidates experience or otherwise well qualified.

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Special training or adequate experience in analysis of milk and milk products. "

4. The applicant was educationally qualified and became eligible for the post of Senior Analyst in 1968 itself when five such clear vacancies were available. Though he was number 6 in the Seniority List, his seniors did not possess the required educational qualification. However, no DPC was held and the respondents ^{by N.C.L.} ~~were~~ to delay promotions to enable others to acquire the required qualifications. Though in 1975,

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the Chairman, DMS floated a proposal to convene the DPC for five promotional posts, nothing came out of it. The applicant was given adhoc appointment which continued till 1990. Meanwhile, the direct recruits who joined much later were given a higher seniority than the applicant on the ground that they held regular appointments. Non regularisation also made him vulnerable to being declared surplus on the basis of the recommendations of the S.I.U. to reduce to the number of posts. No reply was received to his numerous representations as well as the legal notice dated 4.8.86.

5. On 15.5.87, this Tribunal passed an interim order restraining the respondents from reverting the applicant till the disposal of this O.A.

6. The respondents have stated that no departmental candidate was eligible for promotion to the post of Senior Analyst/Deputy Manager against 25% promotion quota upto 1968 as either they had not put in the requisite length of service or were not educationally qualified. Moreover, these posts were filled up from time to time depending on the exigencies of service. Between 1969 and 1976, 7 persons were given adhoc appointments, out of which two were ^{later} selected by direct recruitment and three persons including the applicant continued to work on adhoc basis. Proposals for convening the meeting of the D.P.C. were initiated in 1971 but the DPC could not be held due to administrative reasons. They have also mentioned that the applicant was under shadow of a charge sheet from 5.11.71 till his exoneration on 28.11.74 and he could not have been regularised. In 1984, ten posts of Senior Analysts were declared surplus and thereafter there was no question of regularising him.

7. 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

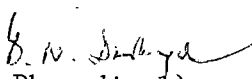
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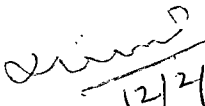
was considered. The following observations were made :

" As the material produced by the respondents themselves ^{bw} indicate^s that there were vacancies and proposals to hold the DPC did not fructify, 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."

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

- (a) The respondents shall ascertain if there were vacancies available for being filled up by promotion ^{by} ~~by~~ ^{selection} on dates earlier than 3.12.84.
- (b) If regular vacancies did ^{bw} ~~not~~ exist before 3.12.84, ^{PT} 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.
- (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 communication of a copy of this Judgment. No costs.


(B.N. Dhoundiyal) 12/2/83
Member(A)


12/2/83
(P.K. Kartha)
Vice Chairman(J)