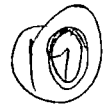


CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI.



REGN.NO. O.A. 641/87.

DATE OF DECISION: 16.9.1992.

G.P. Duggal.

... Petitioner.

Versus

Union of India.

... Respondent.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioner.

... Shri G.D. Bhandari,
Counsel.

For the Respondent.

... Shri G.P. Kshatriya,
Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The petitioner was working as a Section Controller in the Bikaner Division of the Northern Railway when in pursuance of the panel prepared for promotion to the cadre of Deputy Chief Controller, an order was passed as per Annexure A-4 dated 11.9.1978 according promotion to the petitioner and posting him at the Headquarters. The order makes it clear that his promotion is subject to his passing P.16A course held from 16.3.78 to 15.6.78 which he had attended in ZTS/Chandausi. It is his case that notwithstanding the fact that the petitioner earned promotion he was not allowed to join the promotional post at the Headquarters on the ground that his services

(11)

are required for the purpose of preparing the time table. Annexure A-5 dated 2.8.1979 is the order which supports the stand of the petitioner that though he was given an order of promotion, he was not allowed to join at the promotional post and he was detained at Bikaner for the time table work stating that he will be spared as soon as the said time table work is completed. The petitioner says that his not going to join the promotional post was not because he was not willing to accept the promotion and join at the Headquarters ^{but} because the authority did not permit him to go and join at the Headquarters. Annexure A-6 is the copy of the letter which the petitioner wrote on 1.3.1979 to the Divisional Personnel Officer, Northern Railway, Bikaner requesting him to permit him to go and join as Deputy Chief Controller at the Headquarters as he was suffering financial loss and seniority in the next grade. The petitioner had also offered to go and do some duty in the Territorial Army. In this background the order was passed as per Annexure A-8 on 10.2.1980 that the petitioner should first join at the Headquarters in the promotional post and thereafter proceed to serve in the Territorial Army. Before the petitioner could take charge at the Headquarters, an order came to be made on 13.2.1980 as per Annexure A-9 to the effect that the order

of promotion and posting dated 11.9.1978 be treated as cancelled. In view of the said order, a memo. was issued to the petitioner on 16.2.1980, copy of which is attached below Annexure A-8, which says that the petitioner is spared for Territorial Army embodiment as per DOS/BKN verbal order. In view of the order (Annexure A-9) dated 13.2.1980 and the order (Annexure A-8) dated 16.2.1980, the petitioner went to serve in the Territorial Army embodiment and returned back after serving for some time. After his return, he was posted as Deputy Chief Controller on 16.5.1980 on the basis that he stood promoted as Deputy Chief Controller. He was further promoted as Chief Controller on 1.1.1984. Thereafter, certain seniority lists were prepared in which the name of the petitioner is shown at the appropriate place on the basis that he stood promoted as Deputy Chief Controller w.e.f. 16.5.1980. It is in this background that the petitioner has approached the Tribunal with this application filed on 6.5.1987.

2. The principal prayer of the petitioner is to direct the respondents to assign correct seniority to him in the cadre of Deputy Chief Controller w.e.f. 11.9.1978 and to consider his case for further promotion to the next higher cadre on the basis of such seniority and for correction of the seniority list already prepared by

✓ interpolating him at the appropriate place. Though the

13

petitioner has not prayed for quashing any order made by the authorities in this case, we find from the facts pleaded by the petitioner and the records placed by him that what really hurts the interest of the petitioner is the order (Annexure A-9) dated 13.2.1980. It is not disputed that an order of promotion was made in favour of the petitioner on 11.9.1978. If that order of promotion had stood without being disturbed, the petitioner would be entitled to contend that his seniority should have been fixed taking 11.9.1978 as the date of promotion to the cadre of Deputy Chief Controller and his case for further promotion considered. But ^{that order was cancelled on 13.2.80} ~~the~~ petitioner stood promoted w.e.f. 16.5.1980, it becomes necessary to secure relief in this case to assail the order Annexure A-9 which deprived the petitioner the benefit of promotion which was granted in his favour as per the order dated 11.9.1978 (Annexure A-4). This takes us to the order dated 13.2.80 (Annexure A-9) which reads as follows:


"Shri O.P. Duggal SCNL/BKN who was promoted and posted as Dy.CHC Gr. Rs.700-900 (RS) in H.Qrs. office vide their office notice No.757E/62-1/X/ EIB dated 11.9.78 be treated as cancelled".

It is clear from this order that the order of promotion was cancelled. It is necessary to point out that the said order was cancelled before the petitioner took charge of the promotional post of Deputy Chief Controller.

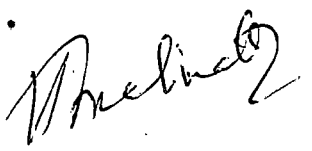
14

As the order of promotion dated 11.9.1978 was cancelled, the petitioner cannot claim a direction that he should be deemed to have been promoted as Deputy Chief Controller w.e.f. 11.9.1978 as long as the cancellation of the said order by Annexure A-9 dated 13.2.1980 remains undisturbed. As the order of promotion (Annexure A-4) was cancelled by the order dated 13.2.1980 (Annexure A-9), no relief can be granted to the petitioner without our examining the validity of the order dated 13.2.1980 by which the promotion given to him earlier was cancelled. The petition was filed on 6.5.1987. ^{the} ~~whereas~~ cause of action arose in favour of the petitioner when an order Annexure A-9 was passed on 13.2.1980. Hence it is obvious that the claim of the petitioner is barred by Section 21 of the Administrative Tribunals Act. It is on this short ground that this petition is liable to be dismissed. We did not, therefore, consider it necessary to go into merits of the contentions raised by Shri Bhandari, learned counsel for the petitioner.

3. For the reasons stated above, this petition fails and is accordingly dismissed. No costs.


(I.K. RASGOTRA)
MEMBER(A)

SRD
160992


(V.S. MALIMATH)
CHAIRMAN