

IN THE GENERAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO.763/87

DATE OF DECISION 29.7.1991

SHRI J.S. FULZELE

....APPLICANT

VS.

UNION OF INDIA

....RESPONDENTS

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SHRI U.C. SRIVASTAVA, HON'BLE VICE-CHAIRMAN (J)

SHRI I.P. GUPTA, HON'BLE MEMBER (A)

FOR THE APPLICANT

....SHRI S.S. TIWARI

FOR THE RESPONDENTS

....SHRI M.L. VERMA

JUDGEMENT

(DELIVERED BY SHRI U.C. SRIVASTAVA, HON'BLE VICE-CHAIRMAN (J))

Against the reversion order dt. 7.12.1984, the applicant who was promoted to the post of Assistant Director (Cooperation on ad-hoc basis on 28.8.1978 for a particular period after expiry of which period he continued to hold the said office continuously, has approached this Tribunal challenging the same. The applicant is a member of SC community and it appears that before the post of Assistant Director, he was

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holding the post of Senior Technical Assistant in the Department of Community Development and Cooperation, New Delhi only after being duly selected by the Union Public Service Commission where he was also confirmed. The promotion order indicated that he was being promoted for the period from 28.8.1978 to 22.9.1978 or till the regular incumbent reverts, whichever is earlier. The applicant continued to hold the said post and it appears that the regular incumbent, i.e., one who was holding the post of Deputy Director, the higher post, was not reverted. In the year 1984, statutory rules came in force and this provided for selection of this post through a Departmental Promotion Committee. Obviously before coming into force, the selection for ad-hoc appointment was made through D.P.C. and the applicant was selected through D.P.C., the procedure of which was the same as is provided in the Recruitment Rules which came into effect in the year 1984. The applicant has stated apprehensions. According to the applicant, his reversion order has been passed on extraneous consideration on malafide grounds and malafides of his Head of the Department who has been impleaded as respondent No.3 as he gave some adverse entries to him in the Confidential Reports for the year 1985 and due to which he has not

been considered for promotion by the subsequent D.P.C. and his name was eliminated from the seniority list. The respondents have justified their action in their counter reply in which it has been stated that he was promoted on ad-hoc basis for specific period and at that time, the Recruitment Rules provided the method of recruitment as under :-

- (i) 40% by promotion, failing which by transfer on deputation (including short-term contract), selection being made in consultation with the Union Public Service Commission and failing both by direct recruitment; and
- (ii) 60% by transfer on deputation.

The first two regular vacancies falling in the promotion quota were filled in by the Department of Civil Supplies and Cooperation and the applicant was one of them and the rest three were required to be filled by transfer on deputation. It has been admitted in the reply that the applicant was deemed to continue to hold the post of Assistant Director on ad-hoc basis from 31-5-1984.

2. It is true that before coming in force of the new Rules, although the earlier rules as they existed provided for selection by D.P.C. by associating U.P.S.C. with it. But it appears that when applicant was selected, U.P.S.C. was not associated. But the applicant continued

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to hold the said office for a period of six years. The vacancy against which the applicant was appointed, was a vacancy which existed much before coming into force of Statutory Rules of 1984 and the same was to be filled in accordance with the rules as they were in force then. Even after coming in force of the Statutory Rules, the said post was to be filled in accordance with the old rules. But in the instant case, the applicant had worked against the same post. The respondents by taking into consideration the fact that the applicant was a member of SC community and one seat had to go to that community and that Statutory Rules also provided for relaxation of certain qualifications for enforcing the said rules. Without considering clause 5 of the Statutory Rules which provides that ^{if} the Central Government is of the opinion that, "It is necessary or expedient so to do, it may be order for reasons to be recorded in writing and in consultation with the Union Public Service Commission, relax any of the provisions of these rules with respect to any class or category of persons", reverted the applicant. The learned counsel for the applicant made reference to the case of

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Smt. Krishna Singh Vs. Union of India arising out of SLP No.1229 in OA 381/80 decided on 6th September, 1985 in which the applicant was promoted on ad-hoc basis and the respondents were not justified in reverting the applicant on the original post and the Tribunal was also not of the opinion of dismissing the application and allowed this application. Practically, the same situation arises in this case and accordingly, we direct the respondents that they should hold a review D.P.C. in accordance with the rules as it existed before coming in force of the old rules and after taking into consideration the fact that the applicant is a member of SC community and the power of relaxation can be exercised if the occasion for the same arises, pass necessary order and in case the applicant fulfils the requisite conditions or otherwise comes within the powers of relaxation, he may be appointed against the said post. The reversion order deserves to be quashed, but no relief in this behalf can be given as the same has already come into effect. We are not quashing the same, but the respondents are directed to summon the review D.P.C. and decide the matter finally as decided in the judgement within a period of three months. There will be, however, no order as to the cost.


(I.P. GUPTA)
MEMBER (A)


(U.C. SRIVASTAVA)
VICE-CHAIRMAN (J)