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In the Central Administrative Tribunal
Principal Bench: New Delhi
OA-811/87 Date of decision: 06.11.92.
Shri G.S. Tiwari ...Petitioner

Versus

Union of India through the Secretary,
Department of Food, Ministry of Food &
Civil Supplies, Krishan
Bhawan, New Delhi ...Respondent

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr. I.K. Rasgotra, Member(A)

For the petitioner Shri K.L. Asthana, Counsel.

For the respondent Shri A.K. Behra, proxy
counsel for Shri P.H.
Ramchandani, Senior Counsel.

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

The petitioner, Shri G.S. Tiwari, has approached this Tribunal with the first prayer for regularising his services as Senior Inspecting Officer (SIO for short) w.e.f. April, 1985 as against vacancy No.22. He also prays for notional seniority and connected benefits from October, 1978 - the date from which he was holding the post of SIO on ad hoc basis.

2. It is not disputed that for the first time the recruitment rules for filling up the posts of SIO were promulgated by the President in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution

w.e.f. 18.12.1971. The said rules prescribe that 20% of the posts be filled by promotion, failing which by direct recruitment and 80% by direct recruitment. The feeder category for the said post, as stated in column No.11 of the rules was the Marketing Officer (FP) with three years' service in the grade rendered after appointment thereto on regular basis. These rules underwent an amendment by notification dated 21.11.1974 published in the gazette on 7.12.1974. Sub Rule 2 of Rule-1 of the said Rules provides that they shall come into force on the date on their publication in the official gazette. They have not been given any retrospective effect. One of the amendments relevant to be noticed for our purpose is the one made in respect of column 11 of the 1971 Rules which was substituted by the following clause:-

"Junior Inspecting Officer (Fruit and Vegetable Preservation) with five years' service in the grade rendered after appointment thereto on a regular basis."

Thus, there was a change in the feeder category as also in regard to the length of service to be rendered for qualifying for consideration in the promotional quota of 20% for the cadre of

✓ SIOs.

-3-

3. So far as the petitioner is concerned, it is his case that he was appointed as the Inspector of Fruit Products on 20.11.1961 and promoted as Deputy Marketing Developing Officer w.e.f. 24.2.1966. It is stated that the said post has been redesignated as Junior Inspecting Officer sometime in March, 1973. The petitioner was promoted on ad hoc basis as SIO for some time on 21.10.1978 and reverted on 23.4.1985. It is in this background that the petitioner has approached this Tribunal with this Application filed on 15.6.1987 for the reliefs already stated above.

4. The principal grievance of the petitioner is that if the quota rule was properly operated upon the petitioner would have been entitled to secure regular promotion to the post of SIO either from October, 1978 or at any rate from April, 1985. So far as the stand taken by the respondents is that his turn had not arrived on these dates for regular promotion in accordance with the statutory rules governing filling up of these posts.

5. The petitioner not being in a position to place all the relevant information, including

the relevant seniority list of the feeder categories, the Tribunal felt handicapped in the matter of ascertaining the facts accurately. Therefore, a direction was issued to the respondents to produce the necessary seniority list and other records and also information in regard to the manner in which the quota rule has been operated upon from the beginning. All that the respondents have been able to produce along with the reply is Annexure-R-1, a statement in regard to the promotions and direct recruitments given, starting from the name of Shri B.D. Dongre, a promotee. The respondent after a thorough search were not in a position to trace any other records and, therefore, expressed their helplessness in this behalf. Hence, we have to examine the contentions raised by the petitioner in the light of the materials that the parties themselves have produced before us. We must bear in mind that the petitioner having approached the Court for relief, it is for him to make out a satisfactory case.

6. The petitioner himself has prepared a statement, showing direct recruitments and promotions effected from the date of introduction of the

recruitment rules, 1971. It consists of 24 names. The said statement shows that the first nine names are all of direct recruits. The first name of the promotee is at serial No.10 of Shri B.D. Dongre who has been accorded 23.6.1976 as the date of appointment to the post of SIO. After Shri Dongre we have four names of direct recruits followed by the name of Shri K.C. Virmani at srl. No.15, a promotee. This is followed by the names of four direct recruits which is followed by the name of Shri Y.S. Bangera at srl.No.20, a promotee. This is followed by one name of direct recruit. The next at srl. No.22 is shown as vacant followed by two other names of direct recruits. The last direct recruit is shown as having been appointed on 31.8.1985. It is necessary to notice that the petitioner is claiming the promotion at slot No.22 which is shown as vacant. The contention of Shri Asthana, learned counsel for the petitioner is that there is no good reason why this statement produced by the petitioner should not be accepted as accurate. We find it difficult to proceed on the basis that it is an accurate statement, firstly, for the reason that it is not possible to assume that the petitioner had accurate information in regard to the factual position in regard to the promotion and direct recruitment from the date

and
of introduction of the rules/ secondly, the respondents have taken the stand that several persons have retired or left service for one reason or the other and, therefore, the statement given by the petitioner cannot be regarded as accurate.

So far as the respondents themselves are concerned, they have been able to produce a statement as per Annexure-R-1 starting from the name of Shri Dongre and ending with the name of Shri Karak.

So far as the list produced by the respondents is concerned, starting from Shri B.D. Dongre/it fairly accords with the list furnished by the petitioner starting from serial No.10 where the name of Shri B.D. Dongre is given. Hence we have no difficulty in ascertaining the position from the name of Shri B.D. Dongre downwards. The statement produced by the petitioner as well as the respondents in this behalf do not help the petitioner in any manner for showing that there was no compliance with the recruitment rules which provide for filling up of the 20% posts by promotion and 80% by direct recruitment. Shri Dongre is the first promotee followed by four direct recruits, whereafter there is the name of a promotee, whereafter there are names of four direct recruits followed by the name of Shri Bangera, a promotee. This is followed

by the names of three direct recruits. One post is shown as vacant. This is also the stand taken by the respondents that the one post of direct recruitment has to be filled up, whereupon the question of filling up the post from the promotional quota would arise. It is not disputed that Shri B.D. Dongre, Shri K.C. Virmani and Shri Y.S. Bangera are all seniors to the petitioner. They have secured their places in accordance with the quota rule. As none of the juniors of the petitioner have been promoted the petitioner cannot have any grievance on that basis. But what Shri Asthana, learned counsel for the petitioner really contends is that the posts earlier to the promotion of Shri Dongre were all given to the direct recruits contrary to the quota rule. If the quota rule was applied for the vacancies that were filled up earlier than the promotion of Shri Dongre, it was submitted that Shri Dongre and others would have secured promotion much earlier and the petitioner's turn also would have arrived by this time. Hence, it is necessary to examine as to whether the petitioner is right in pointing out that the statutory rules have been violated in ignoring the claims of the promotees, falling in the feeder category of Deputy Marketing Development Officer equated as Junior

(17)

Inspecting Officer. In this behalf the argument constructed by the petitioner is on the basis of the statement produced by the petitioner himself which we have already indicated cannot be relied upon as an authentic or correct one. Hence it follows that the petitioner has failed to make out a case that there has been a violation of the statutory rules for the recruitment of the post in question upto the date of appointment of Shri Dongre. Assuming for the sake of arguments that the petitioner is right in saying that the statement produced by him represents the correct state of affairs, we shall examine if the petitioner has made out any case for grant of relief. All the 9 names mentioned in the list produced by the petitioner starting from Shri A.S. Desai and ending with Shri Raja Ram Singh are all shown as direct recruits. If the quota rule was applied the first vacancy should have gone to the promotee followed by four direct recruits and so on. In the statement produced by the petitioner all the 9 names have gone to the direct recruits. It is necessary to note that the date of direct appointment of the first person Shri A.S. Desai is 22.7.72 and the date of direct recruitment of the 9th person ✓ Shri Rajaram Singh is 1.3.1974. We shall now examine

the statutory rules which came into force in December, 1971. We have already pointed out that the feeder category for the post in question as per the 1971 rules was originally the cadre of Marketing Development Officer with three years' service in the grade rendered after appointment thereto on a regular basis. Hence, as per the statutory rules which came into force in December, 1971 only Marketing Development Officer with three years of regular service would have claimed promotion in the 20% quota reserved for them. Admittedly, the petitioner was not holding the post of Marketing Development Officer. He was only holding the post of Deputy Marketing Development Officer from the year 1966 onwards. Hence, the petitioner cannot contend that any of the persons who were Deputy Marketing Development Officer would have claimed promotion in accordance with the 1971 rules. The 1971 rules were subsequently amended and column No.11 prescribing feeder category was substituted in the year 1974. The amendment as already stated came into force on 7.12.1974. The feeder category has been substituted by this amendment and Junior Inspecting Officer (Fruit and Vegetable Preservation) with five years' service has been substituted as the feeder category for promotion to the cadre of SIO. The learned counsel for the petitioner

submitted that in the reply filed it is stated that there was a typographical mistake in the matter of the rules and the petitioner is taking advantage of the same. We cannot go by what has been stated in this behalf in the reply. Whereas in the 1971 rules the feeder category was the Marketing Development Officer with three years of regular service, this was substituted by the 1974 amendment by the feeder category consisting of Junior Inspecting Officers. It is also necessary to point out that as the amendment has got prospective effect it could be in force only from the date of coming into force of the amended rules on 7.12.1974. In other words, the Deputy Marketing Development Officer with five years approved service would claim the right to promotion according to the quota rules only in respect of vacancies occurring from 7.12.1974 - the date on which the petitioner for the first time came into the feeder category. If in the light of this legal position we examine the statement produced by the petitioner it becomes clear that all the first 9 persons shown as directly recruited were also recruited in the vacancies that occurred on and before 1.3.1974. None of the vacancies were filled

up after 1974 rules came into force. Even assuming for the sake of the arguments that the statement produced by the petitioner is accurate having regard to the statutory provisions regulating recruitment of these posts, it is obvious that none of the persons who were in the cadre of Deputy Marketing Development Officer would have claimed promotion to the cadre of Senior Inspecting Officer in respect of the vacancies that occurred before 7.12.1974. As, according to the petitioner's own showing all the 9 direct recruits were appointed before 7.12.1974 he cannot make any grievance about the same. It is also necessary to notice that all the three seniors of the petitioner Shri B.D. Dongre, Shri K.C. Virmani and Shri Y.S. Bangara accepted the promotion given to them in accordance with the list produced by the petitioner himself without a demur. They did not challenge the earlier direct recruits nor did they maintain that they were entitled to any earlier dates of promotion. It is not reasonable to presume that they would have kept quiet without agitating their rights if their rights to promotion were adversely affected by any illegal or improper action of the respondents.

which
✓ This is another circumstance which lends support to

our conclusion that the promotions were made strictly in accordance with the relevant statutory rules that were in force at the relevant point of time. Looked from any angle it is not possible to grant relief to the petitioner.

7. For the reasons stated above this petition fails and is dismissed. No costs.

Dalip Singh
(I.K. Rasgotra)

Member (A)

Malimath

(V.S. Malimath)
Chairman

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