

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1175/87 1987
T.A. No.

DATE OF DECISION 22.3.1988

Shri N.C. Sharma

Petitioner

In person

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. S.P. Mukerji, 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

S.P.M.
(S.P. Mukerji)
Administrative Member

P.K.K.
(P.K. Kartha)
Vice-Chairman (Judl.)

Central Administrative Tribunal
Principal Bench, New Delhi

No. OA-1175/87

Dated: 22.3.1988

Shri N.C. Sharma Applicant

Versus

Union of India & Ors. Respondents

For the Applicant In person

For the Respondents

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri S.P. Mukerji, Administrative Member

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

The applicant, who is presently working as Assistant Director (Programme) in the Office of Registrar General, India, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the promotion of Shri R.L. Talwar, respondent No. 2, as Deputy Director (Programme) in the same office by superseding him.

2. According to the Office of the Registrar General, India and ex officio Census Commissioner for India (Class I and Class II posts for Electronic Data Processing System) Recruitment Rules, 1970, promotion to the post of Senior Programmer is by promotion of Programmer with five years' service in the grade rendered after appointment thereto on a regular basis. The promotion is on the basis of the recommendation by Class I Departmental Promotion Committee and it is a selection post.

3. By a notification issued on 4.2.1975, the posts of Senior Programmer and Programmers were redesignated w.e.f. 1.1.1975 as Deputy Director (Programme) and Assistant Director (Programme) respectively.

2/

4. The applicant and respondent No.2 were initially appointed as Console Operators in 1970 and were promoted on a regular basis as Assistant Director (Programme) w.e.f. 15.10.1980.

5. The case of the applicant is that respondent No.2 had been assigned the duties and functions of routine office administration and that at no point of time during his entire service as Assistant Director (Programme) he was assigned the technical duties of a Programmer. The work of respondent No.2 had, therefore, been assessed not as a Programmer but as a routine administrator in the annual confidential reports recorded on his performance year after year. It was further contended that respondent No.2 did not fall within the zone of choice for promotion inasmuch as he had not worked as Programmer with five years' service in the grade, as required under the relevant recruitment rules.

6. The respondents have stated in their counter affidavit that the applicant and respondent No.2 alone were eligible for consideration for promotion to the post of Deputy Director (Programme) and the Departmental Promotion Committee considered the suitability of both of them. After going through the annual confidential reports of both these officers, the D.P.C. adjudged respondent No.2 as having higher merits than the applicant and, therefore, recommended the name of respondent No.2 for officiating promotion to the post of Deputy Director (Programme) on regular basis.

7. During the hearing of the application, the representative of the respondents placed before us the minutes of the Departmental Promotion Committee from which it could be seen that the D.P.C. had adjudged respondent No.2 as suitable

dwj

for appointment to the higher post in preference to the applicant.

8. As to the nature of the duties performed by the applicant and respondent No.2 which has been raised by the applicant, the respondents have stated in their counter affidavit that both these officers had been and are performing the duties assigned to them by their superior officers in the Data Processing Division in which they are posted and in that matter they have no choice of their own. The word 'Programmer' does not necessarily mean performing the duties of writing programmes for Computer Processing Data but is a designation of the post. Earlier, the feeder post for promotion to the post of Senior Programmer (now Deputy Director (Programme)) was Programmer (now designated as Assistant Director (Programme)). Thus the contention of the applicant that respondent No.2 had never performed duties of Assistant Director (Programme) (earlier designated as Programmer) on regular basis is not correct.

9. The applicant has not filed any rejoinder to controvert what has been stated in the counter-affidavit aforementioned.

10. The legal position applicable to the case is well settled. In Shri Rameshwar Prasad Vs. the State of Bihar and Others reported in 1979(2), SLR 390 at 391, the Supreme Court has observed as follows:-

Ans

".....Article 16 cannot be violated because the petitioner's case for promotion was fully considered by the High Court and the Government and then it was decided not to promote him. All that Article 16 requires is that the case of employees similarly situated and eligible for promotion must be considered before others are promoted. If it was established that the petitioner's case was not considered at all and persons junior to him were promoted without any reason, then something could be said in support of the petitioner's case."

10. There are similar observations in the decisions of the Supreme Court in Union of India & Others Vs. Durga Dass and Others reported in 1978(2) SLR 108 and in the State of U.P. and Another Vs. Ram Gopal Shukla reported in 1981(2) SLR 3 at 7. Reference may also be made to the judgement of this Tribunal in Shri R. Krishnamurthy Vs. Manager, Government of India Press and Another (A.T.R. 1986(1) C.A.T. 273).

11. In the case before us, there is nothing on record to indicate that the selection of respondent No.2 made by the Departmental Promotion Committee was arbitrary. The Departmental Promotion Committee has adjudged the confidential reports of respondent No.2 better than that of the applicant. The Departmental Promotion Committee, therefore, has proceeded purely on the basis of merit and ability while selecting respondent No.2 for the post of Deputy Director (Programme).

12. We have carefully gone through the documents and heard the arguments of both the parties. In the facts and circumstances of the case, there is absolutely no justification for this Tribunal to quash the selection made by the Departmental Promotion Committee.

13. We may incidentally point out that the applicant has drawn our attention to the fact that he is due to retire on 31st March, 1988. He pleaded that in case he is promoted as Deputy Director (Programme), even at this stage for a few days, he will have the satisfaction of having retired from the higher post. To our mind, this appears to be a request worth consideration by the respondents. This could be done by creating a super-numerary post for a short period till the applicant superannuates. Whether this could be done or not is, however, for the respondents to consider sympa-

...5...

thetically, having regard to the seniority and the long years of service put in by the applicant. With these observations the application is rejected. There will be no order as to costs.

S.P. Mukerji
22/3/88
(S.P. Mukerji)

Administrative Member

P.K. Kartha
(P.K. Kartha)
Vice-Chairman (Judl.)
22/3/88