

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO.1261/90

DATE OF DECISION: 14.11.1991.

SHRI S.S. KUNWAR

..... APPLICANT

VERSUS

UNION OF INDIA & ORS.

..... RESPONDENTS

CORAM:-

THE HON'BLE MR. T.S. OBEROI, MEMBER(J)

THE HON'BLE MR. P.C. JAIN, MEMBER(A)

COUNSEL FOR THE APPLICANT : SHRI G.D.GUPTA

COUNSEL FOR THE RESPONDENTS : SHRI P.H. RAMCHANDANI

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. T.S. Oberoi, Member(J)

In this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is serving as Deputy Director, Regional Design & Technical Development Centre, New Delhi, ever since his appointment on the said post, on 20.6.1971, has prayed for the following relief:-

(a) to allow this Original application of the applicant with costs;

(b) to issue appropriate direction or directions, order or orders:

(i) declaring the Rules of 1985 as ultra vires and striking the same to the extent the same do not include the post of the applicant, i.e., Director/Deputy Director, R.D.&T.D.C. as a feeder post for promotion to the post of Regional Director of Handicrafts/Joint Development Commissioner (Handicrafts) Level II;

(ii) further declaring the applicant entitled to

have his post of Director/Deputy Director, have his post of Director/Deputy Director, R.D.&T.D.C. included in the category of feeder posts for promotion to the post of Regional Co-Director of Handicrafts/Joint Development Commissioner (Handicrafts), Level II, and consequently entitled to be promoted as such to the post of Regional Director of Handicrafts/Joint Development Commissioner (Handicrafts), Level II with effect from the date from which the persons junior to him or eventually of other posts of Deputy Directors in various disciplines were promoted to the said post with all consequential benefits;

(iii) directing the respondents to include the post of the applicant in the category of feeder posts for promotion to the post of Regional Director of Handicrafts/Joint Development Commissioner (Handicrafts), Level II, and consequently to promote the applicant as such to the said post of Regional Director of Handicrafts/ Joint Development Commissioner (Handicrafts) with effect from the date from which persons junior to him or eventually of other posts of Deputy Directors in various discipline were promoted with all consequential benefits;

(iv) further directing the respondents to strike the Rules of 1985 to the extent the same do not include the post of applicant, i.e., the post of Deputy Director, R.D. & T.D.C. as a feeder post for

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promotion to the post of Regional Director of Handicrafts/Joint Development Commissioner (Handicrafts), Level-II;

(c) to issue such other director or directions, order or orders as may be deemed fit and proper to meet the ends of justice.

2. Applicant's case briefly is that ever since his appointment in the above mentioned post, on 20.6.1971, after a lapse of about 20 years or so, he has not been given any promotion; rather, though he was appointed as Director, Regional Design & Technical Development Centre, the post was redesignated as Deputy Director in 1987 to suit the administrative inconsistancies, as would be evident from the perusal of Annexure A-2 to the O.A., and thus, in a way, it involved somewhat lowering of the post, in status. The applicant's plea further is that not granting of any promotion, after such a long spell of service, is against various instructions, issued by the Government from time to time, besides several rulings of the Hon'ble Supreme Court, holding that promotions are essential to sustain the interest of a Govt. servant, and non-provision thereof kills the zest and initiative of a government servant, to do his best in the job. His case further is that as he is left with only to serve for a few years more, keeping in view his present age, and therefore, cannot possibly be fitted in, in any other higher post, elsewhere, and so, he has necessarily to look for some promotion, in the present department. By referring to a comparative account of duties, carried out by him, in his

present post, with some of the other posts, which have been made the feeder posts, for promotion to the post of Regional Director (Handicrafts)/Joint Development Commissioner (Handicrafts), five and one in number, respectively, the applicant prayed that, by virtue of the experience gained by him in his present post for a long spell, for as many as nearly 20 years, and with other educational and technical background, he can very-well fit in, in any of the above promotional posts.

He has further pleaded that, in fact, two of the incumbents, holding posts similar to the one held by him, i.e., at Bombay and Bangalore, were promoted, for some time, to the above said promotional posts, and that goes to show that the post held by him, is by no means different from those of other posts, which have been made feeder posts, for the said promotional posts, the nature of the two posts, by and large being the same. The applicant also pointed out an anomalous situation, while submitting that the post of Asstt. Director (Handicrafts), which in a way is a subordinate post to the post held by him, becomes entitled to be considered for the higher promotional post, on being promoted to that of Deputy Director, whereas the post held by him, has been excluded, for being considered for promotion to the post of Regional Director (Handicrafts)/Joint Development Commissioner (Handicrafts), and hence, this leads to discrimination, in his case. The applicant also urged that, as would be evident from the perusal of Annexure P.13 on page 125 of the paper-book, it was even considered at the level of the Development Commissioner (Handicrafts), to bring the post held by the applicant, in the feeder posts for the above said

promotional posts, but the same seems to have been shelved, at the instance of some one interested otherwise, and could not be brought into effect, and for all these grounds, prayed for the reliefs, enumerated as above.

3. The respondents' case, on the other hand, is that this is within the sphere of the Executive Authorities to see as to which posts particularly fit in, for being included as feeder posts, for promotion to the higher posts, looking into the nature of duties, in the respective posts. The respondents also took up the plea that the post held by the applicant is an isolated one, and the nature of duties for the same are quite different from those of the feeder posts, and for that matter, for the promotional posts in question, and hence, the post held by the applicant has been rightly excluded, from the feeder posts, for promotion to the next higher post. It was also urged on behalf of the respondents that the rules for promotion were framed in 1985, whereas the applicant has filed the present O.A. in June, 1990, and thus, the application is time-barred, besides being not warranted, to be granted any relief for other reasons, put forth as above.

4. We have also heard arguments, as addressed by both the sides. The learned counsel for the applicant cited a number of rulings*, in support of his contentions that any good system of

* 1988 Supp.SCC 519 (Raghunath Pd. Singh Vs. U.O.I.)
1990 Supp.SCC 688 (Dr.Ms. O.Z. Hussain Vs. U.O.I.)
1989 Judgement Today (3) P.513 (Council of Scientific & Industrial Research Vs. K.G.S. Bhatt & Another)
O.A.No.2247/89 decided on 1.6.1990 by CAT, Principal Bench, New Delhi. (Arvind Kr. Raizada Vs. U.O.I. & Another)
1(1990) ATLT CAT 445 (Zia-Uddin Vs. Delhi Admn. & Another).
** 1989(11)ATC P.474 (Joginder Singh & Ors. Vs. U.O.I. & Ors.). Judgements Today 1990 (3) P.34 Mallik Ranjan Vs. State of Andhra Pradesh.

service jurisprudence must ensure promotional avenues to its employees, more so, in the present case, when the applicant had put in a considerable spell of service, and is left with barely $2\frac{1}{2}$ or three years to superannuate, and not a single promotion has been given to him, during all this period. The learned counsel for the respondents also pressed into service, certain rulings**, in support of the contentions, urged by him.

5. We have given our careful consideration to the facts and circumstances involved in the present case, besides the rival contentions, as briefly discussed above, together with the rulings cited by the parties, in support of their respective contentions. Needless to say that any good system of government does require for its employees to be provided adequate promotional avenues, to ensure efficiency, and to sustain their interest in the respective jobs. Even in the report of the 4th Pay Commission, certain steps such as introduction of improved span in some pay scales and grant of one stagnation increment, on completion of every two years service, at the maximum of three such increments, were suggested to meet the desired objective. It was also, with the same end in view, suggested as another measure to encadre such isolated posts, as the one held by the applicant, to some regularly encadred posts. Keeping the same in view, and while agreeing to the submissions made by the learned counsel for the respondents that the encadrement of various posts, for purposes of promotion etc., falls strictly within the domain of the Government, and, therefore, it may not be feasible to give any definite directions, on the lines prayed for by the applicant, in this O.A., we leave it to the respondents

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themselves to see to the desirability of considering applicant's case, in the light of the guidelines, discernible from the various rulings of the Hon'ble Supreme Court and also the instructions of the Govt., issued from time to time, in this regard. It is upto them to devise such measures, as they may deem fit, to remove the applicant's grievance in this respect. The application is decided on the above lines, with no order as to costs.

(P.C. JAIN
MEMBER(A)

14.11.91
(T.S. OBEROI)
MEMBER(J)

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