

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1481/90 \ 199
T.A. No.

DATE OF DECISION 31-8-1990

<u>Shri K.L.Rawal</u>	Petitioner Applicant
<u>Shri N.D.Batra,</u>	Advocate for the Petitioner(s) Applicant
Versus	
<u>Union of India through Secy.,</u>	Respondents
<u>Min. of Finance & others</u>	
<u>Shri M.L.Varma,</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN (JUDL.)

The Hon'ble Mr. D.K. CHAKRAVORTY, 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*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble
Mr. D.K.Chakravorty (Administrative Member))

The applicant, who is working as Senior Analyst in the Staff Inspection Unit of the Ministry of Finance (Department of Expenditure), filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that he be given promotion as Joint Director from the date his junior was promoted, and that he be given due seniority and all attendant benefits. The application came up for admission on 23rd August, 1990, when we went through the records of the case and heard the learned counsel for both parties. We feel that the application could be disposed of at the admission stage itself.

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2. The applicant is the senior-most Senior Analyst. He was appointed in that grade on regular basis on 7.12.1974 and has been confirmed on 7-12-1976. He held the post of Joint Director from 2-6-1982 to 9.9.1984 and then reverted for want of a vacancy. He was on deputation on Foreign Service to the Institute of Applied Manpower Research, New Delhi, from 22nd March, 1985 to June, 1990. While he was on deputation, a vacancy of Joint Director arose in the Department on 1.9.1986. Shri N.K.Anand, his immediate junior, was appointed to officiate as Joint Director initially for a period of four months w.e.f. 29.10.1986, or till the post was filled on regular basis, whichever was earlier. Shri Anand, however, has been continuously officiating as Joint Director since then.

3. The applicant is eligible under the relevant recruitment rules for promotion to the post of Joint Director as he had rendered more than 5 years' regular service as Senior Analyst by December, 1979. The Departmental Promotion Committee could not, however, meet for the purpose in view of the stay orders passed in two other applications filed by his colleagues in this Tribunal- OA-149/87 filed by Shri N.K.Anand and Shri Surjit Singh, and OA-293/87 filed by Shri P.Muthuswamy. The stay order passed in OA-149/87 had been vacated in July, 1987, but the stay order passed in the other application was vacated by the Tribunal at the request of the applicant in the said O.A. by order passed by it on 23.8.1990. After the vacation of the stay orders, there is no impediment to the convening of the D.P.C. for the purpose of considering the suitability of eligible persons for promotion as Joint Directors.

4. The learned counsel for the respondents opposed the admission of the present application on the ground that the application is barred by limitation, and that the applicant

has not exhausted the remedies available to him under the relevant service rules. He also drew our attention to an undertaking given by the applicant on 18.11.1986 that he shall seek reversion from his deputation post in case he got regular promotion to the post of Joint Director. He interpreted this undertaking to mean that if it were only an ad hoc promotion, the applicant was not willing to seek reversion.

5. We have carefully gone through the records of the case and have considered the rival contentions. In our opinion, the respondents should have asked the applicant to seek reversion from his deputation post in case he was to be considered for appointment on ad hoc basis as Joint Director in the vacancy which arose in September, 1986. It is not clear why the respondents did not do so especially when the applicant had already held the post of Joint Director for more than 2 years and was the only officer eligible for consideration for regular promotion as Joint Director from December, 1979 onwards while his immediate junior, Shri Anand had barely put in 17 months regular service as Senior Analyst. Had they asked him to revert and had the applicant sought to continue in the deputation post, though he had no right to do so, the prejudice would have been solely due to the conscious decision taken by him. In such an eventuality, the respondents would not have been faulted for having given the chance of officiation to the junior of the applicant.

6. We are not impressed by the preliminary objections raised by the learned counsel for the respondents. The applicant had made representations to the respondents against his non-promotion as Joint Director. In reply to

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his application dated 3.11.1988, the respondents informed him by their letter dated 18.1.1989, which is at Annexure A-1 to the application, p.9 of the paper-book, that his request for promotion could not be acceded to in view of the stay order passed by the Tribunal. As already pointed out, the stay order passed in the application filed by Shri N.K. Anand & Another, was vacated by order dated 24-7-1987 and the stay order passed in the application filed by Shri Muthuswamy was vacated on 23-8.1990. It is, however, observed that Shri Muthuswamy claimed seniority only over S/Shri Anand and Surjit Singh and had not impleaded Shri K.L.Rawal as a respondent, who was his senior by more than 10 years.

7. In the conspectus of the facts and circumstances of the case, the application is disposed of at the admission stage itself with the following orders and directions:-

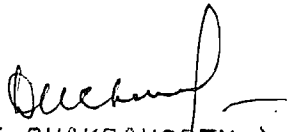
- (i) The respondents shall consider the suitability of the applicant for promotion as Joint Director in the vacancies which arose in 1986 by convening a Departmental Promotion Committee as expeditiously as possible, but in no event, later than three months from the date of receipt of this order.
- (ii) In case, the applicant is found suitable by the D.P.C. for promotion, he shall be given notional promotion from the date his immediate junior was given ad hoc promotion w.e.f. 29.10.1986.
- (iii) In the facts and circumstances of the case, the applicant would not be entitled to arrears of pay and allowances. He would, however, be entitled to fixation of his pay on the basis of such promotion.

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(iv) He would also be entitled to reckon his seniority from the due date.

(v) There will be no order as to costs.


(D.K.CHAKRAVORTY)
ADMINISTRATIVE MEMBER

31-8-1990


3/11/90
(P.K.KARTHA)
VICE CHAIRMAN(JUDL.)