

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1605/90
T.A. No.

199

DATE OF DECISION 23.8.1991

Shri H.S. Kalra

~~x~~Petitioner Applicant

Shri G.B. Singh

Advocate for the ~~x~~Petitioner(s) Applicant

Versus

U.O.I. through Secy. (Textiles)
and Another

Respondent

Shri P.H. Ramchandani

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. P.K. Kartha, Vice-Chairman)

The applicant, who is working as Deputy Director
(Metal) in the Office of the Development Commissioner
(Handicrafts), Ministry of Textiles, filed this applica-
tion under Section 19 of the Administrative Tribunals
Act, 1985, seeking the following reliefs:-

- (i) The long and uninterrupted service of
the applicant in the post of Deputy
Director from 8.4.1983 onwards be
declared as a regular service in that
post; and

- (ii) direct the respondents to convene a review D.P.C. of 4.4.1990 for selection to the post of Regional Directors and consider the case of applicant along with others.

2. The applicant joined the Office of Development Commissioner (Handicrafts) as Assistant Director (Technology), Grade I in the pay-scale of Rs.400-950 (subsequently revised to Rs.700-1300) on 26.2.1974, initially on ad hoc basis and was posted in the Scheme for Technological Improvement in Artmetalwares Crafts, Moradabad. His services were regularised with effect from 23.1.1976 on selection by the U.P.S.C. and he was posted in the Technical Wing of Regional Design and Technical Development Centre, 43, Okhla Industrial Estates, New Delhi. The respondents promoted three Assistant Directors junior to him as Deputy Directors within 2-4 years of their service as Deputy Director whereas they promoted him on ad hoc basis only on 8.4.1983. He has alleged that his juniors were regularised in the post of Deputy Director quickly but he was kept on ad hoc basis for more than seven years.

3. The post of Deputy Director (Production & Wood Technology), which the applicant was holding, was re-designated as Deputy Director (Metal) w.e.f. 15.10.1985 and he continued to function on it.

4. The next post of promotion for the applicant is that of Regional Director of Handicrafts in the pay-scale of Rs.3700-125-4700-150-5000. He would become eligible for promotion after putting in five years' regular service in the post of Deputy Director. According to the applicant, the reason for keeping him in ad hoc capacity for so long a period, is failure of the Government to finalise the Recruitment Rules relating to the post of Deputy Director (P.&W.T.)/(Metal). On 4.4.1990, when the D.P.C. met to consider the promotions to the posts of Regional Directors, while the persons who were junior to the applicant as Assistant Director (Grade I) were also considered, and one of them, Shri C.C. Aiyappa, had since been posted as Regional Director in regular capacity, vide Development Commissioner (Handicrafts) order No.1/14/89-Admn.I dated 23.4.1990 (Annexure I), the case of the applicant was not considered by the D.P.C. at all.

5. The applicant has contended that non-consideration of his case ~~by the D.P.C.~~ for promotion to the post of Regional Director by the aforesaid D.P.C. which met on 4.4.1990, has resulted in violation of his fundamental rights under Articles 14 and 16(1) of the Constitution and resulted in severe damage to his service prospects especially when he is due to retire within less than three and a half years.

6. The respondents have stated in their counter-affidavit that ~~since~~^{as} the post of Deputy Director (Metal) presently held by the applicant on ad hoc basis is an isolated post like his regular post of Assistant Director (Tech.) (Mech. Engineering) and as such, he cannot claim seniority in comparison with other Assistant Directors/ Deputy Directors in various other cadres/disciplines.

7. We have gone through the records of the case and have considered the rival contentions. The learned counsel for the applicant has relied upon several judicial pronouncements^{*} and we have duly considered them. There are six posts of Regional Director of Handicrafts and one post of Joint Development Commissioner (Handicrafts), Level II in the pay-scale of Rs.3700-5000 (revised). As per the Recruitment Rules notified in 1985, 80% of these posts are to be filled by the method of promotion failing which by transfer on deputation basis. ~~xxxx~~^{as} In accordance with the provisions contained in the Recruitment Rules, Deputy Directors in the feeder cadres with 5 years' regular service in the respective grades only are eligible for being considered for promotion to the grade of Regional Directors of Handicrafts. The following posts in the grade of Deputy Directors in the pay-scale of Rs.3000-4500 (revised) are in the feeder cadre for promotion to the grade of Regional Director of Handi-

*Decisions relied upon by the Applicant:

AIR 1991 SC 518; 1989 Supp. (1) SCC 194; AIR 1990 SC 1607; ATLT 1990 (1) 31; 1984 (4) SCC 329; ATR 1988 C.A.T.1.

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crafts:-

S.No.	Name of the post	Existing strength	Remarks
1.	2.	3.	4.
1.	Deputy Director (Handicrafts)	9	The post of the Deputy Director (Credit Fund), Deputy Director (Marketing), Deputy Director (Export Promotion), Deputy Director (Exhibition) and Deputy Directors in Regional Offices of the Development Commissioner (Handicrafts) have been redesignated and merged to form the cadre of Dy. Director (Handicrafts).
2.	Dy. Director (Carpets)	1	-
3.	Dy. Director (Tex. Printing)	1	The post has since been redesignated as Dy. Director (Tex.)
4.	Dy. Director (Credit Fund)	1	The post has been redesignated as Deputy Director (Institutional Finance).
5.	Deputy Director (Cooperative)	1	Since abolished.
6.	Publicity Officer	1	-do-
7.	Dy. Director (Prod. & Wood Tech.)	1	The post has since been redesignated as Dy. Director (Metal).
Total:		15-2=13	

8. A meeting of the Departmental Promotion Committee was

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convened by the U.P.S.C. on 4.4.1990 to consider the case of promotion of the Deputy Directors in the feeder cadre to 5 posts of Regional Director. Five officers in the feeder cadre who had the required length of five years' regular service, were considered for promotion. The applicant was not considered as he was an ad hoc Deputy Director (Metal) and did not fulfil the required eligibility criterion provided in the Recruitment Rules. The applicant was initially appointed as Deputy Director (Production & Wood Technology) w.e.f. 8.4.1983 (Annexure IV to the application). The post of Deputy Director (Production & Wood Technology) was subsequently redesignated as Deputy Director (Metal) w.e.f. 15.10.1985 and the applicant was appointed as Deputy Director (Metal) on ad hoc basis w.e.f. 15.10.1985 (Annexure VI to the application). As per the Recruitment Rules, ad hoc service in the feeder post does not count for promotion to the grade of Regional Director of Handicrafts. As such, the applicant, being ad hoc in the grade of Deputy Director (Metal), was not considered eligible to be considered for promotion to the grade of Regional Director of Handicrafts. The applicant held the post of Assistant Director (Technical) (Mech. Engineering) in the pay-scale of Rs.2200-4000 (revised), which is in the feeder cadre for promotion to the grade of Deputy Director (Metal) in the pay-scale of Rs.3000-4500 (revised). The

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other officers held posts of Assistant Director in the pay-scale of Rs.2200-4000/-, 2000-3500 (revised) in other disciplines and were thus eligible for promotion to the grade of Deputy Director in discipline quite distinct from that for the post of Deputy Director (Metal).

9. The applicant was appointed to the post of Deputy Director (Production & Wood Tech.) in the pay-scale of Rs.3000-4500 (revised) on ad hoc basis w.e.f. 8.4.1983 (Annexure IV to the application). The post of the Deputy Director (Production & Wood Technology) was subsequently redesignated as Deputy Director (Metal) in the same pay-scale w.e.f. 15.10.1985 and the applicant was appointed as Deputy Director (Metal) on ad hoc basis w.e.f. 15.10.85 (Annexure VI to the application). His ad hoc appointments, first to the post of Deputy Director (Production & Wood Technology) w.e.f. 8.4.1983 and subsequently, to the post of Deputy Director (Metal) w.e.f. 15.10.1985, was subject to the condition that the ad hoc service will not confer on him any preferential treatment/claims regarding his appointment on regular basis, seniority and confirmation to the same post and his eligibility for promotion to the next higher grade.

10. The Recruitment Rules for the post of Deputy Director (Metal) were notified on 6.7.1990. As per the Recruitment Rules, the post of Deputy Director (Metal)

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is to be filled in by the method of promotion, failing which by transfer on deputation and failing both, by direct recruitment. The post of Assistant Director (Tech.) (Mech. Engineering) held by the applicant, is in the feeder cadre for promotion to the post of Deputy Director (Metal). As such, the case of regular promotion of the applicant to the grade of Deputy Director (Metal) had been sent to the U.P.S.C. on 10.9.1990 for considering the case of the Applicant for regular promotion to the grade of Deputy Director (Metal).

11. The post of Deputy Director (Metal) is one of the feeder posts for promotion to the grade of Regional Director of Handicrafts and Development Commissioner (Handicrafts) Level II in the pay-scale of Rs.3700-5000 (revised).

12. During the hearing of the case, the learned counsel for the applicant brought to our notice that the applicant has been appointed as Deputy Director (Metal) on regular basis w.e.f. 11.12.1990, vide notification dated 27th December, 1990. No doubt, there had been delay in making the rules relating to the recruitment to the post of Deputy Director (Metal). Whereas the Recruitment Rules had been notified in the case of other disciplines in 1985, the Recruitment Rules for the post of Deputy Director (Metal)

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were notified only in 1990. The Recruitment Rules were made for the post of Deputy Director (Metal) with a view to providing promotional avenues to the incumbents of the post of Assistant Director (Tech.) (Mech. Engineering), which was the substantive post held by the applicant.

The delay in the making of the rules for the post of Deputy Director has caused some prejudice to the applicant as Assistant Directors in other disciplines were promoted as Deputy Directors and they had put in the requisite length of service to become eligible for the post of Regional Director, while the applicant was initially appointed as Deputy Director (Production & Wood Technology) on ad hoc basis in 1983 and continued to hold that post until he was appointed on a regular basis w.e.f. 11.12.1990. In between, the designation of Deputy Director (Production & Wood Technology) was changed to Deputy Director (Metal) in 1985.

13. The question arises whether the applicant would be entitled to ~~have~~[✓] have been regularly appointed to the post of Deputy Director (Metal) w.e.f. the date he was appointed to the post of Deputy Director (Production and Wood Tech.) w.e.f. 8.4.1983. In other words, whether the regularisation of his appointment to the post of Deputy Director (Metal) on 11.12.1990, would relate back to 8.4.1983, when he was

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appointed on ad hoc basis to the post of Deputy Director (Production & Wood Technology).

14. The Supreme Court has held that if the initial appointment is not made by following the procedure laid down by the Rules, but the appointee continues in the post uninterruptedly till the regularisation of his services in accordance with the rules, the period of officiating service will be counted (vide Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra, 1990 (2) S.C.C. 715 at 745). Therefore, in our opinion, the applicant would be entitled to seniority from the date of his appointment on ad hoc basis to the post of Deputy Director (Production & Wood Technology) in 1983. The Recruitment Rules of 1985 stipulate that a Deputy Director with five years' regular service in the respective grade, is eligible for promotion to the post of Regional Director of Handicrafts. In view of the inordinate delay in notifying the Recruitment Rules relating to the post of Deputy Director (Metal), the applicant would fulfil this eligibility criterion only in December, 1995, though he has worked on this post since 1983 on ad hoc basis. The applicant would have retired on attaining the age of superannuation by that time. In our opinion, this is a case of genuine hardship. The delay involved has also jeopardised his legitimate expectations.

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15. After careful consideration, we are of the opinion that this is a fit case in which the respondents should relax the rules by invoking Rule 5 of the Recruitment Rules and consider the applicant for promotion to the post of Regional Director (Handicrafts), waiving the requirement of having put in five years' regular service in the grade of Deputy Director (Metal).

16. The application is, therefore, disposed of with the direction to the respondents to consider the case of the applicant for promotion to the post of Regional Director (Handicrafts) or in an equivalent post in the next vacancy by relaxing the rules as directed above.

There will be no order as to costs.

D. K. Chakravorty
(D.K. Chakravorty)
Administrative Member

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