

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1862/90
T.A. No.

199

DATE OF DECISION 13.12.1991

<u>Shri K.B.K.S. Sawhney</u>	<u>Petitioner Applicant</u>
<u>Shri R.P. Oberoi</u>	Advocate for the Petitioner(s) Applicant
Versus	
<u>Union of India through Secy.,</u>	<u>Respondent</u>
<u>Miny. of Defence & Another</u>	
<u>Shri P.P. Khurana</u>	Advocate for the Respondent(s)

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

The Hon'ble Mr. B.N. Dhoundiyal, 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, while working as an Assistant on ad hoc basis, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:-

- (i) The impugned order - Office Memorandum No. 4228/89-D(EST-I GP II) dated 16.4.90 - issued by Respondent No. 2 be quashed.
- (ii) The respondents be directed to modify their order No. A/32015/1/86-D(EST-I GP II) dated 28.6.1990 so far it relates to the applicant

(2)

and to grant him promotion to the grade of Assistant initially on ad hoc basis w.e.f. 16.4.1984 and on long-term basis w.e.f. 25.4.1986, the dates from which his juniors were given such promotions.

- (iii) The applicant be granted the consequential benefits in the matter of seniority, pay and allowances as a result of retrospective promotions as per (ii) above.
- (iv) The applicant ^a be awarded interest at the rate of 18% per annum on the arrears payable as a result of (iii) above from the date the amount shall become due to the actual date of payment.
- (v) Any other relief which this Hon'ble Tribunal may deem appropriate, just, fair and equitable on the facts and circumstances of the case.
- (vi) The applicant be awarded the cost of this application.

2. On 14.9.1990, the Tribunal passed an interim order directing that status quo as regards the continuance of the applicant in the post of Assistant be maintained and it was made absolute on 20.3.1991.

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3. The case of the applicant is that he joined in the Central Secretariat/Service as L.D.C. in 1964. He was promoted as U.D.C. in an officiating capacity in 1977 and was included in the Select List of UDCs of the Ministry of Defence w.e.f. 7.4.1980. He was deputed to an ex cadre post of Store Keeper in Section D (Medals) of DMRF of the Ministry of Defence for a period of three years w.e.f. 14.10.1983. The period of deputation was to expire on 13.10.1986.

4. On 5.5.1984, the respondents informed the applicant that he was eligible for appointment as temporary Assistant on long-term basis but due to non-availability of requisite number of long-term vacancies of Assistants in the Ministry of Defence, it would not be possible to appoint him as Assistant on long-term basis in Defence Ministry and he was asked to intimate his willingness or otherwise about his being nominated to any other cadre for temporary appointment.

5. In his reply dated 16.5.1984, the applicant informed the respondents that he was not interested in his nomination to another cadre for temporary promotion and would like to be considered for appointment as Assistant on long-term basis in the Ministry of Defence as and when a vacancy arises.

6. On 6.10.1986, the respondents again enquired from the applicant about his willingness or otherwise for

nomination to another cadre for temporary appointment to Assistant's grade on a similar plea as stated in their earlier communication of 5.5.1984, requiring a reply by 15.10.1986. The applicant informed the respondents that he was not interested to go out of the Ministry of Defence. He also stated in his reply that he had completed his deputation period on 13.10.1986 and sought reversion as U.D.C. and promotion as Assistant as his juniors were already officiating as Assistants and according to information available, his name was at the top of the list for regular promotions to the Assistant's grade.

7. On 5.12.1986, the respondents ^{promoting nine UDCs} issued an order of the C.S.C.S. Cadre of the Ministry of Defence on long-term basis w.e.f. various dates between the period 25.4.1986 to 1.7.1986. All of them were junior to the applicant. They had earlier been promoted on ad hoc basis in 1984. The applicant has stated that these promotions, though stated to be ad hoc, were apparently against long-term vacancies as the said officials continued in the promotional post continuously and uninterruptedly till their appointments on long-term basis.

8. A D.P.C. was held on 25.4.1984 which recommended inclusion of the name of the applicant in the Select

panel. He has contended ^{that} ~~as~~ he was away on deputation at that time, either he should have been repatriated to his parent cadre for promotion, or he should have been promoted while holding the deputation post giving him the benefit of N.B.R. under F.R.30.

9. According to the applicant, he was continued in the deputation post in spite of his requests for reversion to the parent cadre after expiry of the normal deputation period of 3 years on 13.10.1986. Orders for his reversion were issued on 18.12.1986 but due to non-availability of the candidate selected as Store Keeper in Section D(Model), he was continued in the deputation post. On 10.9.1987, he once again requested for his reversion to his parent cadre, but was not relieved. He was finally relieved from deputation post on 13.10.1988, when he was posted as U.D.C.

10. On 10.11.1986, the applicant was served with a charge-sheet on the allegation that while availing the facility of leave travel concession for the block years 1978-81, he submitted a false claim without actually visiting Kanyakumari. The departmental proceedings were held against him under Rule 14 of C.C.S.(CCA) Rules, 1965. The disciplinary authority, by order dated 4.5.88, imposed on him the penalty of stoppage of increments of

pay for a period of two years without cumulative effect and recovery of the amount drawn on account of his L.T.C. The applicant has contended that when he had been duly approved for promotion by the D.P.C. at its meeting held on 25.4.1984 and regular vacancies had occurred and were in existence, there was no justifiable reason for denying him promotion to the grade of Assistant.

11. The applicant has been promoted as Assistant on ad hoc basis w.e.f. 22.6.1990 to 30.9.1990 or till such time the regular nominee becomes available. He is aggrieved by the fact that he has been given ad hoc promotion for a period of nearly 3 months, whereas a number of his juniors have been working in the promotional post of Assistant w.e.f. 16.4.1984 and in which post they were subsequently made regular on varying dates commencing from 25.4.1986.

12. The respondents have denied the above allegations. They have stated in their counter-affidavit that the applicant had initially become eligible for promotion as Assistant on ad hoc basis in December, 1983. At that time, 13 UDCs including 4 officials junior to the applicant, were promoted to officiate as Assistants on ad hoc basis from 17.12.1983 to 31.3.1984. The ad hoc appointments were made against purely short-term vacancies caused by leave, short-term deputation, training, etc. Since the

applicant was working in a deputation post, he was not considered for ad hoc promotion against the short-term vacancies.

13. According to the respondents, the first chance of the applicant for promotion as Assistant on long-term basis (in order of seniority and on the availability of vacancy) came in December, 1986 when his juniors were promoted. However, he was not considered for promotion because disciplinary proceedings had been initiated against him for submitting false L.T.C. claim and charge-sheet was served upon him on 10.11.1986. The disciplinary proceedings were concluded on 4th May, 1988 with the imposition of penalty of "stoppage of increments of pay for a period of 2 years without cumulative effect and recovery of amount paid to the applicant on account of his L.T.C. claims." The Department of Personnel and Training had advised them that since the penalty proceedings against the applicant had ended in the imposition of a penalty, he cannot be promoted on the basis of the recommendations of Departmental Promotion Committee of 1984 even after the penalty period was over. They advised that he need to be considered for promotion along with others by the D.P.C., if any, held after conclusion of the proceedings. The Committee, while considering his fitness, was required to

take into account the overall record including the circumstances leading to penalty. If found fit, actual promotion ^{could} be given only after the expiry of the period of penalty. They also ruled that 'Next Below Rule' benefits cannot be given against ad hoc/long-term promotions.

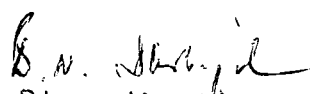
14. The respondents have clarified that the promotion of the applicant as Assistant on ad hoc basis from 22.6.1990 to 30.9.1990 on account of the availability of further short-term vacancies. The applicant has been granted further extension to officiate as Assistant on ad hoc basis upto 31st December, 1990 and subsequently, upto 30.4.1991 or till such time the regular nominees become available.

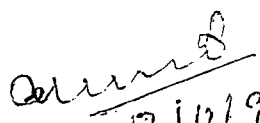
15. We have gone through the records of the case carefully and have considered the rival contentions. The applicant was on deputation from 14.10.1983 in the scale of pay of Rs.425-600 in an ex cadre post and he was drawing deputation allowance. He was to complete the fourth year of his deputation on 13.10.1987. No deputation allowance was admissible beyond the fourth year and he made his representation on 10.9.1987 for his reversion to the parent cadre.

16. By the time the turn of the applicant came for promotion as Assistant on long-term basis in December,

1986, he had already been charge-sheeted on 10.11.1986 under Rule 14 of the C.C.S.(CCA) Rules, 1986. There is no legal infirmity in the stand of the respondents that he could not have been promoted as Assistant in view of the pending disciplinary proceedings. There is nothing on record to indicate that any one junior to him has been promoted as Assistant on a regular basis after the penalty period was over. He is also not entitled to the Next Below Rule benefit against ad hoc/long-term promotion, short of regular promotions.

17. In the facts and circumstances, we see no merit in the reliefs sought by the applicant. By virtue of the interim order passed by the Tribunal, the applicant has been directed to be continued in the post of Assistant. We direct the respondents to continue him in the post of Assistant on ad hoc basis so long as a vacancy exists and ~~that~~ he shall not be replaced by any person junior to him. He would also be entitled to be considered for regular promotion in his turn in accordance with the rules. The application is disposed of accordingly. There will be no order as to costs.


(B.N. Dhoundiyal) 17/4/91
Administrative Member


13/12/91
(P.K. Kartha)
Vice-Chairman(Judl.)