

CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. NO. 2059/90

(21)

New Delhi this the ^{5th} ~~6~~ day of July, 1996.

Hon'ble Shri A.V. Haridasan, Vice Chairman(J).

Hon'ble Shri R.K. Ahooja, Member(A).

Shri Mahinder Singh Nijhawan,
S/o Shri N.S. Nijhawan,
R/o F-11, Green Park Extension,
New Delhi.

...Applicant.

By Advocate Shri Shyam Moorjani.

Versus

1. Delhi Administration,
through its
Chief Secretary,
Sham Nath Marg,
Delhi.

2. The Secretary (Services),
Delhi Administration,
Sham Nath Marg,
Delhi.

3. Union of India through
The Secretary,
Ministry of Finance,
Department of Expenditure,
North Block,
New Delhi.

...Respondents.

By Advocate ~~Mrs.~~ Manisha, proxy for Mrs. Avnish Ahlawat.

O R D E R

Hon'ble Shri R.K. Ahooja, Member(A).

The applicant, who was recruited as an Assistant Accountant in the Delhi Administration w.e.f. 18.12.1967, is aggrieved that despite putting in 22 years of service, he has not been given even a single promotion till date. The application was originally filed in October, 1990.

21

22

2. The case of the applicant in brief is that he joined the service as an Assistant Accountant with Delhi Administration on 18.12.1967. The said post was classified as Class-III (Ministerial). Thereafter, he was transferred to the Labour Department in 1978 and to the Education Department in 1980 as other ministerial cadre officials. In the year 1988, the first promotion list of 1967 batch of Grade-III was issued, but the name of the applicant did not figure in the said list. He was assured that his name would find a mention in the supplementary list but when the second promotion list also came in 1990, his name was again missing. The applicant submits that when he made representations against the omission of his name, he was informed that since he was an Assistant Accountant, he belonged to an entirely separate cadre and, therefore, he was not considered for promotion in the ministerial cadre. He further states that at that time he came to know that in the year 1977 vide O.M. dated 4.6.1977, the Ministry of Finance, had directed the Delhi Administration to meet the temporary shortage in the cadre of Junior Accounts Officers by ad hoc/officiating promotions from amongst the Senior/Junior Accountants. He alleges that despite the fact that he was eligible to such a promotion to the post of Junior Accounts Officer, he was not considered nor was his case considered when in the year 1981 the respondents established the Subordinate Accounts Service.

2.

stay orders issued in O.A. 910/90. The respondents further state that since the applicant is eligible to be promoted from Grade-III to Grade-II as and when the stay order is vacated, his case would be considered.

4. We have heard the learned counsel on both sides. Shri Moorjani, learned counsel for the applicant, has argued that the applicant had the necessary experience and was fully qualified to be promoted as Junior Accounts Officer in 1977 even though such an appointment was on an ad hoc basis. Officials who have been so appointed had received further promotions on the account side and, therefore, the applicant should be granted relief by giving those promotions. The applicant would also be entitled to the arrears of pay as well as fixation of his retiral benefits on the basis of such promotions.

4. Ms Manisha, learned proxy counsel for Mrs Avnish Ahlawat arguing for the respondents, submitted that as per the Govt. instructions then issued, the applicant was not even eligible to be considered in 1977 for the post of Junior Accounts Officer. Even otherwise the question of promotion in 1977 could not be raised in 1990. As regards the promotion in the ministerial cadre, she has submitted that the applicant could not be promoted because his name did not figure in the seniority list and the applicant did not give any representation for the non-inclusion of his name even though a tentative Seniority list had been issued earlier wherein

2

The applicant further alleges that in the result he was neither considered for promotion on the account side nor was he considered for promotion in the ministerial cadre. He, therefore, prays that the Tribunal should direct the respondents to promote him first to the post of Junior Accounts Officer w.e.f. 1977 and to give him all further promotions /till the time of his voluntary retirement and to fix his retiral benefits, including pension accordingly.

3. The respondents in their reply state that although the applicant was designated as an Assistant Accountant ~~xxxxxx~~ on his initial appointment, his post was classified as Grade-III (Ministerial), that is UDC, and in that capacity he was transferred to various departments. The incumbents holding the post of UDC are differently designated in such different departments /as Cashier or Junior Accountant in the Pay and Accounts Offices. The UDCs belonging to the batch of 1967 were considered for promotion in the year 1988 but since the name of the applicant did not figure in the seniority list, he could not be promoted as such. The respondents allege that the applicant never represented regarding his non-inclusion /till April, 1990. Therefore, he could not be promoted to the next higher post on 14.2.1990 when the second list was issued and Grade-III officials of general category were considered upto 1972 appointments. Thereafter, his case could not be considered on account of

d

27

also the name of the applicant had been omitted. The learned proxy counsel vehemently argued on the point that since the relief claimed by the applicant relates only to his appointment as Junior Accounts Officer for which no case exists, the application deserves to be rejected without further consideration.

5. Having given consideration to the pleadings on records and the arguments on both sides, we are of the opinion that the case of the applicant has merit. While it is correct that the applicant was given the post of Assistant Accountant on his initial entry into the Govt. service, it is admitted on both sides that the said post was classified as Grade-III (Ministerial). Thus, the promotions of the applicant could come only in the ministerial cadre. The applicant claims that he could have been considered for the post of Junior Accounts Officer in 1977. The possibility of his consideration for such a post does not give him a right to be so appointed. The Govt. instructions were that in view of the shortage of accounts staff, the Delhi Administration could consider others with accounts experience for appointment as Junior Accounts Officer but only on an ad hoc and temporary basis. It could not, therefore, be said that all those who had any accounts experience became entitled to be promoted as Junior Accounts Officer.

02

26

The initial appointment of the applicant was in Grade-III (Ministerial) cadre and if he had any right, it was for promotion in his own ministerial cadre. The respondents submitted that he should have been considered for the first promotion in 1988 but this was not done because his name did not figure in the seniority list. We do not agree with the contention of the learned proxy counsel for the respondents that the applicant should have represented against his non-inclusion in the seniority list. The responsibility for maintaining the seniority list is that of the employer. The applicant could have been called upon to represent in case his seniority was not properly fixed but his name had to figure somewhere and the respondents could not take the line of defence that since he did not represent, his name did not exist in the seniority list. It is strange that despite his representations, this omission was not corrected and he was not included in the second promotion list of 1990. Be that as it may, the applicant had clearly a right to be considered for promotion in 1988 and to all subsequent promotions in the order of his seniority in terms of his date of appointment. We are, therefore, of the view that the respondents should consider the case of the applicant for promotion in the ministerial cadre from the same date when his next junior was considered.

No



6. A question which might be considered in moulding the relief concerns the payment of arrears of pay in case of promotion of the applicant. Our attention has been drawn by Shri Moorjani to a copy of the letter written by the Principal, Govt. Boys Sr. Secondary School, Srinivaspuri, New Delhi, the controlling officer of the applicant, at that time (Annexure A-IX). This letter is dated 19.8.1988 and is addressed to The Directorate of Education. The Principal after giving a reference to the Directorate's letter of 11.8.1988 on the subject of promotion from Grade-III to Grade-II has stated that he is enclosing the information in the prescribed proforma in respect of the applicant who was working in Grade-III in his school. This shows that the applicant's particulars had been forwarded to the concerned Directorate and, therefore, the applicant cannot be in any way held responsible for any omission resulting in his non-inclusion in the seniority list and consequently of his promotion.

7. In the conspectus of facts and circumstances of the case, we dispose of the application (OA) with the following directions:

(a) The respondents will consider and finalise the case of promotion of the applicant to Grade-II as also to the higher grades of ministerial cadre from the date any junior to the applicant was so promoted, within a period of three months of the receipt of a copy of this order.

28

(b) The respondents will fix the applicant's pay in the higher post, work out the arrears of pay due to the applicant and pay the same to the applicant within a period of three months thereafter.

(c) The respondents will also redetermine the pensionary benefits of the applicant accordingly and pay to him the arrears thereof within the said three months.

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

R.K. Ahooja
(R.K. Ahooja)
Member (A)

A. V. Haridasan
(A.V. Haridasan)
Vice Chairman (J)

'SRD'