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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 2211/90

New Delhi this the 24th day of October, 1994.

Shri N.V. Krishnan, Vice Chairman(A).

Smt. Lakshmi Swaminathan, Member(J).

N.P. Garg,
S/o Late Shri Kabir Chandra,
R/o A-67, Lajpat Nagar,
Sahibabad,
Distt. Ghaziabad (UP). .Applicant.

Applicant in person.

Versus

1. Union of India through
The Secretary,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi.
2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi.
3. Shri P.I. Bakshi,
Technical Officer/
Security Officer,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi. .Respondents.

By Advocate Shri M.K. Gupta.

ORDER (ORAL)

Shri N.V. Krishnan.

The applicant is aggrieved by his not being given promotion as Assistant Technical Officer (ATO) while it has been given to the third respondent, Shri P.I. Bakshi, alleged to be his junior. In the circumstances, he has prayed for a direction to the respondents to promote him "as Assistant Technical Officer from 5.8.1979 and as Assistant Director from 5.8.1988, i.e. the date on which his immediate juniors were promoted

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and/or the applicant was due according to his seniority". He also seeks consequential benefits with interest.

2. The brief facts are that the applicant, who was working under the second respondent, states that he was promoted as Assistant Central Intelligence Officer Grade-I (ACIO-I) (W/T) by the memo dated 7.7.1971 of the respondents. By the same order the third respondent was also promoted. A copy of the memo dated 7.7.1971 has been produced at Annexure A-14 but it has been extracted as follows in the O.A:

".....The undermentioned ACIOs-II (WT) (whereas the applicant was appointed as ACIO-II (Tech), have been approved for officiating promotion to the rank of ACIO-I (WT). They are transferred from and posted to the places as mentioned against their names.....

They should pass the Advance Maintenance Course Examination at the first available opportunity after their promotion as ACIO-I (WT). If they fail to pass the AMC in the first attempt, they will be reverted to the post of ACIO-II (W/T).

S.No.	Name	Rank	Present place of posting/ transferred from	Place of posting on promotion posted to.
1.	Shri N.P. Garg	ACIO-II (WT)	Trg.Centre Nowgong.	Ladakh W/T Grid.
2.	" Prem Iqbal Bakshi.	-do-	IB.	DTL IB Hqrs.
3.	" N. Murugappan	-do-	Mizo Hills W/T, SIB Shillong.	Mizo Hills W/T, SIB Shillong."

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In the cadre of ACIO-I (W/T), the third respondent, P.I. Bakshi was shown as his junior. In the seniority list of ACIO-I (W/T) circulated by the third respondent on 12.5.1975, the applicant is shown as senior to third respondent and the latter is shown as working in ISRO as Assistant Engineer from 1974. That position continued till 1979. In the seniority list issued on 17.11.1979, it was also shown that the third respondent had been confirmed as ACIO-I from 22.12.1973 while the applicant was confirmed in 1980 only.

3. The applicant states that he came to know only subsequently, some time in 1989, that the third respondent has been promoted as ATO, though junior to him. He alleges that favouritism has been shown to him. He has thereafter filed this O.A. and claimed the reliefs mentioned above.

4. The respondents 1 and 2 (i.e. I.B.) have filed a reply. The important points made are as follows:

4.1. In regard to the appointment of the applicant as ACIO-I, the I.B. has stated as under:

"...the applicant joined the I.B. as Teleprinter Operator in 1960 and was appointed as ACIO-II (Tech) in August, 1968. Initially, all officers selected to work in the communications wing of I.B. as ACIO-II, were offered appointment as ACIO-II (Tech). Subsequently, those working in the Communication Wing were brought to a separate cadre known as WT cadre, and those working in the Technical Lab were brought under Technical Cadre, which was made distinct from that of WT Cadre. The applicant who had all along been working in the communication wing was grouped with WT officers. He was

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promoted as ACIO-I (WT) on 05.8.1971 on the condition that he should pass A.M.C. in the first available opportunity. He, however, passed the AMC only in 1974".

4.2. In regard to the third respondent, the reply of the I.B. is as under:

"...In reply to para 4.3, it is submitted that the respondent No. 3, had initially joined IB in the Common Cadre of ACIO-II (Tech). After bifurcation of Cadres into WT and Technical he appeared in the test for direct recruitment for the post of ACIO-I(Tech) and, on being declared successful, took over as ACIO-I (Tech) on 12.07.71. As such, he did not avail of the promotion to the rank of ACIO-I (W/T) offered in July 1971".

4.3. In regard to the promotion of Respondent No. 3 as ATO, it is stated as under:

"ACIO-I (Tech) and ACIO-I (WT) are feeder grades for promotion to the post of Assistant Technical Officer (ATO). They are considered for promotion by separate DPCs on the basis of separate seniority lists maintained for respective cadre. The criteria for promotion in both the cases is "Selection".

In 1979 two separate DPCs were held to consider promotions of ACIO-I (WT) and ACIO-I (Tech) for promotion to the grade of ATO. The applicant, who belongs to WT discipline was considered for promotion, alongwith other ACIO-I (WT) in his turn, by the DPC which considered only ACIO-I (WT). He was graded as "Good" by the DPC. However, only those officers who were graded as "Very Good" were covered for promotion on the recommendations of this DPC against the vacancies then available for promotion. The applicant who was graded as "Good" was not covered for promotion.

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Respondent No. 3, was considered by the separate DPC held for promotion of ACIOs-I (Tech) as ATO. This DPC approved 3 officers, including Respondent No. 3, who was graded as 'Very Good' / 'Outstanding'. He was no.3 in the approved list. The first two officers in the approved list (S/Shri Santosh Kumar and K. Malikarjuna Rao) were cleared for promotion immediately. The third officer (Respondent No. 3) was cleared for promotion in May, 1979 after de-reservation of one post by the Government"

4.4. In the circumstance, it is stated that the third respondent has always been on the technical side while the applicant was on the W/T side. There can be no comparison between these two streams of ACIOs(I).

5. The applicant has filed a rejoinder reiterating the averments made in the O.A. He denies that the W.T. cadre was every bifurcated. He alleges that the third respondent was not qualified to get promoted as ACIO-I. It is denied that it was due to a mistake that the name of Respondent No. 3 was shown in the seniority list of ACIO-I (WT). That respondent also belonged to the WT cadre only.

6. As it appeared to us that the crucial issues was whether the posts of ACIO-I (Technical) and ACIO-I (W/T) were separate, we directed the respondents to produce the relevant records. This has been done.

7. We have seen the original records. The following observations are recorded:

- (a) A selection Board met in May, 1971 to make recommendations for selection of ACIO-I (Tech.) in Electronics Photo Chemistry and Technical Cells.

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The third respondent, P.I. Bakshi, was selected as a departmental candidate (i.e. ACIO-II (W/T)) for ACIO-I (Electronics & Photo). Another departmental candidate selected was U.C. Chaturvedi (i.e. ACIO-II (Tech.) for Chemistry Division and Technical Cells. The applicant was not considered ~~as~~ selected as ACIO (Tech). Therefore, an offer of appointment as ACIO-I (Tech.) was made to Respondent No. 3 on 9.7.1971. He accepted it and joined on 12.7.1971.

(b) Nevertheless, the name of the third respondent ^{is figured} ~~fixed~~ in the seniority list along with the applicant as follows:

(i) Draft seniority list of ACIO Grade-I (Technical) meant for W/T work other than deputationists circulated on 26.3.1971. The last cyclostyled name is at S.No. 173. Neither the name of the applicant nor Respondent No. 3 is in this list because it includes only those recruited prior to 30.4.1965. The names of Respondent No. 3 and the applicant- in that order- are added in ink thereafter.

(ii) Draft seniority list dated 12.2.1975 is captioned differently.

It is the seniority list of ACIO-I (W/T) meant for W/T work. The applicant's name is at S.No. 132 and Respondent No. 3 is at S.No. 133. It shows the latter as Assistant Engineer, IGRO (1974).

(iii) Seniority list as at (ii) issued on 17.11.1979. The applicant and Respondent No. 3 are at Serial No. 73 and 74 respectively.

(iv) Seniority list issued on 14.2.1980 is in respect of ACIO-I (Technical other than those meant for W/T work). This list does not contain the name of the applicant. It shows the name of the Respondent No. 3 at Serial No. 10.

(c) The respondents have also produced the proceedings of the D.P.C. We have seen the records relating to the promotion of ACIO Grade-I (Technical) to the Grade of ATO (Technical) in the Intelligence Bureau. A D.P.C. consisting of Shri R.D. Khandelwal, JDW, Shri K.V.S. Padmavan, DD (IB), Shri V.N. Parnappa, DT met on 4.1.1979 to consider promotion from the rank of Assistant Technical Officer. The eligibility criteria was five years service as ACIO-I (Technical) on or before 7.5.1978. Six persons are found eligible for consideration. The third respondent, along with other three persons was selected, the other three being found either not fit or not eligible. The applicant's name does not figure herein as he was only

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ACIO-I (W/T). Another record of the respondents shows that a DPC was held on 6.1.1979 to consider ACIO-I (W/T) for promotion to the rank of ATO (W/T). The DPC consisted of Shri S.C. Tandon, JD(N), Shri M.K. Barua, DD, Shri A.C. Krishan DD (Technical). The names of ACIOs-I eligible on 1.5.1978 for promotion included 32 names, including that of the applicant. The applicant's name was at Serial No. 30. He was graded Good. There were many other persons who were graded Very Good.

8. From these observations, the following conclusions are drawn:

- (i) The Respondent No. 3 was selected both as ACIO-I (W/T) (Annexure-14 order dated 7.7.1971) and also as ACIO-I (Technical) vide para 7 (a). He joined as ACIO-I (Tech.) on 12.7.1971.
- (ii) This clearly shows that as early as in 1971 there were two streams for ACIO-I - one for WT, the other being Technical.
- (iii) The name of Respondent No. 3 was no doubt shown below that of the applicant in the seniority list as stated in para 7(b) supra. This appears to be a mistake. In 1976, a separate list was prepared (Annexure R-I) of ACIO-I (Technical other than those meant for W/T work). In this, only the name of the Respondent No. 3 was included. This list appears to be the precursor of the list referred to at para 7(b)(iv) supra.

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(iv) Promotion to the rank of ATO (Technical) is from the rank of ACIO-I (Technical). Likewise, the promotion to the rank of ACIO (W/T) was from ATO(W/T). The applicant was ACIO (W/T) and, therefore, he was considered in 1979 only for promotion as ATO (W/T). On merits, there were many persons superior to him and hence he was left without consideration. The third respondent was in another stream. He was ACIO-I (Technical) and, therefore, he was considered in 1979 for promotion to the rank of ATO (Technical).

9. In the circumstance, we find that the applicant cannot stake any claim for promotion as ATO from 5.8.1979 merely on the ground of the promotion granted to the third respondent, because these persons were in totally different streams. We are satisfied that the mention of the third respondent's name in the seniority of ACIO (W/T) is a mistake which has been corrected. In the circumstance, we find that the applicant has no cause of action based on the promotion given to the third respondent. We find no merit in the O.A. It is accordingly dismissed.

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

N.V. Krishnan
(N.V. KRISHNAN)
VICE CHAIRMAN(A)

'SRD'