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* CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. No. 408 of 1990

New Delhi, this the 3/81 day of May, 1995.

HON'BLE MR J.P. SHARMA, MEMBER (J)
HON'BLE MR B.K. SINGH, MEMBER (A)

Shri V.K. Sharma,
R/O Krishan Nagar, R/O D-II/163,
Kaka Nagar, New Delhi. Applicant.
(through Mr Sunil Mittal, Advocate).

vs.

1. Union of India, through its Secretary, Ministry of Health & Family Welfare Department of Family Welfare, Nirman Bhavan, New Delhi.
2. Union Public Service Commission, through its Secretary, Dholpur House, Shahjahan Road, New Delhi.
3. Shri M.L. Swaroop, Regional Sales Officer, Govt. of India, Office of Health and Family Welfare 101, Railway Parallel Road, Bangalore-20.
4. Shri Pallab Ray, Regional Sales Officer, Department of Family Welfare, Ministry of Health & Family Planning, Nirman Bhavan, New Delhi.
5. Shri D.K. Bedi, Deputy Assistant Commissioner (S), Department of Family Welfare, Ministry of Health and Family Planning, Nirman Bhavan, New Delhi.
6. Shri G.L. Kashyap, Deputy Assistant Commissioner (D), Department of Family Welfare, Ministry of Health and Family Planning, Nirman Bhavan, New Delhi. Respondents.
(official respondents through Mr P.H. Ramchandani, Sr. Advocate and Respondent No. 3 through Mr J.P. Gupta, Advocate).

ORDER

(delivered by Hon'ble Mr B.K. Singh, Member (A))

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The present O.A. has been filed against the selection of Respondent No.3 to the post of Assistant Commissioner(N & M) and the applicant has sought for quashing the same. Further, he has sought for a direction to Respondent No.1 to place him in the seniormost position in the combined seniority list by taking into consideration the adhoc service rendered by him from 17th January, 1969 to June, 1972, as System Development Planner and declare him to be the seniormost officer and send his name to the U.P. S.C. showing him as No.1 in the combined seniority list.

The admitted facts are that the applicant joined the service of Respondent No.1 on 17th January, 1969. A copy of the said appointment letter is annexed as Annexure P-1 to the paper-book. The posts of Liaison Officer in the Department of Family Planning, Ministry of Health and Family Welfare and Works, Housing and Urban Development were advertised, for which the petitioner and Respondent No.3 appeared for interview before the U.P. S.C. The applicant was placed at Sr. No.1 and the Resptd. No.3 was placed at Sr. No.2. The applicant got five advance increments whereas Respondent No.3 got three advance increments.

Respondent No.3 joined the post of Liaison Officer on 16th October, 1970 in the Regional Health Office, Bangalore. The applicant was posted as Liaison Officer in the Regional Health Office, Lucknow but he did not join there and continued to work as System Development Planner with respondent No.1. Subsequently, by an order of respondent No.1, the applicant joined as Liaison

Officer with respondent No.1 on 1st February, 1971.

This is marked as Annexure P-2 of the paper book.

The letter of acceptance of this post is annexed herewith as Annexure P-3. Thus, it is admitted that he joined the post of Liaison Officer in Delhi itself and he was also asked to combine the duties of the post of System Development Planner in addition to his duties as Liaison Officer which is annexure P-4 of the paper book.

While the applicant was holding the post of System Development Planner in addition to his duties as Liaison Officer, the System Development Planner's post was advertised by Respondent No.1 and through a D.P.C., presided over by a member of the U.P.S.C. he was selected on regular basis to hold the post of System Development Planner. The applicant gave up the post of Liaison Officer and joined the post of System Development Planner in the scale of Rs.1100-1600 on 1st June, 1972 and it is admitted by him that he joined this post after relinquishing the charge of the post of Liaison Officer. It is Annexure P-5 of the Paper Book.

A post of Assistant Commissioner was created by the department of Family Welfare, Ministry of Health and Family Planning under Respondent No.1 vide Order No.2, 20011/4/83-NH(Estt.III) dated 22nd May, 1986 and the said post was in the pay scale of Rs.3700-5000. A copy of the notification dated 22nd May, 1986 has been annexed as Annexure P-6. The Govt. of India, Ministry of Personnel have laid down under O.M. dated 11th May, 1987 that in cases where the promotion is from various feeder grades the seniority list of the feeder

grade should be sent to U.P.S.C. In the present case, it seems that the circumstances were such that the combined seniority list could not be prepared as is evident from the perusal of the record of this case. Separate seniority lists were sent to U.P.S.C. as required but no combined seniority lists were sent to U.P.S.C. although the applicant claims that he is the seniormost officer and that he should have been selected for the post of Assistant Commissioner (N&M) but the D.P.C. held and presided over by a Member of the U.P.S.C. selected Respondent No.3 for the said post. Aggrieved by this order, this O.A. was filed on 13th March, 1990. The reliefs prayed for are;

- " (i) quash the joint seniority list prepared by respondent No.1 in terms of clause 8 of Annexure P/7 and communicated to Respondent No.2 for selection of a candidate to the post of Assistant Commissioner.
- (ii) quash the selection of Respondent No.3 to the post of Assistant Commissioner.
- (iii) direct Respondent No.1 to place the applicant at the seniormost position in the joint seniority list for selection to the post of Assistant Commissioner and to consider the service rendered by the applicant with effect from 17th January, 1969 to 1st June, 1972 as System Development Planner (Sales Promotion Executive) and as Liaison Officer (Regional Sales Officer) under Respondent No.1.
- (iv) direct Respondents No.2 and 3 to make a selection to the post of Assistant Commissioner on the basis of the inter se merit of the candidates available to the post of Assistant Commissioner and not on the basis of the seniority."

We have heard Shri Sunil Mittal, learned counsel for the applicant and S/Sh. P. H. Ramchandani, Sr. Advocate and

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and J.P.Gupta, Advocate for official Respondents and Respondent No.3, respectively.

On notice, the respondents filed their reply(s) and contested the application and grant of reliefs prayed for. The counter has been filed by the official respondents- by U.P.S.C. and also by respondent No.3 denying the averments made by the applicant that he was granted five increments and that Respondent No.3 was allowed the minimum of the pay-scale. It has been stated that respondent No.3 was allowed three advance increments at the time of initial appointment to the post of Liaison Officer. The post of Assistant Commissioner(N &M) is Group 'A' post in the scale of Rs.3700-5000 and it is admitted that it was created on 22nd May, 1986. Pending finalisation of the recruitment rules, it was decided to fill up the post by promotion of officers from amongst the grades of Sales Promotion Executive (Rs.3000-4500) one post, Regional Sales Officer(Rs.3000-4500) 3 posts and Deputy Assistant Commissioner(Stores(Rs.3000-4500) two posts. Since this is a Group 'A' post, a proposal in the prescribed proforma was sent to the UPSC enclosing therewith the combined eligibility list containing the names and particulars of all the eligible officers. Separate seniority lists in respect of the different feeder grades were also sent to the U.P.S.C. A meeting of the Selection Committee was held by the U.P.S.C. on 20.2.1990. The Selection Committee recommended the name of Respondent No.3 for appointment to the post of Assistant Commissioner(N&M). The recommendation of the UPSC was duly considered in the Ministry of Health and Family Welfare by the competent authority and it was decided to accept the recommendations of the U.P.S.C.



As regards the combined seniority list it has been clearly stated by the official respondents as well by the U.P.S.C. and the respondent No.3 that there were more than one feeder grade in the consideration zone for promotion to the post of Assistant Commissioner(NM). The question of inter se seniority, therefore, does not arise and in the peculiar circumstances where the applicant had been changing his post every now and then it would be difficult to accept his contention to place him at No.1. His ad hoc appointment as System Development Planner from 1969 came to an end the moment he joined as Liaison Officer. It is admitted by him that whereas Respondent No.3 joined as Liaison Officer on 16th October, 1970, he joined as Liaison Officer not at Lucknow but at Delhi on 1.2.1971 and subsequently he relinquished the charge of Liaison Officer also and appeared and was selected as System Development Planner on regular basis and joined that post in June, 1972. Thus, the applicant has been changing his post every now and then. Had he continued as System Development Planner right from the date he joined in 1969 and was regularly selected without relinquishing the charge of this post when he was selected as Liaison Officer he could claim seniority from the date of his initial appointment. This did not happen. During the intervening period, he relinquished the charge of the post of System Development Planner and joined as Liaison Officer to at Delhi and was made/combine the duties of other post of System Development Planner. His substantive appointment, therefore as Liaison Officer could be reckoned from 1st February, 1971 whereas Respondent No.3 continued to hold that post at

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Bangalore right from 16-10-1970 and he continued to retain his lien in that post till he was selected and promoted.

After going through the record and hearing the arguments and the rival contentions it is clear that the prayer made in para 8(iii) to consider the services rendered by the applicant from 17.1.1969 to June, 1970, which is more than two decades old is also beyond the jurisdiction of this Tribunal. This Tribunal is not vested with any power to take cognizance of any acts arising three years prior to the constitution of the Central Administrative Tribunal. On this ground alone, the application is liable to be dismissed.

On merits, three posts of temporary Liaison Officers in the Department of Family Welfare, Ministry of Health and Family Welfare were advertised, through the U.P. S.C. in January, 1970 vide Annexure R-1. These posts were made for the regional offices of Health and Family Welfare at Bangalore, Calcutta and Lucknow. It is admitted by both the parties that Shri M.L. Sarup joined the Regional Health Office Bangalore on 16th October, 1970 (A.N.) and successfully completed the probationary period of two years on 15th October, 1972 vide department's letter No. 1/2(17)/69-Estt.I dated 3.7.1973 (Annexure R-2) enclosed with the counter reply). He was confirmed in the post of Liaison Officer w.e.f. 4.6.1973 vide notification No. A-31013/1/76-Estt.I(3) dated 17.11.1976 (Annexure R-3). The two temporary posts of Liaison Officers were declared permanent by the Department of Family Welfare from

4. 6. 1973 vide Annexure R-4 of the paper book.

Shri M.L. Sarup was the first person to be confirmed against the post of Liaison Officer from 4. 6. 1973.

The applicant, though accepted the post of Liaison Officer on 30. 7. 1970 yet did not join at Lucknow for the reasons best known to him. He continued to hold his adhoc appointment to the post of System Development Planner at Delhi(Hqs) and subsequently, he was allowed to resume the charge of Liaison Officer at Delhi Headquarters and he relinquished the charge of the post of System Development Planner and joined at Delhi Headquarters where no post existed. It is not clear whether the post of Liaison Officer was shifted to Delhi or not. In any case, it is within the domain of the executive to shift any post from any place and to allow an incumbent to join that post. The fact remains that he joined the post of Liaison Officer in a substantive capacity w.e.f. 1. 2. 1971 and relinquished the charge of System Development Planner. He continued to hold this post till the post of System Development Planner was advertised by the U.P.S.C. again and he appeared as a direct recruit and was selected by the U.P.S.C. and joined that post w.e.f.

1. 6. 1972. Thus, the claim of seniority by the applicant above respondent No. 3 does not arise since he was holding only an adhoc appointment till his joining the post of Liaison Officer w.e.f. February 1, 1971. He was never confirmed on the post of Liaison Officer and was only holding the additional charge and the duties of the post of System Development Planner. Without completing

his probationary period and without getting confirmed on the post of Liaison Officer he has switched over to the post of System Development Planner as a direct recruit on regular basis w.e.f. 1.6.1972. Thus from the adhoc appointment as System Development Planner he jumped to the post of Liaison Officer which post he did not join at Lucknow but he continued at Delhi holding the adhoc post of System Development Planner and after 8 months, he was allowed to join at Delhi, ^{on} the post of Liaison Officer meant for Lucknow and he drew his salary as Liaison Officer. But here also, he did not complete the probationary period of two years and he was never confirmed as Liaison Officer. He again switched over as a regular incumbent as a Direct Recruit for the post of System Development Planner on 1.6.1972. If he had continued holding this post, his adhoc service from 1969 could have been taken into consideration but from 1.2.1971 he relinquished the charge of this post and joined the post of Liaison Officer and was asked only to combine the duties of this post. Thus he forfeited his claim of being No.1 in the seniority list of Liaison Officer which was advertised in 1970 and for which he was selected. As per C.C.S.Rules quoted by the respondents at Annexures R-5 and R-6, it is clear that Chapter 32 deals with seniority. Rule 4 is the relevant rule. This deals with direct recruits and proviso to Rule 4 clearly stipulates:

"provided that where persons recruited initially on temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their initial appointment, seniority shall follow the order of confirmation and not the

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original order of merit".

Rule 5(ii) lays down that where promotion to a grade is made from more than one grade, the eligible persons shall be arranged in a separate list in the order of their relative seniority in their respective grades and thereafter a D.P.C. shall select the persons for promotion.

This rule clearly goes against the applicant. He was never confirmed as Liaison Officer whereas Respondent No.1 successfully completed the probationary period and was duly confirmed against the two posts which were made permanent in the year 1973. Thus, the applicant cannot claim seniority over Respondent No.3 since he never completed the probationary period and he has been jumping from one post to the other. In a case where there are three feeder grades instead of one, there is no question of a combined seniority list and if a combined seniority list is also made from the date someone joins the service and being confirmed in that case also, Respondent No.3 continued in the post of Liaison Officer and was confirmed.

We have scrupulously gone through the personal files of the two officers and the selection made by Respondent No.1 of respondent No.3 to the post of Assistant Commissioner (N&M). This Court is not competent to sit as an appellate authority over the recommendations of the D.P.C., which selected a candidate to hold the post of Assistant Commissioner (NM). In AIR 1991 SC 284

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Keshav Chander Joshi and others vs. Union of India and another, it has been held:

"Where the initial appointment is only adhoc and not according to rules and is made as a stop gap arrangement, the period of officiation in such post cannot be taken into account for the purposes of seniority. The quintessence of the proposition is that the appointment to a post must be according to rules and not by way of adhoc or stop gap arrangement made due to administrative exigencies. If the initial appointment is 'dehors' the rules, no benefit accrues to the incumbent."

Thus the applicant did not continue from 1969 uninterruptedly till 1.6.1972 since there was a break also. He relinquished the charge of adhoc appointment of System Development Planner on 1.2.1971, when he joined as Liaison Officer without moving from Delhi to Lucknow. He has admitted that he relinquished the charge of System Development Planner, and as such, the continuity of his adhoc appointment was broken. He joined as a fresh recruit after relinquishing the charge of the post of Liaison Officer as System Development Planner again on 1.6.1972. His seniority, therefore, will count from that date in the grade of System Development Planner and his seniority in the feeder grade of Liaison Officer subsequently called Regional Sales Executive, he cannot claim seniority over Respondent No.3 who continued to hold that post at Bangalore and was confirmed against that post in 1973 after the post was made permanent. The applicant did not complete the probationary period and as such in that feeder grade, he cannot claim

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seniority over Respondent No.3, who joined in October, 1970 and completed the probationary period and was confirmed. The applicant did not join at Lucknow and remained at Delhi on adhoc basis on the post of System Development Planner and subsequently was allowed to join as Liaison Officer w.e.f. 1.2.1971 but he did not complete the probationary period of two years since he switched over to the post of System Development Planner when the post was advertised by the U.P.S.C. and he joined that post as a regular recruit from 1.6.1972. Thus, in any case he cannot claim seniority over Shri M.L. Sarup Respondent No.3 because of his non-confirmation as Liaison Officer and non-completion of the probationary period.

As regards the promotion as back as in 1967, the Hon'ble Supreme Court in the case of Sant Ram vs. State of Rajasthan (AIR 1967 SC 1918) has held that promotion is not automatic and is not to be made on the basis of ranking in the gradation list. Promotion involves merit and merit involves the performance and conduct of an officer and this is reflected in the ACRs and if all things are equal the seniority has to be given its due weightage. In AIR 1987 SC 1889 S. B. I. Vs. Mohd Moinuddin, the Hon'ble Supreme Court has held that where a selection is made on the basis of merit, no officer can claim promotion or selection to a higher post as a matter of right. He has a right to be considered but he has no right to be promoted. It is admitted by the applicant that he was considered but he was not promoted. This Court is not competent to

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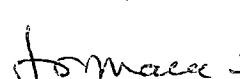
sit as an appellate authority and appreciate the abilities and attributes of the various candidates who appeared before the D.P.C., presided over by a Member of the U.P.S.C., to select a candidate for the post of Assistant Commissioner (NM).

In AIR 1988 SC 1069 U.P.S.C. vs. Hiranya Lal Dev, the Hon'ble Supreme Court have held that the provisions to make selection through D.P.C. are vested in the D.P.C. and the Tribunal cannot usurp that role for itself. This Tribunal cannot sit as an appellate authority over the acts and proceedings of the D.P.C. The same view has been re-iterated in J.T. 1995 (2) SC 654

Major General I.P.S. Dewan vs. Union of India and others in which the proposition has been laid down that the Courts cannot sit as an appellate authority over the acts and the proceedings of the D.P.C. We are not competent to sit as an appellate body over the acts and proceedings of the D.P.C.

In view of the law laid down by the Hon'ble Supreme Court the application fails and is dismissed leaving the parties to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

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