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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 438/90.

Date of decision: 15-2-95-

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Sri Samir Kumar Chakraborty,
Assistant Inspecting Officer (Tex.),
N.I. Circle, D.G.S & D,
Jamnagar House,
Shahjehan Road,
New Delhi-110 001.

.. Applicant

(By Advocate Shri J.R. Dass)

versus:

Director General of
Supplies & Disposals,
Parliament Street,
New Delhi.

.. Respondents

(By Advocate Sri N.S. Mehta)

O_R_D_E_R

∟ Hon'ble Smt. Lakshmi Swaminathan, Member (J) ∟

The applicant, who was appointed as Assistant Inspection Officer (Textile) (AIO, Tex.) in the Inspection Wing of the Respondents on an ad hoc basis and took charge on 30.1.1986 (as per Annexures A-5 and A-6) is aggrieved that he has not been regularised in that post. He has filed this O.A. claiming regularisation in the post of AIO (Tex.) in the Inspection Wing from the dates his junior(s) were regularised and a direction to the respondents to include his name in the seniority list of AIOs from 1.1.1990.

2. The brief facts of the case are that the petitioner was appointed as Examiner of Stores (Textile)

in the Inspection Wing on 1.12.1969 and was confirmed in that post w.e.f. 19.12.1973. On 18.12.1974, he was promoted as Junior Field Officer (JFO) in the Supply Wing and assumed charge there on 1.1.1975. On 24.3.1984 the Inspection Wing asked for his willingness to accept the promotion as Assistant Inspection Officer (Tex.), on an ad hoc basis (Annexure A-1). Although he accepted the offer, he was not appointed. By the Order of 12.7.1984, the petitioner was appointed as JFO on regular basis w.e.f. 23.3.1984 (Annexure A-2). He was again asked for his willingness to accept promotion as AIO (Tex.) on 13.12.1985 (Annexure A-3), which he accepted (Annexure A-4). Thereupon, he was promoted to the post of AIO (Tex.) in the Inspection Wing on a purely ad hoc basis w.e.f. 30.1.1986 (Annexures A-5 & A-6). Subsequently, by Office Order dated 19.8.1987, the applicant was appointed as JFO on regular basis from the date of his appointment in that post, namely, 1.1.1975 (Annexure A-7). In this Order, one Shri T.K. Goswami, JFO, who was junior to the applicant was regularised in the post of JFO w.e.f. 13.8.1987.

3. In the seniority list of Examiners of Stores (Tex.) in the Inspection Wing issued on 1.11.1988, the applicant was placed at S.No. 21 and shown as ad hoc AIO (Annexure A-8). However, his grievance is that in the seniority list of Examiners of Stores (Tex.) dated 1.1.1990, his name did not find a place in the list (Annexure A-11). The applicant has given a list of officers in para 4(q) of the O.A., who have been regularised as AIOs although they were JFOs

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or Assistant Director in the Supply Wing earlier. He had made a representation against the promotion of his junior, Shri Sukriti Gangopadhyay, who was at S.No.22 in the seniority list of Examiners of Stores dated 1.11.1988 (Annexures A-9 & A-10). The applicant, therefore, claims that since he had opted for the post of AIO (Tex.) in the Inspection Wing and is working in that post on an ad hoc basis since long, he has a right to be regularised in that post from the date his juniors were so regularised. He submits that the denial of such promotion is violative of Articles 14 and 16 of the Constitution. Since, he has not received a reply to his representation, hence this O.A.

4. The respondents have stated in their reply that since the applicant has been regularised in the post of JFO w.e.f. 1.1.1975 vide Order dated 19.8.1987, as per the recruitment rules, he will be considered for promotion to the post of Assistant Director of Supplies (Grade II) and not AIO. They have stated that as per DGS&D, Assistant Inspecting Officers' (Engg.)/Metallurgical/Textiles/Met-Chem/Timber) Recruitment Rules, 1975, the posts of AIOs (Textile) are required to be filled by promotion of (i) Examiner of Stores (Selection Grade) in Textiles Branch with 3 years service in that grade or (ii) Examiner of Stores (Selection Grade) with 8 years service in that grade; or (iii) Examiner of Stores (Ordinary Grade) in Textile Branch with 8 years service in that grade. While

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Examiner of Stores are eligible for promotion to the post of AIO, JFOs are eligible for promotion to the post of Assistant Director of Supplies, Grade II. They have relied on the DOP&T's O.M. dated 28th March, 1988 which came into force w.e.f. 1.4.1988 and their circular dated 15.6.89 (Annexure R-1). As per the Department's circular dated 15.6.1989, they have reiterated the position given in the DOP&T's O.M. dated 28.3.1988 as follows :-

* The Department of Personnel & Training issued instructions governing confirmation in service w.e.f. 1.4.88 vide their O.M.No. 18011/1/86-Estt.(D) dated 25.3.1988 according to which an official is to be confirmed only in the grade of his entry in Govt. service. On promotion to a higher post, an officer promoted on regular basis would have all the benefits that a person confirmed in that grade could have, if there is no probation. In case, there is a provision of probation in the Recruitment Rules, he is to wait for a declaration by the Appointment Authority to the effect that he successfully completed the probation-

In the light of the instructions issued on 25.3.1988, it is pointed out that those EOS, who have been working in the grade of JFOs, or were further promoted to the posts of ADS(Gr.II) on regular basis and completed a minimum of two years service have ceased to be belonging to the grade of ECS. As such, their names will be removed from the seniority list of ECS.*

5. In view of the fact that the applicant has been regularised as JFO w.w.f. 1.1.1975, and having regard to the aforesaid O.M. and circular, the respondents have stated that the applicant can only be considered for promotion to the post of Assistant Director of Supplies, Gr.II and cannot be regularised as an AIO (Tex.).

6. In the rejoinder (affidavit) filed by the applicant on 3.8.1990, he has stated that he has not received the departments circular dated 15.6.1989 nor their Office Order dated 19.8.1987 appointing him as JFO on regular basis with

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retrospective effect from 1.1.1975. He states that the fact of his regularisation as JFO was known to him only in January, 1990 when he found his name omitted in the seniority list of Examiner of Stores dated 1.1.1990, though he was included in the seniority list of 1.11.1988.

7. We have heard the learned counsel of both the parties and perused the records.

8. From the facts given above, it is clear that the applicant was appointed as AIO (Tax.) in the Inspection Wing only on a purely ad hoc basis vide Order dated 18th February, 1986, which does not entitle him to regularisation in that post. He has since continued in that post by virtue of the interim order of the Tribunal dated 30.3.1990 till the application was dismissed for default for non-prosecution on 19th August, 1994. By the order dated 24.10.1994, the order of dismissal was recalled and the case thereafter ^{has} come for final hearing.

9. The contention of the applicant that he has not received the department's circular dated 15.6.1989 is of no assistance to him. This departmental circular is based on the DOP&T's O.M. dated 28.2.1988 which came into effect from 1.4.1988. The DOP&T's O.M. ^{is} of general application and has been widely circulated to all Ministries/departments. Even if it is assumed as averred

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by the applicant, that the departmental circular dated 15.6.1989 has not been received by him, that would not make any difference to the consequences flowing from the O.M. issued by the DOP&T which is applicable to all Govt. servants.

10. In the Order dated 19.8.1987, the applicant has been regularised as JFO w.e.f. 1.1.1975. He was promoted as AIO (Tex.) on a purely ad hoc basis. It is settled law that the ad hoc promotion does not give him any right to be regularised in that post de hors the rules. As per the recruitment rules, JFO is not a feeder post for promotion to the post of AIO (Tex.), but an Examiner of Stores with the prescribed number of years of experience is to be considered for promotion to that post. At the time when the DOP&T O.M. took effect on 1.4.1988, ^{it is immaterial} whether the applicant was regularised from 1.1.1975 or from 23.3.1984, as claimed by the applicant, the fact is that the applicant has to be treated as a regular JFO and he cannot, therefore, be considered for promotion as AIO (Tex.) as per the recruitment rules

11. The respondents have stated in their reply that as regards the applicant's junior, Shri T.K. Goswami, JFO, is concerned, he was regularly promoted as JFO w.e.f. 13.8.1987, so that on the date of coming into force of the DOP&T's O.M. w.e.f. 1.4.1988, he had not completed two years in that grade and hence, he was promoted as AIO (Engg.) from the feeder post of Examiner of Stores. Similarly, the

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respondents have stated that the other officers were promoted to the posts of AIOs much earlier to the O.M. dated 28.3.1988 or had not completed 2 years of service on regular basis in the grade of JFO before their promotion as AIOs. Therefore, after the issue of the O.M. dated 28.3.1988, since the applicant was a regular J.F.O. from 1.1.1975, his promotion can be considered only for the post of Assistant Director of Supplies (Grade II), and not AIOs as per the recruitment rules.

12. We, therefore, find no merit in the O.A. Accordingly, the O.A. is dismissed. There will be no order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Adige

(S.R. Adige)
Member (A)

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