

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 870/90

199

T.A. No.

DATE OF DECISION 24.12.1991Shri J.P. Gupta~~Petitioner~~ ApplicantShri B.S. CharyaAdvocate for the ~~Petitioner(s)~~ Applicant

Versus

Central Social Welfare Board
and Others

Respondent

Shri P.H. Ramchandani, Senior 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, who is working as Assistant Director, Grade I in the Office of the Central Social Welfare Board, has called in question ^{an} the fixation of seniority of respondent Nos. 3 to 6 above him and the promotion given to respondent No. 3 to the post of Deputy Director. He claims that he is entitled to promotion to the post of Deputy Director.

2. On 11.5.1990, when the application was admitted, the Tribunal passed an interim order to the effect that any promotion made will be subject to the outcome of the present application. *an*

3. Officers of the Central Social Welfare Board belong to two categories having separate channels of promotion. On the one side, there are Assistant Directors, Grade II, Hindi Officers and Private Secretary to the Chairman in the scale of Rs. 2,000-3500, whose next channel of promotion is to that of Assistant Director, Grade I in the pay-scale of Rs. 2200-4000. On the other side, there are Assistant Project Officers in the pay-scale of Rs. 2000-3500 who can look forward for promotion as Project Officer (Field) in the pay-scale of Rs. 2200-4000. The post of Deputy Director is common to which promotions are to be made from both the streams. According to the Recruitment Rules of 1985, which are currently in force, the post of Deputy Director is to be filled ^{by promotion} as follows:-

"By promotion from amongst Asstt. Director Grade I/PRO/Project Officer having a minimum of 5 years regular service in the grade of Rs. 700-1300/Rs. 650-1200 or both, 50% of the posts being filled up from amongst Asstt. Director, Grade I/PRO/Project Officer VAB and 50% from amongst Field Project Officers on 1:1 basis".

4. The method of recruitment prescribed under the said Recruitment Rules is as follows:-

"75% by promotion, failing which by transfer on deputation and 25% by direct recruitment."

5. We may consider the respective contentions of both the parties in the light of the aforesaid position under the Recruitment Rules. *de*

6. The applicant was appointed as Welfare Officer in 1979 and thereafter, was selected for appointment to the post of Assistant Project Officer in 1983. The normal channel for his promotion is to that of Project Officer (Field) in the pay-scale of Rs.2200-4000. He was appointed on 24.8.1987 as Assistant Director, Grade I as a direct recruit in the scale of Rs.2200-4000. This was a fresh appointment, as is clear from the offer of appointment made to him on 14.8.1987 at Annexure-XX to the counter-affidavit, pages 83-85 of the paperbook. As already pointed out, the feeder category for promotion to the post of Assistant Director, Grade I is Assistant Director, Grade II, Hindi Officer and P.S. to the Chairman.

7. The applicant will complete five years of service as Assistant Director, Grade I only in August, 1992, unless the service rendered by him as Assistant Project Officer in the grade of Rs.2000-3500 is also reckoned for the purpose of eligibility for promotion to the post of Deputy Director.

8. The grievance of the applicant relates to the giving of higher seniority position to respondent Nos.3 to 6^{to a} which, according to him, they are not entitled to. He contends that the seniority position should be as reflected in the seniority list published by the respondents in 1988 and not the one published in 1990. According to the seniority list of 1988,

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the applicant figured at Sl. No.5, whereas respondent No.3 figured at Sl.No.7 and respondent No.5 at Sl. No.9. A footnote was inserted in the said seniority list, according to which, the seniority of respondent No.4 would be decided on the finalisation of disciplinary/court cases and according to the recommendations of the D.P.C.

9. The aforesaid seniority position was altered in the seniority list of 1990, according to which, respondent No.3 is shown at Sl. No.3, respondent No.4 at Sl.No.4, respondent No.5 at Sl.No.6, respondent No.6 at Sl.No.5, and the applicant at Sl.No.7.

10. The applicant has contended that no show-cause notice was given to him before depressing his seniority and that the action taken by the respondents is not tenable in law.

11. Admittedly, the applicant was appointed as Assistant Director, Grade I w.e.f. 24.8.1987, whereas respondent No.3 was appointed as Assistant Director, Grade I w.e.f. 12.2.1986, and respondents 4, 5 and 6 w.e.f. 21.12.1987. Respondents 3 to 6 are promotees. The D.P.C. which recommended their promotion, held its meeting on 21.12.1987. As regards respondent No.4, the D.P.C. observed that there was a departmental proceeding pending against him, that he was under suspension, and that a C.B.I. case was pending in the Court against him. The assessment of the D.P.C. was,

therefore, kept in a sealed cover in accordance with the Government instructions, and his name was not included in the list of officers recommended for promotion. The D.P.C. recommended the following persons for promotion in the order of merit:-

1. Smt. Gracy Verghese (Respondent No.3)
2. Shri P. Kumar (retired from service in Aug.,89)
3. Shri P.N. Das (S.C.) (respondent No.5)
4. Miss Shashi Kiran Bhatnagar (respondent No.6)
5. Shri H.S. Bhalla.


12. The suspension of respondent No.4 was revoked w.e.f. 23.1.1989 and he was taken on duty as Assistant Director, Grade I on ad hoc basis. Earlier, he had been officiating as Assistant Director, Grade I w.e.f. 17.12.1986 on ad hoc basis. His services could not be regularised in the cadre of Assistant Directors, Grade I because he was under suspension from 4.12.1986.

13. In the above background, a meeting of the Review D.P.C. was held on 19.4.1990 for regularisation of Assistant Director, Grade I. The Review D.P.C. reviewed the gradation of all the officers empanelled and those who were not empanelled. It was observed that there was discrepancy between the gradation prepared by the earlier D.P.C. on the basis of the annual confidential reports of the officers for that period. The review D.P.C. noted that

in the case of Shri P.N. Das, he had three "Good" and one "Very Good", whereas the officer who was senior to him, namely, Miss Shashi Kiran Bhatnagar, had four "Very Good". The review D.P.C. observed that it was a factual error because of which the officer who was senior, was superseded by her junior officer. The review D.P.C., therefore, decided that the panel prepared by the D.P.C. in 1987, be treated as cancelled due to the aforesaid factual errors. It was also noted that Shri D.V. Chopra (who had been kept under sealed cover in the D.P.C. of 1987) and Smt. Gracy Verghese, had already been regularised in the grade of Assistant Director, Grade I w.e.f. 12.2.1986 on the basis of the empanelment in the grade of Assistant Director, Grade I w.e.f. 12.2.1986 on the basis of the empanelment in the previous D.P.C. held on 12.2.1986. The review D.P.C., therefore, recommended the following panel of officers in the order of merit:-

- i) Shri P. Kumar
- ii) Shri K.P.R. Nair
- iii) Kum. Shashi Kiran Bhatnagar
- iv) Shri P.N. Das (SC)
- v) Shri H.S. Bhalla.

14. We have gone through the records of the case and have carefully considered the matter in the light of the rival contentions advanced by both the parties. We have



also duly considered the numerous authorities^{*} cited before us by the learned counsel for both the parties. The case of the applicant in brief is that he having joined earlier than respondents 3 to 6, should rank senior to them. As the imougned seniority list issued in 1990 shows him to be junior to them, the said list is illegal and liable to be quashed. As regards his eligibility for promotion to the post of Deputy Director, his contention is that the service rendered by him in the post of Assistant Project Officer since January, 1983, should be reckoned and if this is done, he will fulfil the requirement of minimum of five years' regular service prescribed under the Recruitment Rules.

15. As against the above, the case of the respondents is that in terms of the Recruitment Rules, the promotees have to be shown first followed by the direct recruits in the ratio of 3:1 and that the seniority list prepared in 1988 had to be reviewed in view of the subsequent developments mentioned above. The respondents have also referred to O.M. dated 7.2.1986 issued by the Department of Personnel & Training consolidating the various orders on seniority.

* Case law cited by the learned counsel for the Applicant:

1991 (2) J.T. 203; 1989 Suppl. (1) S.C.C. 194;
1977 (3) S.C.C. 399; 1986 (1) S.C.C. 287;
1990 J.T. 264; 1988 (7) S.L.R. 802; 1988 (7)
S.L.R. 211; 1986 (2) S.L.R. 673; 1979 (1) SLR 454;
1973 (1) S.L.R. 1039; and 1974 (2) S.L.R. 255.

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16. The applicant has not challenged the validity of the O.M. dated 7.2.1986 in the present proceedings.

17. The impugned seniority list of 1990 has been prepared on the basis of the recommendations made by the two ~~xxxxxx~~ D.P.Cs held on 21.12.1987 and 19.4.1990, mentioned above. Respondents 3 to 6 are promotees. The review DPC has empanelled them on the basis of merit, which has been duly reflected in the seniority list of 1990.

read with OM dated 7.2.1986

18. According to the Recruitment Rules, the position of promotees and direct recruits is to be arranged in the following manner:-

- "Promotee
- Promotee
- Promotee
- Direct recruit
- Backlog of direct recruits.

19. The respondents have stated in their counter-affidavit that even though the applicant was appointed as Assistant Director, Grade I w.e.f. 24.8.1987, i.e., earlier than the promotees, he would stand junior to the officers who are promoted/regularised w.e.f. 21.12.1987 because he was appointed under the backlog of direct recruit point for the year 1984. According to the Roster and Rules, the date of appointment/promotion is not relevant as seniority is assigned as per Roster. We see no infirmity in the procedure followed by the

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respondents in the instant case as regards the fixation of seniority of the applicant and the respondent No.3-6.

20. The further question which has to be considered is whether the applicant fulfils the required qualifying service for promotion to the post of Deputy Director. Respondent No.3 has been promoted as Deputy Director as she fulfilled the required five years' qualifying service, as her date of appointment is 12.2.1986 in the post of Assistant Director, Grade I, she having been regularised in that grade w.e.f. 12.2.1986 on the basis of the empanelment in the previous D.P.C. held on 12.2.1986. In view of this, the applicant cannot call in question her promotion as Deputy Director.

21. The applicant was appointed as Assistant Director, Grade I pursuant to the offer made to him on 14.8.1987 and he joined the said post on 24.8.1987 as a direct recruit. Strictly speaking, he does not fulfil the required five years' regular service in the grade of Assistant Director, Grade I. It, however, appears that the scale of pay of the post of Assistant Project Officer and that of Assistant Director, Grade II is identical. The applicant has worked as Assistant Project Officer from 1983 to 1987. If this service also is reckoned, he would be eligible for consideration for appointment under the Recruitment Rules. The Recruitment Rules contain the power to relax with respect

to any class or category of persons. In view of this, it is for the respondents to consider whether persons in the stream of Project Officers and Assistant Project Officers should be given relaxation in case the chances of promotion in that stream are less compared to the other stream. It is for the respondents to consider whether any such relaxation is to be given.

22. In the light of the foregoing discussion, we are of the opinion that the applicant is not entitled to the reliefs sought by him to the extent of quashing the impugned seniority list issued in 1990, or the order of promotion of respondent No.3 to the post of Deputy Director. We, however, direct the respondents to consider whether there is any stagnation in the cadre of Project Officers in the matter of promotion ^{to the post of} Deputy Director and if so, they ^{should} consider the question of relaxing the rules in respect of that class or category of persons in terms of Rule 13 of the Recruitment Rules. In that event, the period of service rendered by the applicant in the post of Assistant Project Officer could also be reckoned for the purpose of counting the qualifying service required for the purpose of promotion to the post of Deputy Director. The application is disposed of accordingly. There will be no order as to costs.

A. N. Dhondiyal
(B.N. Dhondiyal)
Administrative Member

P. K. Kartha
24/12/81
(P.K. Kartha)
Vice-Chairman(Judl.)