

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 1290/91

New Delhi this the 26th Day of May 1994

Hon'ble Mr. J.P. Sharma, Member (J)

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

Shri P.C. Agarwal,
son of Shri Ram Swaroop,
Resident of 326 GRD Nagar,
Delhi-110 092.

... Applicant

(By Advocate : Mrs. Meera Chhibar)

Vs.

1. Union of India
through its Secretary,
Legislative Department,
Ministry of Law and Justice,
Shastri Bhawan, New Delhi.

2. The Secretary,
Department of Personnel &
Training, North Block,
New Delhi.

3. Shri J.S. Malik,
Superintendent (Legal),
Legislative Department,
Ministry of Law & Justice,
Shastri Bhawan, New Delhi.

4. Shri N.K. Ambastha,
Superintendent (Legal),
Legislative Department,
Ministry of Law & Justice,
Shastri Bhawan, New Delhi.

5. Shri Rama Nand,
A.L.A.,
Dept. of Justice,
Ministry of Law & Justice,
North Block, New Delhi.

6. Shri O.P. Giroh,
Superintendent (Legal),
Legislative Department,
Ministry of Law & Justice,
Shastri Bhawan, New Delhi.

.... Respondents

(By Advocate : Shri P.H. Ramchandani)

ORDER

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant was appointed as Assistant (Legal)
in the Legislative Department of Ministry of Law and Justice

in September 1972 and was confirmed on the post with effect from 12.8.1990. The next promotional post is Superintendent (Legal), a Group 'B' Gazetted post. The promotion to the post is by selection method and by notification dated 4.10.1989, 75% of the posts are to be filled by promotion and remaining 25% to be filled in by transferr on deputation failing which by direct recruitment. By the aforesaid notification the eligibility for promotion has also been modified where Assistant (Legal) with 5 years regular service failing which 7 years combined regular service in the scale of Rs. 1640-2900 or Rs. 425-800 (Pre-revised) is the eligibility condition. The applicant, therefore was eligible for promotion sometime in September, 1980 but he was not given any regular promotion. He was also promoted on ad hoc for a short spell for three months with effect from 5.2.1980. The grievance of the applicant is that two of his juniors belonging to general category have been promoted as Superintendent (Legal) since 1.1.1987, however, the applicant was involved in a criminal case in the year 1979 and was arrested on 23.10.1982. On 16.5.1989 a meeting of the DPC was convened for filling up of the two posts of Superintendent (Legal) and the applicant's name was duly considered by the DPC. As a criminal case was pending against the applicant, the recommendation of the DPC regarding applicant's suitability were kept in a sealed cover. The applicant has also the grievance that respondents should have considered his case for review opening the sealed cover and promote him on adhoc basis as per the instructions of the Department of Personnel OM dated 12.1.1988. The applicant, therefore, claimed the following reliefs:

a) The respondents be directed to consider the claim of the applicant for promotion to the post of Superintendent (Legal) as per the instructions issued by the Dept. of Personnel & Training by OM dated 10.4.1989 on the basis of bench mark grading procedure and promote him from the date his juniors have been promoted.

2. The respondents in their reply contested the case of the applicant and stated that the applicant has given his own self-assessment in the form of his self-appraisal for promotion to the post of Superintendent (Legal). Since the applicant has been facing the criminal proceedings and the criminal case has not yet been decided, so the sealed cover containing the recommendations of the DPC could not be opened. When the DPC met in 1983, there was one vacancy and his senior Shri P.C. Roy was considered. When a vacancy arose in May 1989 the DPC considered his case and the recommendations were kept in a sealed cover. Thus, in view of the above facts, the applicant is not entitled to any relief.

3. The applicant has also filed the rejoinder reiterating the same facts. The applicant has also filed M.A. No. 1039/94 on 11.4.1994. In the M.A., the applicant has stated that he has been acquitted in the criminal case by the order dated 31.3.1994 of the Metropolitan Magistrate, a copy of which is annexed to the M.A. as Annexure A-1. He also also made representations informing the Administration about his acquittal and he has therefore prayed for opening of the sealed cover. The respondents did not file any reply to the aforesaid M.A.

4. Heard the learned counsel for the applicant as well as Shri P.H. Ramchandani for the respondents. The counsel for the respondents did not contest the prayer for opening of the sealed cover. The case of the applicant is fully

(12)

covered by the Judgement of the Hon'ble Supreme Court in the case of Union of India Vs. K.V. Jankiraman reported in 1991 (2) Scale P. 423. It has been held that where an employee has been fully exonerated, he has to be given the benefit of the higher post from the date on which he would have been normally promoted but for the disciplinary/ criminal proceedings. This was the only hurdle in considering the promotion of the applicant to the post of Superintendent (Legal). Now there is no justification to withhold the opening of the sealed cover containing the recommendations of the DPC. In view of the above facts and circumstances the OA and MA 1039/94 are disposed of with the direction to the respondents to open the sealed cover containing the recommendations of the DPC within four weeks from the date of receipt of the copy of the Judgement and act on the recommendations of the DPC. If the applicant has been found fit for promotion and otherwise eligible he should be given promotion to the post of Superintendent (Legal) from the date he should have been normally promoted. In the circumstances parties to bear their own cost.

B
(B.K. Singh)
Member(A)

J.P. Sharma
(J.P. Sharma)
Member (J)

Mittal