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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1687/91

DECIDED ON : 18.9.92

S. S. Vig

... Applicant

Vs.

The Director Police
Telecommunications

... Respondent

CORAM : THE HON'BLE MR. P. C. JAIN, MEMBER (A)
THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

Applicant in person

Shri J. C. Madan, Proxy counsel for Shri P. P.
Khurana, Counsel for the Respondent

JUDGMENT

Hon'ble Shri P. C. Jain, Member (A) :-

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was posted as Cipher Assistant in the Directorate of Coordination (Police Wireless), is aggrieved by his promotion straight to the post of Extra Assistant Director (Cipher) (for short EAD), by order dated 2.5.1988 (Annexure-A to the OA). He has prayed for that a review DPC may be convened and benefit of promotion to the post of Technical Superintendent (Cipher) from 18.4.1988 to 1.5.1988 with re-fixation of pay for that period and for subsequent promotion to Extra Assistant Director (Cipher) be done with a view to neutralise the financial loss to the applicant.

2. The respondents have contested the O.A. by filing a return to which a rejoinder has also been filed by the applicant. As the applicant was due to retire on superannuation on 31.12.1992 and as the pleadings in this case were complete, it was decided with the consent of the

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parties to dispose of the case finally at the admission stage itself. Accordingly, we have perused the material on record and also heard the applicant who presented his case in person and the counsel appearing for the respondents.

3. It is necessary to give in brief the hierarchy of the posts involved. In the Directorate of Coordination (Police Wireless), there are three sanctioned posts of Extra Assistant Director (Cipher) in the pay scale of Rs.2000-3500. This is a Group 'B' Gazetted post. Below this post there is one sanctioned post of Technical Superintendent (Cipher), a Group 'B' Non-Gazetted post in the pay scale of Rs.2000-3200. Below this post there are thirty three sanctioned posts of Cipher Assistant, a Group 'C' post in the pay scale of Rs.1400-2600. As per the recruitment rules, promotion to the post of Extra Assistant Director (Cipher) is made from amongst the Technical Superintendents (Cipher) with three years' service in the grade, failing which seven years combined service in the grades of Technical Superintendent (Cipher) and Cipher Assistant, and failing both, Cipher Assistants with seven years' service in the grade are eligible for consideration. Similarly, as per the recruitment rules, Cipher Assistant with five years' service is eligible for promotion to the post of Technical Suptd. (Cipher). One of the three posts of EAD (Cipher) fell vacant on 1.1.1988, another fell vacant on 1.4.1988 and the third post fell vacant on 1.5.1988. A vacancy in the post of Technical Suptd. (Cipher) as a result of promotion of the incumbent of that post to the higher post of EAD (Cipher) occurred on 18.4.1988, after the second vacant post of EAD (Cipher) fell vacant.

4. The case of the applicant is that in the list of officials eligible for promotion to the post of Technical Suptd. (Cipher)/EAD (Cipher) in order of seniority as on 1.3.1988 his name appeared at sl. No.2. Above him was the name of one Shri Srikrishan (Technical Suptd. (Cipher)), and below his own name at sl. No.3 one Shri A. S. Saxena (Cipher Assistant). He, therefore, contended that after Shri Srikrishan, Technical Suptd. (Cipher) was promoted to the post of EAD (Cipher) the post of Technical Suptd. (Cipher) held by him fell vacant and he being the seniormost Cipher Assistant, should have been promoted to that post and only later on to the post of EAD (Cipher) when the third post fell vacant on 1.5.1988. If it had been done, he would have got the benefit of pay fixation, first on the post of Technical Suptd. (Cipher) and again from that post on promotion to the post of EAD (Cipher). The case of the respondents, on the other hand, is that, as per the recruitment rules which have already been referred to above, the applicant was eligible for consideration for promotion to both the posts of Technical Suptd. and EAD at the time the DPC met on 22.3.1988 and that the DPC considered the applicant for both the posts. However, as promotion could be given only to one post, he was offered the higher post of EAD when that post fell vacant on 1.5.1988 and he accepted the same and assumed charge of the post of EAD on 2.5.1988. It is also stated that the offer of promotion to the post of Technical Suptd. to the applicant was not possible as he would have worked in that post only for 12 days or so and such calculated promotion in succession within the short period of 12/13 days was administratively not a proper step.

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5. We have carefully considered the rival contentions of both the parties. If the applicant had not been considered for the higher post of EAD, then he was eligible for such a promotion in terms of the relevant recruitment rules and would have had a genuine grievance. Similarly, if a Cipher Assistant junior to him had been promoted to the post of EAD, then also he would have had a genuine grievance. Thus, if a person is eligible for consideration simultaneously for two posts, i.e., one immediately higher to the post held by him and the other higher to the next higher post, he can have no legally justifiable grievance. Similarly, if on consideration, he is selected for the second higher post and appointed thereto, he can have no legally justifiable grievance. He would have had a grievance if a Cipher Assistant junior to him had been promoted to the next higher post of Technical Suptd. before according such promotion, if any, to him. Such a course of action has not been adopted by the respondents and accordingly, here also, there is no scope for a genuine grievance. It is also well settled that a Government servant has no right to seek promotion to a post from the date it falls vacant and, therefore, in our considered view, the applicant cannot justify the claim that he should have been promoted to the post of Technical Suptd. when it fell vacant on 18.4.1988.

6. Before parting with this case, we may also mention that the applicant was ordered to be promoted to the post of EAD by order dated 2.5.1988. This order itself states that refusal of promotion will be dealt with in accordance with the instructions issued by the Department of Personnel and Training on the subject which had already been circulated. He was also required to submit his option for fixation of

pay within one month and he could take charge of the post latest by 31.5.1988. But the applicant not only did not refuse promotion to the higher post of EAD but took charge of the promotion post on the same date. His representation dated 5.5.1988 (Annexure-D to the OA), seeking promotion as Technical Suptd. for the period from 18.4.1988 to 1.5.1988 *inter alia* on the ground that the post was lying vacant, was rejected by memorandum dated 25.8.1988 (Annexure-F to the OA). If he wanted to agitate his grievance before the Tribunal, he should have filed the O.A. by 24.8.1989. However, this O.A. has been filed on 13.6.1991 and as such is barred by limitation also. His subsequent representation dated 31.8.1988 on the same subject was rejected by memorandum dated 21.9.1988 (Annexure-I to the OA) in which it is stated that his case had been examined thoroughly and the position in the matter had already been clarified vide memorandum dated 25.8.1988. From this date also, this O.A. is barred by limitation. However, we do not consider it appropriate to reject this O.A. on ground of limitation alone in view of the office memorandum dated 31.5.1990 (Annexure A-1 to the OA) in which he was informed that the case for his promotion to the post of Technical Superintendent (Cipher) was still ^{under} consideration of Ministry of Home Affairs/Department of Personnel & Administrative Reforms.

7. In the light of the above discussion, apart from being barred by limitation, the O.A. is also devoid of merits and the same is accordingly dismissed leaving the parties to bear their own costs.

J. P. SHARMA
(J. P. SHARMA)
MEMBER (J)

C. C. JAIN
(P. C. JAIN)
MEMBER (A)