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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 2306/91

DATE OF DECISION : 24.07.1992

Shri Anusya Prasad

...Applicant

Vs.

Union of India & Ors.

...Respondents

CORAM

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

Hon'ble Shri B.N. Dhoundiyal, Member (A)

For the Applicant

...Shri E.X. Joseph

For the Respondents

...Shri B.P. Khurana

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant, Assistant Accounts Officer, Northern Telecom Region, filed this application aggrieved by the order dt. 17.6.1991 rejecting his representation dt. 8.4.1991 of not making him eligible for consideration for promotion to the cadre of Accounts Officer in the DPC held in March, 1991.

2. In para-8 of the application, the applicant claimed a number of reliefs. By the order dt. 23.4.1992, the learned counsel for the applicant has waived other reliefs and pressed only the relief prayed for in para-8.1 and the consequential

reliefs in paras-8.4 to 8.8 which are as follows :-

Grant of orders quashing and setting aside the decisions and orders dt.17.6.1991 issued by the Department of Tele Communications; grant of orders that the applicant ought to be considered for promotion as Accounts Officer by the DPC held in March, 1991; grant of orders that the applicant ought to be promoted as Accounts Officer on the basis of the due consideration by the DPC held in March, 1991; grant of orders directing the respondents to grant the applicant all the consequential benefits by way of arrears of salary, seniority etc. The reliefs in paras-8.7 and 8.8 are formal in nature.

3. The brief facts of the case are that the applicant joined on 27.7.1979 on the post of Junior Accounts Officer. On 27.7.1984 as per the Recruitment Rules, Indian Post and Telegraphs (Accounts and Finance Service, Telephone Wing Group-B) Recruitment Rules, 1980, which were notified on 12.8.1980 with the prospective effect from 1.4.1976, the applicant becomes eligible for promotion to the post of Accounts Officer. The said Recruitment Rules laid down that 50% of the posts of Accounts Officer will be filled up by promotion of JAO with 5 years' regular service in the grade. On 8.1.1987, a chargesheet

under Rule 16 of the CCS (CCA) Rules for minor penalties was issued to the applicant. From 1.4.1987, the scheme of upgrading 70% of the posts of JAO as Assistant Accounts Officer comes into force and the applicant became eligible for such promotion. The case of the applicant was considered by the DPC and in January, 1988 he was informed that his matter has been kept in a sealed cover. On 3.6.1988, the applicant was imposed a minor penalty of withholding of one increment for two years which took effect from 1.7.1988. The DPC considered the applicant, but the applicant could not make a mark as minor penalty was imposed. On 11.1.1990, the DPC assessed the applicant again and the applicant was not found fit for promotion. On 26.12.1990, he was again considered by the DPC and was assessed fit for promotion as Assistant Accounts Officer and he was promoted as Assistant Accounts Officer w.e.f. 3.1.1991. The DPC was held for promotion to the post of Accounts Officer in March, 1991. The grievance of the applicant is that his name did not find place in the zone of consideration as he lost seniority in the grade of Assistant Accounts Officer by more than 1200 position as conveyed to him by the respondents, since a number of officers who were junior to him in the grade of JAO were promoted to the grade of Assistant Accounts Officer superceding him. As a result of the above DPC, on 25.3.1991 a number of

Assistant Accounts Officers, allegedly junior to the applicant in the grade of JAO were promoted as Accounts Officer. Further 4 Junior Accounts Officers, who had never been promoted as Assistant Accounts Officers were promoted to officiate on ad hoc basis as Accounts Officers. The Recruitment Rules have been filed as Annexure A6 to the rejoinder and it goes to show that to the post of Accounts Officer, the feeder grade is by promotion of JAO with 5 years' regular service in the grade. Thus it is averred by the applicant that since he became eligible by virtue of putting 5 years' regular service as JAO, he should have been in the zone of consideration for promotion to the post of Accounts Officer, but the respondents neglecting his claim superseded him and did not send his name to the DPC for consideration.

4. The respondents contested the application and stated that the applicant was working as JAO w.e.f. 27.7.1979, but the penalty was imposed on him in a departmental disciplinary proceeding under Rule 16 of the CCS (CCA) Rules, 1965 and he was awarded minor penalty of withholding of one increment

for two years without commulative effect which was effected from 1.7.1988 and was over by 30.6.1990. In the meantime, the DPC were held for consideration for promotion to the post as Deputy Accounts Officer/Assistant Accounts Officer w.e.f. 1.4.1987 and for forming a panel as on 1.7.1987, 1.7.1988, 1.7.1989 to 30.6.1990. The findings of the DPC held on 3.10.1988 and 4.7.1989 were not acted upon as the penalty of withholding for increment was in existence during the life of the panels prepared by the DPC. The applicant was also considered for promotion to the grade of Assistant Accounts Officer by the DPC held on 11.1.1990 and he was found unfit for promotion. As such he could not be promoted immediately after the penalty was over, though the panel was still valid. However, on 26.12.1990, the DPC assessed him fit for promotion to the post of Assistant Accounts Officer and he was promoted w.e.f. 3.1.1991. In view of the above facts, the applicant lost seniority in the grade of Assistant Accounts Officer by more than 1200 position since a number of officers, who were junior to him in the grade of JAO were promoted to the grade of Assistant Accounts Officer superceding him. Consequent upon losing seniority by him in the grade of

19

Assistant Accounts Officer, the name of the officer did not find place in the zone of consideration by the DPC which met in the month of March, 1991 for considering the Assistant Accounts Officer/Junior Accounts Officer for promotion to the grade of Accounts Officer and many Assistant Accounts Officers, who were junior to him as JAO, but placed above him in the grade of Assistant Accounts Officer, were considered by the DPC and thereafter promoted to the grade of Accounts Officer on their recommendation. Thus the case of the respondents is that the applicant has no case and the application is devoid of merit.

5. We have heard the learned counsel for the parties at length. The learned counsel for the applicant referred to the Recruitment Rules, P&T Finance and Accounts, Group-B Telecom, annexed with the rejoinder as Annexure A6. In the rules, the post of Accounts Officer is filled up 50% on selection basis and 50% on non selection basis. Thus for promotion, a JAO with 5 years' regular service in the grade is eligible for consideration for promotion. As per the Recruitment Rules, the case of the applicant is that even though he came within the zone of consideration, but his

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name was not sent to the DPC held in March, 1991 although he has put in service as JAO w.e.f. 27.7.1979. However, after the Recruitment Rules came into force, Indian Audit and Accounts Department carried out upgradation of 80% posts of JAO to be designated as Assistant Accounts Officer by restructuring the cadre in terms of the recommendation of the 4th Pay Commission. It was done in order to bring parity between Audit and Accounts. That there is no effective amendment in the Recruitment Rules in this regard and so the learned counsel for the applicant rightly argued that eligibility of the applicant for promotion to the post of Accounts Officer can only be 5 years' regular service in the grade of JAO. However, the fact remains that 80% of the posts of JAO were given higher status and emoluments and so in spite of the Recruitment Rules, there was a separate grade for Assistant Accounts Officer and it was because of this that the order dt. 11.9.1990 (Annexure A7 to the rejoinder) goes to show that Assistant Accounts Officer with 2 years' regular service in the grade of JAO with a combined service in the grade of JAO with a combined service of 5 years in the grade of JAO and Assistant Accounts Officer put together are eligible for promotion

as Accounts Officer. In the Original Application, the applicant has made averments that the applicant should have been considered for promotion as Assistant Accounts Officer w.e.f. 1.4.1987 when his juniors were considered and promoted. It is also averred that the selection to the post of Assistant Accounts Officer is on the basis of seniority-cum-fitness and the department should have promoted the applicant w.e.f. 1.4.87, the date on which his juniors were promoted. Because of these averments, the applicant has also prayed in paras-8.2 and 8.3 for grant of orders that the applicant be promoted on the basis of the recommendations made by the DPC held for consideration of his promotion to the cadre of Assistant Accounts Officer from 1.4.1987, and that further orders be granted that the applicant is entitled to be given seniority and pay on the basis of deemed promotion with due consideration by the DPC which met after 3.6.1988. Since these claims of the applicant were not within limitation and the applicant has not come at the proper time, the learned counsel for the applicant gave a statement that he does not want to press these reliefs. Thus when these reliefs have not been pressed and by implication stand rejected by withdrawing the same, the applicant cannot say that those JAOs. who have already been

promoted as Assistant Accounts Officer on account of upgrading and restructuring of the cadre by taking 80% of the posts of JAO, are still junior to him. By virtue of this march of having been upgraded to the 80% posts in a higher scale of pay, the applicant stood superceded and this supersession meant lowering down of his seniority as JAO also. It is not open to the applicant now to say that such JAOs. who have been promoted as Assistant Accounts Officer are still junior to him. The learned counsel for the applicant has referred to the seniority list dt. 31.5.1983, but the upgradation of 80% posts was done sometimes in 1987 after the recommendations of the 4th Pay Commission were enforced. Thus there cannot be any confusion on this account that when once the applicant has not been given upgradation in the higher scale and did not come within 80% of the posts of JAO, he can still be senior to all those JAOs who have been upgraded on account of restructuring as said above. There is a reason for not promoting the applicant as Assistant Accounts Officer in the various DPCs held in 1987, 1988 and 1989. The applicant was chargesheeted for minor penalty and also punishment has been imposed which was to last for two years. The life of

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the panel could not run upto the time the punishment lapsed by virtue of the applicant having undergone the same. Thus the applicant could not find place in the zone of consideration for promotion to the grade of Accounts Officer as normally a definite multiple of the officers taken for consideration is taken into account. It was only after the punishment exhausted the DPC considered the applicant in January, 1990, but he was not found fit for promotion to the post of Assistant Accounts Officer. Thus from 1987 onwards, the respondents are having regular DPCs through upgrading 80% of the posts of Junior Accounts Officer and designated those posts as Assistant Accounts Officer. If the applicant had any grudge regarding that procedure adopted by the respondents dehors the rules to his prejudice, then at the relevant point of time the applicant could have agitated these matters. Since he has not agitated these matters at that time and in the present application the same are not being pressed, the applicant is now stopped to take the plea that such JAOs who were junior to him in the seniority list dt. 31.5.1983 still continues junior to him even after their promotion to the upgraded post of Assistant Accounts Officer. Moreover the applicant had not assailed by claiming any specific prayer

that he should have been promoted as Assistant Accounts Officer after he has outlived the penalty imposed upon him. He has rightly not done so because that matter would have been barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. The applicant contended himself by filing repeated representation which would not have added to the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985 as laid down in the case of S.S. Rathore Vs. State of Madhya Pradesh, AIR 1990 SC 10.

6. The applicant has since been promoted as Assistant Accounts Officer w.e.f. 3.1.1991 and he has also accepted that upgraded post. The learned counsel for the applicant stressed that in spite of this fact, the applicant should be considered senior to all those Junior Accounts Officers, who have been promoted and upgraded as Assistant Accounts Officer in the panel prepared on the recommendation of the DPC in 1987, 1988 and 1989. It shall be too much to accept this contention of the learned counsel as it appears totally unacceptable and has no reasonable basis.

7. The seniority of the JAOs, of course, is maintained, but the learned counsel for the respondents has from the departmental

file shown the revised seniority list stating that by virtue of promotion as Assistant Accounts Officer in 1987, 1988 and 1989, the serial number in the seniority list of JAO has gone a material change and the applicant has been by-passed by about 1200 such officers. Unless all such officers are impleaded as respondents, they cannot be down-graded in the seniority list in view of the fact that they are already working on an upgraded post getting higher emoluments in the scale of Assistant Accounts Officer.

8. Considering all these facts into account, we find that there is no substance in the application and the same is dismissed as devoid of merit leaving the parties to bear their own costs.

B.N. Dholiyal
(B.N. DHOUDIYAL) 24/7/92
MEMBER (A)

Sharma
24.7.92
(J.P. SHARMA)
MEMBER (J)