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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.251/91

New Delhi, this the 21st day of August, 1995

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

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

Shri G.C. Rawal,
A-357, Sarojini Nagar,
New Delhi-23.

... Applicant

By Advocate: Shri B.B. Raval

Vs.

Union of India
through the
Secretary,
Ministry of Planning,
Department of Statistics,
Sardar Patel Bhavan,
Sansad Marg, New Delhi.

... Respondents

By Advocate: Shri P.H. Ramchandani

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

The applicant was working as Computer
in the office of the Registrar-General from 1971.
The applicant applied for the same post in the
Computer Centre and he was selected and placed
at Sr.No.1 and another person Shri Mirig was placed
at Sr.No.3. Though the applicant was senior to
Shri Mirig, the seniority was changed in the year
1977 and Shri Mirig was shown senior to him taking

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into account the earlier service rendered in the Registrar-General office where both were working and in that office Shri Mirg was senior to the applicant. However, in the year 1988 the applicant was placed senior to Shri Mirg. Before this, the applicant was given adhoc promotion as Programme Assistant/Console Operator (PA/CO). As per the existing Recruitment Rules, the vacancies in the grade of PA/CO were to be filled up 25% by promotion and 75% by direct recruitment. These vacancies are to be filled up from amongst Junior Programme Assistant with 5 years of regular service in the grade, Junior Programme Assistant possessing post-graduate degree with Statistics as a subject. The applicant was given promotion on 20.3.82 purely on adhoc basis as PA/CO mentioning in the order of appointment that this adhoc appointment will not confer any claim for regular appointment and the service rendered on adhoc basis in the grade will not count for seniority or for promotion to the next higher grade.

The grievance of the applicant is that the applicant has been confirmed as Programme Assistant

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only w.e.f. 8.5.87 while he had to be confirmed w.e.f. October, 1983 and had he been confirmed earlier, he would have been promoted as Programme Assistant much earlier. The applicant was promoted as Assistant Director by the order dated 8.11.90 w.e.f. 17.10.90 where 3 years regular service is required in the grade. As the applicant had been confirmed in October, 1983, he would have been eligible for promotion as Assistant Director in the year 1986 itself. As such he has made representation which could not yield any result and the seniority list was finalised in November, 1989 which is not disputed by the applicant and the copy of which has been filed in which the applicant has been shown senior to Shri Mrig and his number in the seniority list is at Sr.No.25. His contention is that 5 years service from March, 1982 till May, 1987 has gone waste and merely because regular appointment was not made, his service should not be washed out. The representation of the applicant was rejected by the order dated 31.5.89. However, he filed the present application on 31.12.90 which was re-filed on 27.1.91 and he has also filed an application of condonation of delay M.P.No.300/91 and prayed for condonation of delay. The delay caused by the applicant has referred to the fact that he received the communication

from the department that his retrospective regularisation would be considered and finalised after finalisation of the seniority list. The seniority list was finalised only in November, 1991 and thereafter there has been certain delay on account of sometime taken by the learned counsel where the papers were misplaced. In view of this, considering the objection taken by the respondents, we are of the view that there is reasonable cause in not filing the application in time and the delay therefore is condoned.

The relief prayed for by the applicant is that the applicant be given retrospective promotion as Programme Assistant w.e.f. October, 1983 when regular vacancies existed in the category of Programme Assistants and the applicant was also eligible and he be given the consequential benefits.

The respondents filed a short reply and thereafter filed a supplementary detailed reply and opposed the grant of the relief prayed for by the applicant. As regards delay, the M.A. for condonation is allowed and the objection that the application is barred by time is overruled.

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On merit it is stated that the promotion of the applicant on 20.3.82 was only adhoc and the applicant was also not fulfilling the eligibility condition on that date. However, the D.P.C. was delayed because the regular incumbent to the post of Executive Director who is Chairman of the D.P.C. was not in station and as soon as regular Executive Director joined, the DPC was held. No officer junior to the applicant was given promotion and there is no infringement of the rights of the applicant. It is said that the applicant was appointed as Computer by the order dated 29.10.74 and he was promoted to the next higher post of Junior Investigator in October, 1978. However, by the order dated 29.6.88 the seniority of the applicant was restored above Shri Mrig and on this revised seniority the applicant was appointed as Assistant Director on promotion w.e.f. 17.10.90 and Shri Mrig is yet to be promoted. Because of the seniority disputes of the applicant with Shri Mrig the promotion has been delayed. In fact because of the quota system there was no vacancy available though the applicant may be eligible for regular promotion to PA/CO.

As per the existing Recruitment Rules out of every 4 appointees, 3 are to be appointed by direct recruitment against one in promotion quota from the feeder post of Junior Programme Assistant. There was no vacancy available till 1986 and the respondents have furnished during the course of hearing, a chart of vacancies. In the chart it is shown that in the year 1982, there were 3 vacancies and one vacancy has gone to Shri S.K. Garg, who is admittedly senior to the applicant in the promotion quota. The 2 other vacancies have gone to direct recruit quota in which Shri Kailash Chand and Smt. Paramjit Kaur were appointed though Shrimati Paramjit Kaur joined in April, 1984. In the year 1983 there was only one vacancy which has gone to direct recruit quota. In the year 1984 there was one vacancy which has gone to promotion quota and one Shri V.K. Verma, who was senior to the applicant was considered and appointed. But Shri V.K. Verma vacated this post to join in State Bank of India but he retained the lien in this post for 2 years and this post could only be available in the year 1986. In the year 1985 there were 2 vacancies which have gone to direct recruit quota. In the year

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1986 there were 11 vacancies, out of which 3 vacancies have gone to promotee quota and the remaining to the direct recruit quota. In one of these vacancies, the applicant has been considered alongwith others in the DPC held on 8.5.87 and the Minutes of the DPC have also been filed. The respondents have also filed the seniority-list as on 1.3.89 of the PA/CO. As such it is stated that the applicant cannot claim retrospective promotion to the post of PA/CO and he has been rightly given regular promotion w.e.f. 8.5.87.

The applicant has also filed rejoinder and also filed supplementary rejoinder regarding the nature of vacancies pointed out by the respondents in their additional information.

We have heard the learned counsel for the parties at length and perused the record. The applicant has not disputed that he was promoted as Junior Investigator w.e.f. 18.10.78 for the next promotional post of PA/CO with 5 years regular service is required in the grade which the applicant could complete in October, 1983. The holding of the DPC can only be when there is regular vacancy available for appointment to the cadre. In 1982, there was a vacancy in the promotion quota but the applicant was not eligible and his senior


Garg was appointed and that fact is not disputed by the applicant even in the supplementary information furnished by the applicant. The contention of the applicant and also averred in the supplementary information is that after the promotion of Shri S.K. Garg 7 persons were inducted in the direct recruit post. This fact is not denied by the respondents except that Shri V.K. Verma, a promotee was given promotion and Shri Poorna Nand was given a berth in the 1986 vacancies. As already referred to before there were only 3 vacancies in 1982 and promotee vacancy has gone to Shri S.K. Garg and 2 vacancies have gone to direct recruits. In the year 1983 there was only one vacancy which has gone to direct recruit. In the year 1984, there was one vacancy which has gone to Shri V.K. Verma, a promotee. Thus, out of the 5 vacancies of 1982, 1983 and 1984, 2 have been rightly given to the promotee quota and Shri S.K. Garg and Shri V.K. Verma have been appointed and 3 vacancies have gone to direct recruit quota. In the year 1985, there were 2 vacancies and since out of 5, 2 promotees were appointed so both these vacancies have gone to direct recruit quota, whereby out of 7 vacancies upto the year 1985, 5 were given to the direct recruits quota and 2 to the promotee quota and it is in keeping with the Recruitment Rules that against 3 direct recruits, one promotee has to be appointed. It is in the year 1986 there were 11 vacancies and 3 vacancies have gone

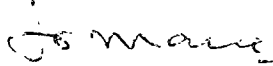
to promotee quota and 8 vacancies have gone to direct recruits. The applicant has consolidated all the direct recruits vacancies including some of the 1986 vacancies making averment that 7 direct recruits were inducted but it is an incorrect statement of facts. The applicant has deliberately omitted the name of Shri V.K. Verma, a senior to him who though promoted in the promotee quota in 1984 but went to join State Bank of India and retained the lien on this post till he was confirmed in the S.B.I. The contention of the applicant's counsel is that the lien of the promotee Verma could have been on the direct recruit quota is totally untenable. Thus, the above chart clearly shows that there was no permanent vacancy available to consider the applicant by the DPC before 1986. The D.P.C. therefore rightly considered him in 1987 for a vacancy which was due in 1986 and he was given promotion on regular basis to the post of PA/CO w.e.f. 8.5.87. He has also been given promotion as Assistant Director w.e.f. 17.10.90. The contention of the applicant's counsel is that since Shri V.K. Verma was relieved on 20th March, 1984, then that vacancy could have been made

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available to the applicant in the promotee quota is incorrect and will not be in conformity with the Recruitment Rules which specially prescribed filling of the vacancies by quota and rota, unless a person is absorbed in another service he continues to maintain his lien at least for 2 years in the post from which he has gone. Shri V.K. Verma was appointed on regular basis in the year 1984 and therefore the respondents have rightly retained his lien for a period of 2 years. In any case this vacancy cannot be of the year 1984 and can only be considered in the year 1986 and the respondents have rightly done so.

In view of the above facts and circumstances, the application is totally devoid of merit and the same is dismissed leaving the parties to bear their own costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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