

15

Central Administrative Tribunal
Principal Bench

.....

Case No. 332/1991

New Delhi, this the 24th day of July, 1995.

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri S.R. Adige, Member (A)

Jitendra Lal Bud s/o Sh. H.R. Bud,
R/o 60, Defence Enclave, Delhi-92

working as Deputy Director (OL),
Department of Science & Technology,
Technology Bhavan, New Delhi-16.

Applicant

(By Shri M.R. Bhardwaj, Advocate)

Versus

Union of India through

1. Secretary,
Department of Official Language,
Ministry of Home Affairs,
New Delhi.
2. Secretary,
Department of Personnel & Training,
North Block,
New Delhi.
3. Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi.
4. Shri D.S. Jaggi,
Dy. Director (OL)
Deptt. of Economic Affairs
(Banking Division), Min. of Finance,
Jeevan Deep Building,
Parliament Street,
New Delhi.
5. Shri Ram Kumar,
Dy. Director (OL),
Department of Tourism,
Parliament Street,
Parliament Bhavan,
New Delhi.

.....2p/-

6. Shri Ashok Kumar,
Dy. Director (OL),
Ministry of Surface Transport,
Transport Bhavan,
New Delhi.
7. Shri Brij Raj,
Dy. Director (OL),
Deptt. of Personnel & Training,
North Block,
New Delhi.
8. Smt. D.D. Kumar,
Dy. Director (OL),
Deptt. of Official Language,
North Block,
New Delhi.
9. Shri Som Prakash Arya,
Dy. Director,
Department of Statistics,
Yojna Bhavan,
New Delhi.
10. Shri S.S. Kataria,
Deputy Director,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
11. Shri B.L. Gupta,
Deputy Director,
Deptt. of Supply,
Sardar Patel Bhavan,
New Delhi.

... Respondents .

(By Mrs. Raj Kumari Chopra, Advocate)

ORDER (ORAL)

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

The applicant joined as Assistant Director on 15.5.1977 on ad-hoc basis in the Central Secretariat Official Language Service. With effect from 1.2.1985 the applicant alongwith others was given substantive appointment on regular basis on the post of Assistant Director. The next promotional post is of Deputy

Director which is governed by Central Secretariat Official Language (Group 'A' & 'B') Post Rules, 1983.

The post of Deputy Director has to be filled primarily on promotion basis by considering eligible Assistant Directors on the date having 8 years of regular service in the grade. If this mode of selection fails, there is an alternative mode provided in the recruitment rules i.e. by transfer on deputation basis but that is irrelevant for the decision of the present case.

It appears that the department has given ad-hoc promotion to the applicant from Grade-III of the aforesaid Service to grade-II in the scale of 3000-4500/- w.e.f. 13.4.1989 for a definite period which was extended from time to time and the last extension was given upto 31.5.1990 or till a duly selected incumbents joins on the post. The respondents, in accordance with the aforesaid rules, had a D.P.C. in the year 1989 and a panel was declared on 21.12.1989 of 11 Assistant Directors to be promoted as Deputy Director but the name of the applicant was not existing in the said panel. As a result of which the applicant was again reverted to the substantive post of Assistant Director on 31.1.1990. However, he was again promoted as Deputy Director on regular basis w.e.f. 1.1.91.

The applicant appears to have filed this application in December, 1990 having suffered a set back in the earlier O.A. No. 150/90 which was filed and withdrawn by the applicant with liberty to file the fresh O.A. when

the respondents had already put an appearance and also contested the O.R. by filing their reply. This order was passed by the Principal Bench on 12.3.1990.

In the present application, the applicant has prayed for the following reliefs:-

"(i) Call for the relevant file/records in the possession and custody of respondent one dealing with:

(a) Proposals for the relaxation of the provisions of recruitment rules, in so far as length of 8 years regular service in the post of Asstt. Director(DL) for purposes of eligibility for consideration for promotion to the post of Dy. Director (DL) and invoking Note 3 at foot of Schedule IV of the Recruitment Rules to render the ineligible officers eligible.

(b) the appointment of respondents (4) to (11) to the post of Dy. Director (DL) on the basis of the select lists drawn up by the D.P.C. which met in August and Dec., 1989, considering the cases of officers who were ineligible for promotion under the statutory Rules, and

(c) the two select lists prepared by the D.P.C. in its meetings in August and Dec., 1989 together with the C.Rs of all the officers

whose cases were considered by the D.P.C.

It is respectfully submitted that disclosure and discovery of the aforesaid records/files is necessary in the interest of justice as the perusal thereof by the Hon'ble Tribunal would reveal that respondent one and three had acted illegally and arbitrarily and that the consideration of the cases of officers who were otherwise ineligible and the relaxation of the Rec'tt. Rules were ultra-vires of the powers vested in respondents No. 1 to 3.

On notice the respondents contested this application and denied various averments made in the original application. It is stated that the Central Secretariat Official Language Service was constituted for bringing various scattered posts into a common cadre for providing better promotional avenues and service conditions. The initial constitution of Group 'A' and Group 'B' post was constituted in two phases on 17th December, 1985 and 8th June, 1987. The applicant was included in the initial constitution of the service by the order dated 17.12.1985 and was appointed as Assistant Director on regular basis w.e.f. 1.2.1985. The first D.P.C. was held on 24th August, 1987 and in the exigency of work, the ad-hoc promotions were given to the Assistant Directors to the post of Deputy Director with the clear understanding to them that that service will not count for as a regular service and is only a stop gap arrangement till such incumbents

:- 6 :-

are replaced by the regularly selected candidates.

It is said that the applicant had already withdrawn one original application no. 150/90 in which the same relief, as prayed for in the present application, was prayed/sought. As a result of the recommendations of the D.P.C. headed by the Chairman, Union Public Service Commission, the panel was drawn and notification was issued on 15.1.1988. That D.P.C. has considered the vacancies on year-wise basis. The D.P.C. was held in December, 1989. The applicant was considered alongwith other juniors but was not recommended by the D.P.C. The respondents have referred to sub-clause 3 of rule 7 which lays down that the selection of officers for promotion shall be made by selection on merit on the recommendations of the D.P.C. constituted in accordance with rule 4. It is, therefore, said that the applicant has no case.

The applicant has also taken the stand that when junior has been considered then all persons senior to him will also be considered for the post of Deputy Director. The applicant has also filed the rejoinder reiterating the same facts.

We heard the learned counsel for the parties at length. Firstly, we find that the applicant who filed earlier S.O. No. 150/90 had withdrawn at a stage when the respondents had filed their reply. Since the liberty was granted to re-agitate the matter again, if so advised,

:- 7 :-

so the present application cannot be said to be barred by the principles of resjudicata but at the same time there is a positive point in favour of the respondents that the applicant once ~~on a post~~ ^{joins like} cannot make further ~~gains~~ ^{advances} on the merit of this case.

The other point taken by the learned counsel is that zone of consideration will be enlarged by relaxing the rule as provided under rule 13. His contention is that relaxation can be said to be relaxed as per laid down norms when it is in favour of a ^{class} clause and should not be resorted to in the case of an individual.

The interest of society or needy is foremost than that of the individual. There cannot be two opinions about this proposition, but the fact is that the respondents had to fill up certain posts of Deputy Directors and all these Deputy Directors who had been considered were inducted on the initial constitution of the service w.e.f. 1.2.1985. When all of them ^{have} become member of the Service on one and the same date, the contention of the applicant's counsel is that the candidates much below him are junior and their promotion to the post of Dy. Director as such, cannot be accepted. The respondents, on the basis of earlier service have graded the seniority list giving birth at serial no. 1,2,3 and so forth irrespective of the fact that all of them became Assistant Directors on regular basis from 1.2.1985. Even considering that matter in further detail, it

appears that the respondents could have resorted to an alternative mode of filling up the vacancies by transfer on deputation and in that event the applicant and the other employees can have the benefit of promotion who have been deprived of promotion for years together.

In view of the fact that those who had been working on ad-hoc basis since 1977 or so, as Assistant Director and in view of the rules which provided in initial constitution of service, department has shifted to the nodal ministry DOP&T for giving relaxation of rules as provided under rule 13 of the Rules. The contention of the applicant counsel that UPSC should have been consulted may be having some force but it is diluted when a member of UPSC chairs the D.P.C. in which the matter has been duly considered for giving promotion to the candidates on regular basis. One fact still remains that the applicant who is getting the benefit of relaxation himself under the said rule can challenge the same benefit given to others. In equity, fair play and justice, it cannot be done and is estopped to take such a plea because he himself is a beneficiary of relaxation and cannot get the relief in a manner that benefit given to the other candidates in the same manner be withdrawn. If the applicant feels so strongly on the relaxation provision then he should have forgotten the benefit w.e.f. 1.1.1991 and thereafter challenge the promotion of others that all those

who have been promoted, have been promoted against the provisions of rules and the relaxation could not have been given to them. Having not done so, he has no basis to challenge the benefit given to others when he himself is a beneficiary of that relaxation.

On merit we do find that the respondents have taken the serial no. 1 to 32 of the seniority list in order to make the selection proper multiplying with the number of vacancies with 3 so that better and meritorious candidates can be given appointment though they may be junior to the applicant as alleged by him.

In fact all of them have been working in the grade of Assistant Director from the same date and the respondents have not erred in considering the merit of all these persons.

The applicant has since been promoted as Deputy Director w.e.f. 1.1.1991 as recommended by the subsequently held D.P.C. We find that the order of promotion issued on 31.12.1989 does not call for any interference. The original application is, therefore, dismissed as devoid of merit leaving the parties to bear their own costs.

Arfaz
(A.R. RADHAKRISHNA)
MEMBER (A)

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

/nka/