

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO. 579/91

DATE OF DECISION: 3rd JAN. 1992
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SH. RAJ PAL SINGH

.....

APPLICANT

VERSUS

UNION OF INDIA & OTHER

.....

RESPONDENTS

CORAM:-

THE HON'BLE MR. D.K. CHAKRAVORTY, MEMBER(A)

THE HON'BLE MR. T.S. OBEROI, MEMBER(J)

COUNSEL FOR THE APPLICANT : SH. GYAN PRAKASH

COUNSEL FOR THE RESPONDENTS : SH. P.H. RAMCHANDANI,
SENIOR COUNSEL

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. T.S. Oberoi, Member(J)

In this O.A., filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant who
is serving as a Senior Public Prosecutor in C.B.I.,
has prayed for the following reliefs:-

(a) The applicant may be admitted with costs.

(b) The order contained in impugned letter dt.

4.1.91 (Annexure A-1) may be quashed.

(c) The respondents may be directed to consider
the case of the applicant for giving him deemed
promotion and seniority in the grade of Senior
Public Prosecutor in C.B.I. w.e.f. 22.1.1985.

(d) The respondents may be directed to give
the applicant all the consequential benefits
arising out of deemed promotion as S.P.P. in
1985.

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(e) An early hearing may be granted to the applicant since his future promotions are linked with the judgement/orders in this case.

(f) Any other relief which Hon'ble Tribunal may deem fit for the applicant in the interest of justice and fairplay.

2. The applicant's case briefly is that he was appointed as a Public Prosecutor in C.B.I. w.e.f. 22.1.1982, and, as per the recruitment rules, he was eligible to be considered for promotion as a Senior Public Prosecutor, on completion of three years' service as a Public Prosecutor in C.B.I., which he completed on 21.1.1985. His case further is that inspite of his having completed the said three years' service, and inspite of his having represented to the respondents to consider him for promotion as Senior Public Prosecutor in C.B.I. vide his letter dt. 20.1.1985 and 16.8.1985, and inspite of two D.P.Cs. having been held in 1985, his case for promotion was not considered in the said D.P.Cs. and instead, his case was considered much later in the D.P.C. held in 1986, which recommended his case for promotion as Senior Public Prosecutor, which eventually resulted in his promotion on 5.1.1988, and thus his promotion as Senior Public Prosecutor was delayed for nearly three years which would affect him adversely, throughout his remaining service. He elaborated that his further promotion as Deputy Legal Advisor would

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correspondingly be delayed for the said period of three years or so, affecting him both monetarily as well as in the matter of his career progression. He further pleaded that his representations to the departmental authorities/respondents have failed to bring forth the desired result, and hence, this O.A.

3. The respondents have contested the applicant's claim, and vide the counter filed on their behalf, have opposed the same on various grounds. Their first contention is that the present application is barred by limitation, as the grievance occurred to the applicant as far back as January, 1985, and this was within applicant's knowledge, as he first represented, in this respect, vide his representation dated 29.11.1989 (page 18 of paperbook), which was rejected vide reply dt. 9.2.1990 (page 13). The second representation was dated 3.7.1990 (Page 16-17), which was rejected vide the impugned order dated 4.6.1991 (page 11). It was contended on behalf of the respondents that it is well known that repeated representations do not extend the limitation, and the applicant ought to have tapped the legal recourse, in case he was really aggrieved, with the respondents non-action, within the permissible period, as per provisions contained in Section 21 of the Administrative Tribunals Act, rather than submitting his representations to different authorities, including

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the Commission for Schedule Castes and Schedule Tribes, (Govt. of India, Ministry of Welfare), as per his representation dated 4.6.1987 (Page 20 of the paperbook).

The second contention put forth by the respondents, opposing the applicant's case, was that the two D.P.Cs. held in 1985 had considered the cases for promotion against the vacancies for the years 1983 and 1984, and since the applicant had completed 3 years' service as Public Prosecutor in January, 1985, his case could not be considered, alongwith the others who became eligible for such consideration, in the said D.P.C's, and, accordingly, case of all those who became eligible for consideration for promotion as Senior Public Prosecutors'against the vacancies for the year 1985, after collecting the requisite information, including their A.C.Rs., from different offices of C.B.I., scattered all over India, sometimes in December, 1986, and thus after necessary approval of the concerned authorities, applicant's appointment as Senior Public Prosecutor could be feasible in December, 1987, as a result of which he could join on his promotional post on 5th January, 1988, and thus there was no avoidable delay in applicant's promotion as Senior Public Prosecutor.

The respondents also took up the plea that there was no prejudice caused to the applicant's interest, in as much as no junior to the applicant had stolen a march over him, in this process, and even some seniors

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to the applicant had been promoted as Senior Public Prosecutors much later, and in case, applicant's prayer with regard to his promotion w.e.f. January, 1985, on completion of his three years of his service, as a Public Prosecutor in C.B.I. is accepted, it would cause a chain reaction by way of prejudice, to those of the Senior Public Prosecutors, who had been promoted as such, much later than January, 1985, as claimed by the applicant, without their being made a party in this O.A. or being heard about it. The third contention put forth by the respondents, opposing applicant's prayer in this regard, was that the applicant's case, particularly with regard to his future promotion as Deputy Legal Advisor, is merely with regard to chance of promotion, not giving rise to any legal right in this respect, since it is dependent upon some future contingency.

4. We have also heard the learned counsel for the parties and have given our careful thought to the rival contentions, as made out by both the sides. The learned counsel for the applicant emphasised the applicant's case, because of his being the first scheduled caste candidate, appointed directly as a Public Prosecutor in C.B.I. and promoted as Senior Public Prosecutor, and, therefore, deserved to be considered for promotion as Senior Public Prosecutor against the quota for SC/ST

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candidates, on priority basis. He also emphasised applicant's claim in this respect on his deemed promotion as Senior Public Prosecutor w.e.f. January, 1985, so that his interests for next promotion do not suffer. The learned counsel for the applicant also emphasised that as per government instructions, there should be yearly meetings of the D.P.Cs., for considering the yearwise vacancies, and as held in 1989(9)(SC) ATC 263 - Union of India Vs. Somasundram, the instructions in this respect are not mere formalities, but carry a sanctity, to be strictly complied with, as their non-compliance results in adverse affect to the concerned.

The learned counsel for the applicant also referred to AIR 1970 SC 1447 (Amrik Singh & Ors. Vs. U.O.I. & Others), which impressed upon the desirability of avoiding administrative lapses, as they result in loss to the concerned government servants, both in terms of money as well as their future career progression.

5. The plea of the learned Senior Counsel for the respondents in this regard was that, though it is very much desirable that the governmental instructions in holding D.P.Cs. should be strictly adhered to, but sometimes, some delays are inevitable, particularly where several agencies are involved, and matters have to be finalised, in consultation with the U.P.S.C., as in this case, and eventual approval of the appointing

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authority had also to be obtained. The learned Senior Counsel for the respondents thus pleaded that the delay in the instant case was not at all deliberate or malafide and, therefore, should not be allowed to stultify the whole thing.

6. After carefully considering the whole position, as briefly discussed above, we do not find it possible to grant the reliefs prayed for by the applicant in this O.A., on the ground of delay involved, particularly when it concerns several other persons, senior to the applicant, who have not been made a party in this case, and also because no junior to the applicant has been promoted as Senior Public Prosecutor, over and above him. In result, the application is dismissed with no order as to costs.

Oberto 3.1.92
(T.S. OBEROI)

MEMBER(J)

Chakravorty 3-1-1992
(D.K. CHAKRAVORTY)

MEMBER(A)

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