

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 PRINCIPAL BENCH
 NEW DELHI

D.A.No. 643/91.
 M.A.No. 785/91.

Date of decision: 7.7.1995.

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

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Permal Singh,
 S/o Shri S.C. Dass,
 r/o 28-E, J/B, LIC, C-8,
 Area Maya Puri,
 New Delhi.

OFFICE ADDRESS: .. Applicant

Working as Computer
 in the office of the APO
 Division, Deptt. of Defence,
 Ministry of Defence,
 New Delhi.

(By Advocate Shri B.B. Raval)

versus:

Union of India, through

1. The Secretary,
 Ministry of Defence,
 South Block, New Delhi.
2. The Secretary,
 Ministry of Food & Civil Supplies,
 Deptt. of Food, Krishi Bhawan,
 New Delhi.
3. Secretary,
 Deptt. of Welfare,
 Shastri Bhawan, New Delhi.
4. Shri M.M. Ansari,
 Statistical Assistant,
 Deptt. of Defence (A.P.O),
 Room No. 393-A,
 Krishi Bhawan,
 New Delhi. .. Respondents

(By Advocate Shri B. Lall)

O_R_D_E_R

— Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial) —

The applicant being aggrieved by the Order
 dated 19th November, 1987 (Annexure 'F') passed by

respondent No. 1, has filed this application under Section 19 of the Administrative Tribunals Act, 1985. His grievance is that he was appointed to the post of Computer in the Army Purchase Organisation (APO) of the Ministry of Food & Civil Supplies on 6.2.1971 and since that date he has not been promoted to any higher post. His claim is that he should be promoted to the post of Statistical Assistant in the Department of Food where he was working earlier in place of one Shri M.M. Ansari, who was appointed to that post in 1984 against the recruitment rules and regulations.

2. The brief facts of the case, which are not disputed, are that the applicant was appointed to the post of Computer in the Ministry of Food with effect from 6.2.1971. He was promoted for a short period from 30.4.1983 to 9.12.1983 as Senior Computer on a purely temporary basis and was reverted with effect from 9.12.1983 as a Computer in the Department of Food. When the Government took the decision to merge the Army Purchase Organisation with the Ministry of Defence, the entire staff working in the APO was transferred from the Ministry of Food & Civil Supplies to Ministry of Defence in 1986. The applicant was also transferred alongwith the APO to the Ministry of Defence. The applicant now claims that he was not given any option regarding his transfer along with other staff, to which the respondents have replied that no such option was obtained

from other members of the staff also. However, the respondents have, in their reply, stated that if he was not willing for transfer, he should have represented for his repatriation to the Department of Food which he never did and so he had acquiesced in the transfer. According to the applicant, he made a representation on 12.12.1986 to the Department of Defence regarding his seniority in that Department which the respondents have stated is not on record. He has also referred to various other representations which he had made (Annexures 'C' & 'D') in which he has requested that he may be promoted to the post of Statistical Assistant in the Department of Food and also pointing out that after his transfer to the Department of Defence he has no channel of promotion. He has requested that proper channel for promotion should be created for him in the Department of Defence.

3. The second main grievance of the applicant is that Shri M.M. Ansari was only working on ad hoc basis in the Ministry of Social Welfare at the time of his appointment to the post of Statistical Assistant with effect from 1.3.1994 which was against the relevant recruitment rules. He points out that the appointment should have been made by transfer on deputation failing which by direct recruitment and since Shri Ansari was not holding any permanent post, he did not fulfill

the necessary qualifications and was, therefore, not eligible for the post of Statistical Assistant.

4. We have heard both the learned counsel, Shri B. B. Raval for the applicant and Shri B. Lall for the Respondents.

5. The applicant has reiterated the facts and stand in the rejoinder and the additional rejoinder, which he has taken in the application and the respondents have also reiterated their stand in the additional reply.

6. Shri B.B. Raval, learned counsel for the applicant, in CSIR v. K.G.S. Bhatt (1989(2)SCALE 395. relies on the judgment of the Supreme Court. He states that since the respondents have admitted that the post held by the applicant is an isolated post in the Deptt. of Food, in accordance with the judgment of the Supreme Court in this case, the respondents ought to provide the applicant opportunities for promotion to safeguard the morale, effective performance and in the interest of manpower development and management etc. He, therefore, submits that the respondents may be directed to promote the applicant. His contention is that Shri M. Ansari had been illegally promoted to the post of Statistical Assistant in 1984 ~~and~~ overlooking the claim of the applicant and this position, therefore, needs to be remedied in favour of the applicant.

7. Shri B. Lall, learned counsel for the respondents, has referred to the reply filed by the respondents in which a preliminary objection has been taken that the application is barred by limitation.

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Respondents have stated in their reply that Shri M. M. Ansari has been appointed to the post of Statistical Assistant in 1984. The representation of the applicant as well as some others, against the appointment was rejected by Respondent No. 2 on 9.5.1984 (Annexure R-3). Apart from this, the applicant is now challenging the Office Memo. dated 19.11.1987 (Annexure 'F') in which his request for promoting him as Senior Computer has been rejected by respondent No.1 on the ground that there was no such post in that Ministry.

8. The respondents have affirmed that Shri M.M. Ansari has been appointed as Statistical Assistant strictly in accordance with the recruitment rules for the post and that the applicant was not eligible for appointment to that post. Shri B. Lal points out that the applicant was one among 7 applicants for the post of Statistical Assistant and since the applicant did not possess the requisite qualification Shri Ansari had been selected. The respondents have stated that Shri Ansari was working as Statistical Assistant in the Ministry of Social Welfare on temporary basis against a temporary post of Statistical Assistant and had, therefore, been considered, along with others, and duly selected in accordance with the rules. In any case, they have stated that the applicant can have no grievance, firstly, on the ground of limitation and secondly, because he himself was not qualified for the

post when Shri Ansari was appointed.

9. Regarding the second point raised by the applicant, Shri Lal has drawn our attention to para 4(k) of the reply. The respondents have admitted that the post of Computer in APO in the Ministry of Defence is an isolated post in Group 'C', without any further promotional avenues. They have, however, stated that his case for promotion to the next higher scale of pay will be considered at the appropriate time in accordance with the instructions contained in the Ministry of Finance (Department of Expenditure) O.M.No. 10(1)/E. III/88, dated 13.9.1991 (Annexure R-4). This O.M. provides that following the recommendations of the Fourth Central Pay Commission, the Government had introduced a scheme to ensure atleast one promotion in the service career to each Group 'C' and 'D' employees. This scheme is applicable to -

- (i) employees who are directly recruited to a Group 'C' or Group 'D' post;
- (ii) employees whose pay on appointment to such a post is fixed at the minimum of the scale;
- (iii) employees who have not been promoted on regular basis even after one year on reaching the maximum of the scale of such post.

The scheme provides that where Group 'C' employees fulfil the conditions mentioned above, they can be considered for promotion in situ to the next higher scale as provided in para 2. Shri Lal states that as and when the applicant reaches the maximum in the scale of

Computer, his case for promotion to the next higher scale of pay will be considered in accordance with the O.M. dated 13.9.1991, In view of the reply given by the respondents, he submits that the applicant is not entitled to the reliefs as prayed for in the application and the same may be dismissed.

10. We have carefully considered the arguments of both the learned counsel and the records.

11. The APO was transferred to the Ministry of Defence along with the entire staff working in APO, including the applicant, from the Ministry of Food and Civil Supplies to the Ministry of Defence vide O.M. dated 10.1.1986 with effect from 1.2.1986 (Annexure 'B'). If the applicant had any grievance regarding his transfer to the Ministry of Defence, he should have raised the same within a reasonable time. He cannot raise the question of the lack of any option being sought from him in 1986, at this stage. The claim that suffers from delay and laches and he was not given any option/is, therefore, rejected.

12. Regarding the promotion of Shri M.M. Ansari, and his representation for promotion to the post of Statistical Assistant, the respondents have stated that these have been rejected by the impugned order dated 19th November, 1987. Shri Ansari Had been appointed by Office Order dated 26.3.1984 (Annexure R-1) by respondent No. 2 before the APO was merged with the

Ministry of Defence. On perusal of the reply filed by the respondents, we are also satisfied that Shri Ansari has been appointed to the post of Statistical Assistant in accordance with the recruitment rules, and the applicant had also been considered for that post at that time but was found not eligible. Apart from this, if the applicant had a grievance against the appointment of Shri M.M.Ansari, he should have taken appropriate action to challenge this claim in a court of law within the period of limitation. Therefore, this claim that he should have been appointed to the post of Statistical Assistant in the Department of Food instead of Shri Ansari is rejected both on the grounds of merit and limitation.

13. Finally, the claim of the applicant rests on the pronouncement of the Supreme Court Judgment in K.G.S. Bhatt's case (Supra). The grievance of the applicant that he has no chances of promotion as he is holding an isolated post is not denied by the respondents. We note the assurance given by the respondents in their reply that his case will be considered for promotion to the next higher scale at the appropriate time in accordance with the Ministry of Finance (Department of Expenditure) O.M. dated 13-9-1991,

14. Accordingly, this application is disposed of

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with the direction to the respondents to consider the case of the applicant for promotion to the next higher scale of pay in accordance with the instructions contained in the O.M. dated 13.9.1991 as and when the applicant becomes due for the promotion. No costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Adige
(S.R. Adige)
Member (A)