

17

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 726/1991

New Delhi, this 30th day of March, 1995

Hon'ble Shri Justice S.C. Mathur, Chairman  
Hon'ble Shri P.T. Thiruvengadam, Member (A)

Shri Vijay Kumar Saraswati  
c/o late Shri M.C. Saraswati  
Song & Drama Division  
Soochna Bhawan, New Delhi-3 .. Applicant

(By Shri T.C. Aggarwal, Advocate)

versus

Union of India, through

1. The Secretary  
Min. of Information & Broadcasting  
Shastri Bhawan, New Delhi
2. The Director  
Song & Drama Division  
Soochna Bhawan, New Delhi
3. Shri Chiranjit Gulati  
c/o Song & Drama Division  
Soochna Bhawan, New Delhi .. Respondents

(By Shri P.H. Ramchandani, Senior Counsel  
with Dr. J.C. Madan, Advocate)

ORDER (oral)

The applicant has prayed for the following  
reliefs in this application:

(i) To quash the order dated 10.4.90  
whereby Shri Chiranjit Gulati, Respondent  
No.3 was promoted to the post of Deputy  
Director, Song & Drama Division, Government  
of India; and

(ii) To direct the respondents to fill up  
the post of Deputy Director through  
promotion.

2. The applicant joined the department in the year  
1967 as Producer. In the year 1970 he was promoted  
to the post of Assistant Director. The next higher  
post to which he was to be considered for promotion  
was the post of Deputy Director. 75% of the posts  
are filled by direct recruitment and 25% by  
promotion. In the year 1989, one post of Deputy
- 2.

Director fell vacant. The applicant was the only eligible Assistant Director entitled to be considered for promotion. He was however not promoted and the post was kept vacant. By the time of next recruitment, Respondent No.3 Shri Charanjit Gulati also became eligible and was promoted. The applicant claims that his supersession and the promotion of Shri Gulati are illegal. The main ground of grievance is that his record that was put up before the Departmental Promotion Committee continued to have adverse entry of 1984 which had, on his representation, been expunged. It is further stated that the applicant was awarded punishment by order dated 9.6.88 against which he had preferred appeal but no decision had taken thereon till the time of selection and the punishment was taken into consideration. It is also the case of the applicant that the last vacancy was wrongly treated to be as a reserved vacancy opening it for direct recruitment as it was a single vacancy and it had to be filled by promotion alone, ~~as an open vacancy.~~

3. Reply has been filed on behalf of Respondents No.1 & 2. Despite notice, no reply has been filed on behalf of Respondent No.3 Shri Chiranjit Gulati.

4. In the counter reply filed on behalf of the Central Government, the position of vacancy and its filling up has been clearly brought out. It has been stated the first vacancy arose on 1.11.87 when the incumbent of the office of the Deputy Director retired from service. At that time the applicant was the only Assistant Director eligible to be

considered. Accordingly, the DPC met on 18.8.89 in the office of the UPSC. The Committee considered the service record of the applicant and found him unfit for promotion. It is denied on behalf of the respondents that the expunction of adverse entry was not incorporated in the service record by the time the DPC met. The learned counsel for the Central Government has produced before us the original record which shows that the adverse entry had been expunged on 9.10.86. The applicant's claim therefore that his case for promotion was considered on the basis of incorrect service record cannot be accepted. The vacancy of 1987 was carried forward to the next year i.e. 1988.

5. Before the DPC could meet next to make selection, the Department of Personnel & Training issued instructions dated 25.4.1989 regarding reservation for SC/ST in promotion to all grades/services in which the element of direct recruitment did not exceed 75%. This reservation policy became applicable in the department also. Since the vacancy of 1988 was the first vacancy which fell in promotion quota, it was at roster point 1 and was reserved for SC. Under Office Memorandum dated 29.4.1975 such a vacancy was to be treated as unreserved and the reservation was to be carried forward to three subsequent recruitment years. In view of the above position the vacancy of 1988 was treated as unreserved and the departmental promotion committee met on 28.3.1990 to consider the applicant and the respondent No. 3 for promotion to the post of Deputy Director. The DPC on the consideration of the

22

service record of the applicant and respondent No. 3 recommended the latter. The record of the DPC was produced before us by the learned counsel for the respondents. The record indicates that one of the factors which weighed with the Committee in not recommending the applicant's name was that he had been punished in disciplinary proceedings. The learned counsel for the respondents produced before us the proceedings of the departmental promotion committee from which it appears that the applicant was assessed as average while Shri Gulhati was assessed as "Very Good".

6. In view of the above no flaw can be found in applicant's supersession in 1989 and 1990.

7. It is further pointed in the counter affidavit that another vacancy became available on 1st March, 1990 when the incumbent retired on 28.2.90. This vacancy fell under the promotion quota. Even though it was a single vacancy, it was reserved for SC/ST but since no officer belonging to these categories was available in the feeder cadre the post was temporarily diverted to direct recruitment. It is submitted by the learned counsel for the respondents that the applicant can make no claim to the post as this has been reserved for SC/ST and on account of their non-availability, it has been temporarily diverted to direct recruitment quota. This procedure is permissible under paragraph 3 of OM dated 10.7.90, Annexure R-7 to the counter reply which reads as follows:

"The recommendation has been examined and it has been decided that where recruitment to a grade is made both by promotion and direct recruitment are prescribed in the recruitment rules, reserved vacancies falling in the promotion quota which can not be filled due to non-availability of eligible persons belonging to Scheduled Castes and Scheduled Tribes in the feeder cadre may be temporarily diverted to the direct recruitment quota and filled by recruitment of candidates belonging to Scheduled Castes or Scheduled Tribes as the case may be in accordance with the provisions relating to direct recruitment contained in the recruitment rules. In the subsequent years(s) when reserved vacancies in the direct recruitment quota become available they may be diverted to the promotion quota to make up for the vacancies diverted earlier and filled from SC/ST candidates in the feeder cadre who might by now have become eligible for promotion."

8. With regard to applicant's supersession in 1989, the submission of the learned counsel is that there was no rival candidate and therefore the supersession is wholly arbitrary. Admittedly, the criterion for promotion prescribed in the rule is "selection". In view of this criterion the applicant could not claim promotion on the basis of seniority and single availability alone. He could get promotion only if he was found fit for promotion. In view of the prescribed criterion if no candidate was found fit, the post could be kept vacant. The submission of the learned counsel is therefore misconceived.

9. The learned counsel for the applicant cited Dharam Vir Singh Thomas Vs. Administrator, Delhi Admn. & Ors. (1991)17ATC 925. In this case their Lordships held that fitness means that there should not be any adverse entry in the character roll of the concerned person at least for the last three years and no disciplinary proceedings should be pending against him. This was not a case of promotion from

2

lower post to a higher post based on the criterion of selection; It was a case of promotion from ordinary grade to selection grade.

10. The case of Udai Bhan Rai Vs. State of UP & Ors. 1994(2)SLJ-1 was also cited by the learned counsel. In this case, the appellant though qualified and selected, was not promoted on erroneous plea that there was no post and a junior unqualified person continued. This was not approved of by their Lordships. No such situation arises in the present case. The person junior to the applicant has been promoted after consideration of eligible candidates according to rules.

11. In view of the above, the OA lacks merit and is hereby dismissed without any order as to costs. Interim order if any operating shall stand discharge.

P.J. Rao  
(P.J. Thiruvengadam)  
Member (A)  
30.3.95

S.C. Mathur  
(S.C. Mathur)  
Chairman  
30.3.95

/tvq/