

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 136/2004

NEW DELHI THIS 17th DAY OF NOVEMBER 2004

**Hon'ble Shri Justice V S Aggarwal, Chairman,
Hon'ble Shri S.A. Singh, Member (A)**

S.C. Dhawan,
Deputy Central Intelligence Officer (Workshop) Gp 'A'
S/o Late Shri D D Dhawan, R/o House No/ 2583, Bazar Sita Ram, Delhi

.....Applicant

(By Shri G S Chaman, Advocate)

VERSUS

1. Union of India through
Secretary, Ministry of Home Affairs,
Govt. of India, Central Sectt, North Block, New Delhi
2. Director,
Intelligence Bureau, Ministry of Home Affairs,
Govt of India, 35, New Complex, Sardar Patel Marg,
New Delhi

.....Respondents

(By Shri R N Singh proxy for Shri R V Sinha, Advocate)

O R D E R

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicant, who joined as Senior Mechanic with the Intelligence Bureau in 1967 was appointed as Assistant Central Intelligence Officer (Tech.) in 1972 and transferred to newly created Workshop cadre in March 1974. The applicant was promoted as Assistant Technical Officer (Workshop) on 31.1.1990.

2. The Technical cadre of Intelligence Bureau was re-structured vide MHA's OM dated 5.2.2001 by merging ATOs/ Technical Officers (TOs) of various streams and 39 ATOs were then placed in the upgraded scale of Rs.8000 – 13500/- and re-designated as DCIO(Technical). The Recruitment

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Rules for the re-structure cadre were amended and after approval of the MHA, DoPT, UPSC and Ministry of Law have been notified on 23.3.2004.

3. With the merger of the various streams of ATOs into a single cadre of DCIO (Tech) w.e.f. 5.2.2001 the ATOs posts ceased to exist and all promotions to the post of AD (Tech.) were to be made from common seniority of DCIO(Tech). The main grievance of the applicant is that a vacancy for AD (Workshop) became available on 1.12.2002 for which the applicant had already been empanelled at Sr. No. 2. Sr. No.1 in the panel was one Shri Devgan. Shri H S Devgan was promoted against a vacancy of AD (Workshop) by order dated 20.12.2002 and he took over charge on the same day. He retired from service 10 days later on 30.12.2002. The vacancy of AD (Workshop) became available from 1st December 2002 and the applicant being at Sr. No. 2 in the panel should have been promoted against this vacancy. However, despite the availability of the vacancy he was not promoted. He made representations to the respondents and when he failed to receive a reply he filed OA No. 1903/2003 which was disposed of by order dated 4.8.2003 directing respondents No.2 to consider the representation of the applicant and pass speaking order. The respondents have passed the impugned order rejecting the claim of the applicant on the ground that on re-distribution and re-structuring of the post of DCIO (Tech.) and AD (Technical) the incumbent ATOs had been placed in the upgraded scale and re-designated as DCIO (Tech) and the Recruitment Rules had also been accordingly amended. Moreover, after merging into the single cadre w.e.f. 5.2.2001 the post of ATOs do not exist and promotions to AD (Tech) has to be made from common seniority of DCIO (Tech). With regard to the applicant the reasons spelt out in the order are as under:

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“Shri S C Dhawan has already been placed in the upgraded scale of DCIO/Tech and the post of ATO (WS) which he earlier occupied had ceased to exist w.e.f. 05.02.2001. The old RRs also have become irrelevant and promotion of restructured Technical cadre is to be made as per new RRs which are already approved by MHA/DoPT/UPSC and are under the process of notification. Shri S C Dhawan will get promotion on his turn as per new RRs and other DCIO/Tech who are otherwise senior to Shri S C Dhawan can not be ignored while considering his promotion.”

4. The applicant relying upon the case of C.B. Narnauli and anr. Vs Union of India & Ors (2002 (2) ATJ 420) pleaded that the Recruitment Rules applicable to the applicant should be those that were current on the date the vacancy arose on 1.12.2002. The respondents are applying the Recruitment Rules notified much later on 24.3.2004. Moreover, the applicant has legitimate expectations because he was transferred to Workshop cadre in 1972 without his option and was informed vide order dated 12.9.1982 in reply to his representation, that he will seek further promotion in the Workshop Cadre alone as the decision taken by the respondents was correct. With the retirement of Shri H S Devgan he has legitimate expectation for promotion to the post of AD/Tech. As being senior-most and being the next person on the panel.

5. Needless to say that the case been contested by the respondents pleading that the applicant had no indispensable right of promotion. Earlier Recruitment Rules are not applicable because with the merger of the cadres and re-designation of the posts the post of ATO ceased to exist. During the merger and restructuring, the applicant was upgraded to the post of DCIO/Tech. and was placed in a higher scale, hence the application of earlier rules does not arise and further promotions have to be made against the new Recruitment Rules which have now been notified. The applicant will be considered for promotion in his turn.

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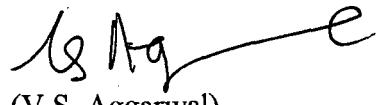
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6. We have heard the parties and gone through the documents placed on record and we find that the short question before the Tribunal is does the applicant have a vested right to be considered for promotion against the vacancy arising on the retirement of Shri H S Devgan. The respondents have argued that the promotion after the merger of cadre have to be made as per the combined seniority list and the promotion of Shri H S Devgan was only because he was retiring within ten days and it should not be taken as precedent. At the most it could be considered as an error on the part of the respondents. It does not give rise to a right to the applicant for being considered for promotion to this post before his juniors in the combined seniority list.

7. It is not contested that the cadre were merged w.e.f. 5.2.2001 and the applicant after merger, was designated as DCIO/Tech in higher grade. The vacancy on the retirement of Shri Devgan has arisen only on 1.12.2002, which is after the merger of the cadres. The applicant having taken advantage of merger by accepting the upgraded re-designated post of DCIO/Tech can not now claim that he should be considered for promotion as per the rules applicable to the non-existent post of ATO/Tech.

8. In view of the above claim of the applicant that Recruitment Rules 1989 should apply in his case is not logical. He has to seek promotion according to the rules applicable to the merged cadre. The O.A. therefore fails and is accordingly dismissed. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

Patwal/