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Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.1523/2004

Hon'ble Mr. Justice B. Panigrahi, Chairman
Hon'ble Mr. D.R. Tiwari, Member (A)

New Delhi, this the 17th day of November, 2005

Manoj Kumar Saraswat,
Deputy Director (Mechanical),
Branch Small Industries Service Institute,
ITI Campus, Bhiwani (Haryana)

....Applicant

(Appeared in person)

Versus

Union of India through:

1. The Secretary,
Ministry of Small Scale Industries,
Udyog Bhawan, New Delhi-11
2. The Additional Secretary & the Development Commissioner,
Small Scale Industries, 7th Floor, Nirman Bhavan,
New Delhi-11

....Respondents

(By Advocate: Shri Rajeev Kumar, proxy for Shri J.B. Mudgil)

Order (Oral)

Justice B. Panigrahi, Chairman

In this case, applicant has challenged the legality, propriety and validity of the seniority list in the grade of Deputy Director maintained by the respondents. Applicant was recruited to the post of Assistant Director Grade-I (Mechanical) (Group 'A') in SIDO, Ministry of Small Scale Industries, Government of India by the Union Public Service Commission (UPSC). He received the offer of appointment on 22.12.93

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and joined the department on 25.1.94. In the merit list prepared by the UPSC, the applicant was kept against serial number 1. On the basis of such merit position acquired by the applicant vis-à-vis other selected candidates, the respondents have prepared the seniority list in the grade of Assistant Director (Mechanical) which has been enclosed as Annexure-1 to the counter reply. It is evident that the applicant was placed against serial number 1. In the course of employment, it seems that the applicant was given promotion to the post of Deputy Director. Initially, he was shown at the 3rd position in the seniority list of Deputy Directors. Therefore, he filed a representation before the authorities challenging his placement in the said seniority list. A review DPC was conducted in 2002 in which the position of the applicant was again lowered and he was placed at serial number 5 in the Deputy Director's grade. Being aggrieved by such seniority list prepared by respondents 1 and 2, he has filed this case.

2. The respondents have filed their reply wherein they have stated that recruitment to a post including appointment on promotion is based on the provisions prescribed in the recruitment rules notified for the post. According to the recruitment rules, the post of Deputy Director is filled 25% by direct recruitment and 75% by promotion from amongst Assistant Directors Grade.I (Mechanical) with five years service in the grade. The respondents have inter-alia stated that since the applicant could not satisfy the eligibility criteria for the vacancy of the year 1998-

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99, therefore, his case was considered against the vacancy of the year 1999-2000 and accordingly he was placed at serial no.1 for the vacancy of that year. Thereafter, his position was shown to be against serial number 5 in the Deputy Directors' grade and four others namely Sanjeev Chawla, Umesh Chandra Shukla, Rakesh Kumar Rai and Mohammed Rafe were shown senior to him.

3. The applicant who is present in person, contended that he was selected by the UPSC to the post of Assistant Director Grade.I (Mechanical) and in the merit, his position was shown to be against serial number 1. Not only this, in the seniority list also which was circulated by the official respondents, he was placed at serial number 1.

4. It is true that although the applicant was selected along with the other candidates during the same selection but his letter of appointment was issued by the respondents at a later date as a result of which he joined on 25.1.94. The applicant further submitted that since he was in railways which is Government organization, therefore, there was no necessity to make further verification of credentials. In that view of the matter, his seniority position could not be altered unilaterally by respondents 1 and 2. In the event they wanted to alter the seniority, the applicant should have been given sufficient opportunity before such alteration and thereafter only, his position could have been lowered.

5. Learned counsel appearing for the respondents has invited our attention to the recruitment rules. In order to appreciate his contention,

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we hereby extract the eligibility criteria of the recruitment rules for the post of Deputy Director Grade-I:

1.Name of post	Deputy Director
2.No. of posts	21 (present strength-54)
3.Classification	Class I Gazetted
4.Scale of pay	700-40-1100-50-1250 (revised scale : 1100-50-1600)
5.Whether selection post or non-selection post	Selection
6.Age limit for direct recruits	40 years and below (Relaxable for Govt. servants).
7.Educational and other qualifications required for direct recruits	Essential: (i) Degree in Mechanical Engineering from a recognized University/Institution or equivalent. (ii) About five years experience in a responsible capacity in a technical organization or industrial concern of repute in production of light engineering stores. (iii) Should be thoroughly familiar with the latest technique of production and use of modern machinery, equipment and tools as applied to the above trade (Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.) <u>Desirable :</u> Some administrative experience
8.Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees	No

9.Period of probation, if any	Two years
10.Method of rectt. whether by direct rectt. or by promotion or transfer & percentage of the vacancies to be filled by various methods.	75% by promotion failing which by direct recruitment, and 25% by direct recruitment.
11.In case of rectt. by promotion/transfer grades from which promotion to be made	By promotion of Assistant Director (Gr.I) with five years service in the grade (including probationary period)
12.If a DPC exists, what is its composition	Class I DPC
13.Circumstances in which UPSC is to be consulted in making recruitment	As required under the rules

6. While examining the contention raised by the respondents' counsel, we have carefully gone through the eligibility criteria stipulated in the rules. It speaks that an officer having five years service in the grade including the probationary period, is eligible for promotion to the post of Deputy Director.

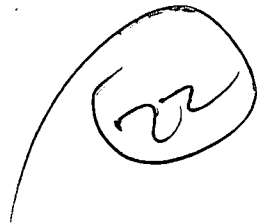
7. In this case, the applicant vis-à-vis other candidates selected to the post of Deputy Director, were selected to the post of Assistant Director in the same selection process. The seniority list maintained by respondents 1 and 2 envisaged that the applicant stood first in the UPSC selection in

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accordance with merit. On the basis of such merit, they had also circulated the seniority list. In the event the respondents altered the seniority list treating him to be ineligible in the first selection, they should have given the applicant a chance to represent and only after hearing him, they could alter his position in the seniority list. Such an exercise has not been followed in the present case.

8. Initial objection raised by the respondents is that since the other officers who are likely to be affected by the decision in the present case have not been impleaded as party, therefore, their seniority position cannot be altered without they being given a chance of hearing. We find significant force in the said submission. However, we also agree with the contention of the applicant that he should have been given a chance of hearing before the seniority position could be altered but in this case, such an opportunity was not given to him. From time to time, his position in the seniority list has been altered. On the first occasion, he was placed at serial number 3. Later on, he had been shifted to 5th position.


9. In the result, we hereby direct the official respondents to conduct a review DPC and consider the case of the applicant along with other selected candidates who are now holding the position above him and decide the matter in accordance with rules. It would not be improper to state that few days shortfall in the eligibility criteria will not, in the instant case, disturb the seniority list maintained in the grade of



Assistant Director and in an appropriate case, the authorities can condone such shortfall if the applicant could not satisfy the eligibility criteria. We find that only 24 days had fallen short in order to make him eligible for the year 1998-1999 for which he cannot also be blamed. The review DPC should be conducted after hearing the grievance of the applicant vis-à-vis other persons made senior to him, within a period of four months from the date of communication of this order. With these directions, the O.A. is disposed of.



(D.R. Tiwari)
Member (A)



(B. Panigrahi)
Chairman

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