

Central Administrative Tribunal  
Principal Bench, New Delhi.

OA-480/2004

*September 16*

New Delhi this the 8<sup>th</sup> day of August, 2004.

Hon'ble Shri V.K. Majotra, Vice-Chairman(A)  
Hon'ble Shri Shanker Raju, Member(J)

J.P. Bhulania,  
S/o Sh. Shankar Lal Bhulania,  
R/o H-77, Laxmi Nagar Extension,  
Laxmi Nagar, New Delhi.

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Applicant

(through Sh. Ritesh Agrawal, Advocate)

Versus

National Council for Educational Research  
and Training through its  
Secretary,  
Sri. Aurobindo Marg,  
New Delhi.

..... Respondents

(through Ms. Deepa Rai, Advocate)

Order (oral)

Hon'ble Shri V.K. Majotra, Vice-Chairman(A)

Heard the learned counsel.

2. Applicant is aggrieved that he has not been considered for promotion to the post of Senior Stores Officer with consequential benefits. It is stated that he is eligible for consideration for promotion having rendered 8 years continued service in feeder grade as per extant service rules. Learned counsel of the applicant stated that by denying consideration for promotion, respondents have violated the provisions of Articles 14 & 16 (1) the Constitution of India. For this

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he relied on Ajit Singh and Others (II) Vs. State of Punjab and Others (1999(7)SCC 209). He further submitted that one officer junior to the applicant, namely, O.K. Dabas was promoted by the respondents vide order dated 1.10.2002 (Annexure-3). The post held by Sh. Dabas has been lying vacant after his retirement on superannuation w.e.f. 1.5.2003. Respondents have not been holding the DPC on the ground that the respondents' council is considering the requirement of this post to which the applicant is seeking promotion. For this purpose, they have constituted a committee for reviewing the vacancies vide O.M. dated 26.2.2004 (Annexure R1/D).

3. Learned counsel of the respondents also pointed out that when Sh. Dabas was promoted to the post, applicant was not fully eligible for consideration for promotion as he had not completed 10 years service in the council as per the then existing rules. She referred to Tribunal's order dated 18.7.2002 in TA-7/2002. Applicant had not challenged the promotion of Sh. Dabas. We agree with the learned counsel of the respondents that in view of Tribunal's aforesaid orders it is no longer open to the applicant to agitate his promotion vis-à-vis the post vacated by Sh. Dabas in 2002.

4. However, in view of the ratio of the matter of Ajit Singh and Others (supra), promotion based on equal opportunity and seniority attached to such promotion are facets of fundamental rights under Article 16(1). If the person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be considered for promotion, which is his personal right. Respondents ought to have considered the

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applicant for promotion. The only ground being relied upon on behalf of the respondents for not convening the DPC for considering the applicant for promotion to the post of Senior Stores Officer is that respondents are reviewing the posts which have been lying vacant for more than one year and on the recommendations of the committee set up by the respondents vide memo dated 26.2.2004, respondents shall be taking a final decision as to which posts of those lying vacant for more than a year have to be abolished and which of those have to survive.

5. Both sides agreed to a suggestion that respondents should consider the applicant by convening a DPC for promotion to the post of Senior Stores Officer, however, if the applicant is considered fit for promotion, he shall be promoted only if the relevant post is not abolished and survives on the recommendations of the review committee, referred to above. Accordingly respondents shall convene a DPC meeting within a period of one month from communication of these orders <sup>and</sup> the review committee shall make recommendations on vacant posts and the council shall take a final decision on the recommendations of the review committee within a period of two months from communication of these orders. The respondents shall promote the applicant if he is found eligible as above if the relevant post is not abolished within the above stipulated period.

6. O.A. is disposed of as above. No costs.

S. Raju  
(Shanker Raju)  
Member(J)

/vv/

V.K. Majotra  
(V.K. Majotra)  
Vice-Chairman(A)  
8.9.04