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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 678/2004
MA 577/2004

New Delhi, this the 25th day of October, 2004

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

1. Gauri Shankar Mitra
A-305, Paradise Apts
40 IP Extension(Patparganj)
New Delhi
 2. Dilip Bhaattacharya
K-2008, Chittaranjan Park
New Delhi
 3. P.L.Kedaria
118, Sector 3, Sadiq Nagar
New Delhi
 4. Dipak Das
G-131, Nanak Pura
New Delhi
- .. Applicants

(Shri Surinder Singh, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Information & Broadcasting
New Delhi
 2. Director of Advertising & Visual Publicity
Parliament Street, New Delhi
- .. Respondents

(Mrs. Avinash Kaur, Advocate)

ORDER

Shri S.K. Naik

Applicants, four in number, are aggrieved on account of inordinate and unexplained delay in the consideration of their promotion to the post of Art Executive (AE, for short)/Exhibition Officer (EO, for short), for which they claim to be eligible.

2. Brief facts of the case are that the applicants have entered the service of Respondent No.2 as Senior Artists in the scale of Rs.6500-10500 twenty years ago and earned no regular promotion. They have however been granted financial upgradation under the Assured Career Progression (ACP) Scheme in the pay scale of Rs.10000-15200 meant for AE/EO in the year 1999. Since the posts of AE/EO are lying vacant from 1st August, 2001, applicants were entitled to be promoted on regular basis

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as they have fulfilled the eligibility criteria for promotion. However, despite repeated requests by Respondent No.2, the matter was not taken up by Respondent No.1 with the Union Public Service Commission to convene the Departmental Promotion Committee meeting, which has prevented the applicants of their legitimate right of being promoted to the post of AE/EO. Since the respondents have already awarded financial upgradation under the ACP scheme and brought the applicants in the pay scale of Rs.10000-10520 in May, 1999, the applicants claim that their regular promotion to the post of AE/EO will not entail any additional financial expenditure and therefore there is no reason as to why they should not have been promoted against the vacancies.

3. Respondents have contested the application. In their reply, they have stated that as per the Recruitment Rules for promotion to the post of AE/EO, there is no doubt that they are to be filled 100% by promotion but they contend that the feeder cadres comprise of three different streams, i.e. Assistant Exhibition Officer with 5 years regular service; secondly Chief Modeler with 7 years in the grade; and thirdly Senior Artists, Artists and Layout Artists with 8 years regular service. While separate seniority lists are maintained for each category, but a single eligibility list comprising eligible incumbents for promotion is prepared for filling up the post of AE/EO. The counter reply however does not clarify whether the applicants are within the eligibility list so prepared and therefore we have to go by the averments/claim of the applicants that they figure in the eligibility list under the Recruitment Rules to be so promoted.

4. Respondents however appear to have taken shelter behind not promoting the applicants on the ground that the Expenditure Reforms Commission (ERC) had made some recommendations proposing merger of the Executive Wing of DAVP with the Directorate of Field Publicity (DFP) suggesting abolition of 127 posts, which included one post of EO. Besides, DAVP also identified one post of AE for abolition and has issued necessary orders on 20.4.2004 in this regard. The further stand of the respondents was that pending merger of the Executive Wing of DAVP with DFP, it was not appropriate to fill up the vacant posts. It was a

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conscious policy decision that none of the posts identified for abolition be filled.

5. Counsel for the respondents therefore has contended that in this peculiar background of the case, applicants cannot claim it as a matter of right to be promoted from the date of occurrence of vacancies, especially keeping in view that they have already been granted financial upgradation under the ACP Scheme with effect from 1999, i.e. much before the occurrence of vacancies. He further states that financial upgradation that has been granted is in the scale of pay i.e. Rs.10000-15200 which they would have been entitled to had they been promoted against the pot of AE/EO. Thus, they do not suffer any financial loss, the counsel contends.

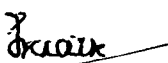
6. Learned counsel for the applicants stresses during the arguments the point that respondent No.2 has all along pressed and recommended filling up of the vacant posts by promotion. Despite their repeated requests, respondent No.1 did not refer the matter to UPSC for convening DPC. He further contends that no doubt the applicants have been placed in the same scale of pay i.e. Rs.10000-15200 which is applicable to AE/EO, but the financial benefit alone is not sufficient as it is the legitimate expectation of an employee to acquire a status before his retirement. Since two of the applicants are due for superannuation very soon, the counsel contends that respondents be directed to consider the applicants for promotion with effect from the dates the vacancies have occurred.


7. It is not contradicted by the respondents that vacancies in the post of AE/EO have occurred during the year 2001. They have also not countered the claim of the applicants that they were eligible to be promoted against the vacant posts as per the Recruitment Rules. However, an attempt has been made by the respondents to explain the inordinate delay based on the recommendations of the ERC. Their reply further indicates that only one post of EO was identified for abolition vide Annexure R-1 and the DAVP identified another post of AE for abolition for which orders were issued on 20.4.2004 vide Annexure R-2. It does not fully explain as to why the respondents did not initiate necessary action to convene the DPC through UPSC since 2001 when the posts fell vacant. Even now in their reply respondents have taken the plea that

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since the posts have remained vacant for over a year they have come under the deemed abolition category and therefore will require the approval of Ministry of Finance for their revival. We do not consider this as sufficient justification in not filling up the vacancies and the applicants cannot be blamed for the delay. Respondent No.1 could certainly take up the matter for the revival of posts which still exist after the implementation of the recommendations of the ERC, with the Ministry of Finance. We notice from the reply filed by the respondents that the same does not contain any reason as to why no action was taken on the series of recommendations made by Respondent No.2 to convene the DPC for promotion to fill up the vacant posts. The view point of Respondent No.1 for the delay, in our view, should have been explained. Absence thereof is only ~~an~~ indicative of the fact that much before any view was taken with regard to the recommendations of ERC and despite availability of vacancies even after the recommendations of ERC, the matter has been left unattended just because a reference to the Ministry of Finance was required for revival the of posts. Had Respondent No.1 taken necessary action to convene the DPC for promotion to fill up the vacant posts in time, the posts would not have fallen under the category of deemed abolition. Thus, in our view, respondents cannot take shelter behind any policy decision which was taken much later.

8. Financial upgradation under the ACP scheme cannot be equated with regular promotion and we are of the view that the applicants are entitled to consideration for promotion against the vacant posts. We therefore dispose of this OA with a direction to the respondents to take up the matter with the Ministry of Finance for revival of the posts, which have come under deemed abolition and consider the case of applicants for promotion to the post of AE/EO, if their names figure in the eligibility list, in accordance with the Recruitment Rules and grant them consequential benefits. There shall be no order as to costs.


(S.K. Naik)
Member(A)


(V.S. Aggarwal)
Chairman

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