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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**NEW DELHI**

O.A. No. 62  
~~Ex. No.~~

1985

DATE OF DECISION 17.3.1986

Sh. Krishan Baldev Wadhwa      **Petitioner**

Petitioner in person      **Advocate for the Petitioner(s)**

**Versus**

Union of India & Others      **Respondent**

Shri M.L. Verma      **Advocate for the Respondent(s)**

**CORAM :**

**The Hon'ble Mr. S.P. MUKERJI, MEMBER**

**The Hon'ble Mr. H.P. BAGCHI, JUDICIAL MEMBER**

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

**JUDGMENT**

The petitioner has come up under Section 19 of the Administrative Tribunals Act to seek redress about his deferred and belated promotion as Senior Section Supervisor with effect from 21.11.1983 while according to him he should have been promoted with effect from 1.8.1982 from

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which day ad hoc promotions were given to three of his juniors. He has cited the case of one Shri R.D. Agarwal who in identical circumstances was given a belated promotion as Senior Section Supervisor on 18.4.1983 and on feeling aggrieved, he went up to the Hon'ble High Court of Delhi (Civil Writ Petition CW 464/83) who directed that the delay having been caused by administrative process, he should be given promotion with effect from 1.8.1980 i.e. the date when the vacancy arose. It is admitted by the respondents that Shri Agarwal was given arrears of higher pay and other benefits as from 1.8.1980.

2. We have gone through the application along with its annexures, the reply by the respondents and duly considered the detailed arguments of the <sup>petitioner</sup> and <sup>the</sup> learned counsel for respondents Shri M.L. Verma.

We were considerably assisted by the various clarifications given by the representatives of the Department of Telecommunications.

3. It is not disputed before us that the vacancy for which the applicant had to be considered arose on 1.8.1982. The respondents' stand is that the petitioner's case however could not be taken up immediately or some time in advance because in spite of the fact that the applicant as an LSG Accountant was entitled to the vacancy in the 10% quota reserved for his cadre, the Department had clamped a ban on the promotion of LSG Accountants and held the promotion quota in abeyance by their order of 14.5.1980 and reaffirmed

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the ban by an order dated 14.4.1982 holding such promotion quota in abeyance. In the meanwhile, it is admitted that Shri R.D. Agarwal claiming a promotion on 1.10.1980 and having been given the promotion only from 18.4.1983 went up to the Hon'ble High Court of Delhi. The Department withdrew the ban on 15.4.1983, and by the directions of the Hon'ble High Court dated 25.3.1983 Shri R.D. Agarwal had to be promoted w.e.f. 1.10.1980 with all the benefits of salary and the facilities from that day. It is admitted by the respondents that in Shri Agarwal's case, <sup>in also</sup> even though the DPC was held a few years after 1.10.1980 and even though Shri Agarwal had not actually discharged the duties of Senior Section Supervisor earlier than 18.4.1983, under the directions of the High Court he had to be paid the fully salary of the post of Senior Section Supervisor w.e.f. 1.10.1980.

4. The respondents' case is that the applicant's promotion <sup>to the vacancy which arose on 1.8.82</sup> could not be made earlier than 21.11.1983 for two main reasons - firstly there was a ban on promotion of his category of officials till 15.4.1983 and secondly, in accordance with the reservation <sup>for procedure in Scheduled Castes and Tribes</sup> for SC/ST ~~procedure~~ his post had to be dereserved before he as a non-scheduled Caste candidate could be considered. Having said that, the respondents have admitted <sup>from August 1982 onwards</sup> that ad hoc promotions were given to three officials from the Section Supervisors grade who were placed below the applicant in the integrated

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roster of promotions (Annexure F to the petition). They have however justified these promotions by saying that the promotions of the three officers below the applicant i.e. Shri O.P. Kirar, Shri Niranjana Dev and Shri Raghbir Singh (at Sl.No.21, 22 and 23) <sup>or in the roster or</sup> were made <sup>only &</sup> on an ad hoc basis though they were promoted on a regular basis after the promotion of the applicant who was at Sl.No.20 on the same list.

5. So far as the question of ban is concerned, the Hon'ble High Court of Delhi has clearly indicated in their judgment <sup>& (Annex. M. to the Petition)</sup> in the aforesaid writ petition that "The ban having been removed on 15.4.1983, the DPC already having found the petitioner suitable and that is why order was passed on 18.4.1983. Evidently the petitioner cannot be held responsible for the delay on the part of the department itself. The petitioner has been found suitable....." Accordingly, the present applicant before us likewise cannot be made to suffer by the ban order especially when the ban was imposed by the Department themselves and withdrawn also by them. We are impressed by the arguments of the applicant that withdrawal of such promotions as are provided for in statutory rules cannot be affected by executive orders or fiat and that too with retrospective effect unless they are properly notified. There is no such notification produced before us in the matter of

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withdrawal of the promotion quota. In the afore-said context and in the context of the clear orders of the Hon'ble High Court it is felt that the applicant has a good case in spite of the so-called ban which was withdrawn on 15.4.1983. The respondents' plea that the DPC in his case was held in 1983 and therefore he cannot be promoted in 1982 stands defeated in the context of the case of Shri R.D. Agarwal in whose case the Hon'ble High Court of Delhi directed promotion from 1.10.1980 with all benefits of pay etc., even though in his case also the DPC selected him long after that date.

6. The only point remaining is that of dereservation. The respondent has depended heavily on the theory of dereservation and strenuously argued before us that no promotion could be made earlier than the receipt of orders of dereservation. However, they have conceded that if the ban order had not been there the reference to the Department of Personnel for dereservation could have been made earlier and the order would not have been received as late as November, 1983. Our attention has been drawn by the applicant to the O.M. of Department of Personnel & A.R., dated 7.4.1984 (Annexure P.10 to the rejoinder) in which the Ministries had been directed not to wait beyond two weeks after making a reference to the Department of Personnel and the Commissioner for SC & ST for releasing reserved vacancies

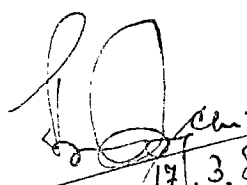
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for general candidates. Obviously, in this case the delegated authority had not been properly utilised. The sanctity of reservation is already violated by the respondents by making ad hoc promotions against <sup>to the</sup> reserved vacancies even before the order of de-reservation was received. This has been done admittedly in the present case by ad hoc promotions of three officers who had been placed below the applicant in the roster (Annexure F to the petition). We find there has been a manifest discrimination against the applicant inasmuch as, having figured at Sl.No.20 in the roster he was not given even ad hoc promotion against three vacancies which were <sup>summarily</sup> available to the respondents between August and October 1982 and three officers junior to him from the Clerical Cadre were given such ad hoc promotions. We could not accept the plea of the respondents that these officers are senior to the applicant firstly because they figure below the applicant in the roster as mentioned above and secondly <sup>while referring to the regular promotions of these three officers</sup> because the respondents themselves in their counter have admitted that "the next four juniors were promoted later, two on 12.12.1983 and two on 3.1.1984 against posts when became available upto the calendar year." (emphasis supplied)

7. In view of the above and considering also that the applicant is retiring in November, 1986 and will suffer an irreparable financial

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loss if his case of promotion goes by default, we find considerable merit in the application. Accordingly, we allow the application and direct that the applicant be given promotion with effect from 1.8.1982 together with all the consequential benefits as have been given to Shri R.D. Agarwal. In the circumstances there is no order as to costs.

  
(H.P. BAGCHI)  
17.3.86

  
(S.P. MUKERJI)  
17.3.86