

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. No./T.A. No.1787 of 1992 Decided on: 7.10.97

B.L. Chauhan

Applicant(s)

(By Advocate: Shri/~~M/s.~~/~~M/s.~~ B.B. Raval)

VERSUS

U.O.I.

Respondents

(By Shri/~~M/s.~~/~~M/s.~~ S.M. Arif)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? YES
2. Whether to be circulated to other Benches of the Tribunal? NO

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

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O.A. No.1787 of 1992

New Delhi, dated this the 7th October 1997

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri B.L.Chauhan,
S/o late Shri B.S.Chauhan,
Ex-Assistant,
Inland Water Transport
Directorate,
New Delhi.
C/o Shri B.B. Raval,
Advocate.

... APPLICANT

(By Advocate: Shri B.B. Raval)

VERSUS

Union of India through
the Secretary,
Ministry of Surface Transport,
Government of India,
Transport Bhawan,
New Delhi.

.... RESPONDENTS

(By Advocate: Shri S.M. Arif)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant seeks quashing of impugned orders dated 6.4.92 (Annexure A) and 18.5.92 (Annexure B) and for promotion as Section Officer w.e.f. 11.1.92 with consequential benefits.

2. Applicant commenced service as L.D.C. in 1958 in Inland Waterways Transport Directorate (IWT Dte) and attached office of Surface Transport Ministry and in due course was promoted as UDC and Assistant in 1979. Consequent to the enactment of the Inland Waterways Authority of India ACT, 1985 and

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the setting up of IWAI, the ISTD stood abolished w.e.f. 27.10.86. Pursuant to Section 11 IWAI Act, applicant and other employees were sent on deputation to IWAI w.e.f. 27.10.86. In course of time he and other employees were asked whether they wanted to get absorbed in IWAI. Applicant along with 23 others did not^{opt}/for absorption upon which they were taken in Surplus Staff Establishment in Surface Transport Ministry for suitable redeployment. Respondents admit that applicant obtained a stay on his redeployment. Applicant retired on superannuation in 1993.

3. Meanwhile respondents issued Order dated 20.1.92 (Annexure A-1) whereby 11 transferred posts along with their incumbents of the erstwhile ISTD were inducted on the permanent strength of Surface Transport Ministry as ex-cadre posts. Of these 11 posts, two posts are of Section Officers, one held by Shri P.S.Bisht and the other by Shri D.B. Asthana (expired on 11.1.92). Applicant lays claims for promotion as S.O. against one or the other of these posts, in the light of para 2 of that order which provides that as when those posts mentioned

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in that order fell vacant due to retirement/
death etc. the posts would be filled by
promotion from amongst eligible employees of
erstwhile ISTD and in case no one was
eligible for promotion the posts at Sl. No.2
to 6 of that order (including the posts of
S.O.) would be included in the CSS/CSSS/CSC
Services and would be filled up by persons of
those services.

4. Respondents contend that applicant is
not eligible for promotion against those two
posts of S.O. because those 11 employees were
taken on the strength of Surface Transport
Ministry against ex-cadre posts and would
remain on these posts till they did not
resign, retire etc. They contend that
promotion would be only from within these 11
ISTD employees, and applicant was not in the
direct line^{ne} of promotion as neither he nor
any post of Assistant was included in those
11 posts transferred from the erstwhile ISTD
which had been retained as ex-cadre posts in
the Ministry. It is stated that applicant
had no basis for seeking promotion in ISTD
Section. It is stated further that as there
was no eligible candidate within the Section
for the post of S.O. vacated by Shri P.S.Bisht
(Retired) this post was inducted into CSS
cadre of Surface Transport Ministry and a CSS

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Officer was transferred to that Section. The other post of S.O. having fallen vacant due to early demise of Shri Asthana was surrendered as an economy measure.

5. We have heard Shri Raval for applicant and Shri Arif for respondents. We have also perused the materials on record and have given the matter our careful consideration.


6. The Order dated 20.1.92 speaks clearly of 11 posts being inducted from the erstwhile IWT Directorate along with their incumbents onto the permanent strength of Surface Transport Ministry as ex-cadre posts, which include the two posts of S.O. mentioned above. Para 2 of that order states clearly that as and when these posts fall vacant due to retirement/resignation, death, etc. the posts would be filled up by promotion from amongst the eligible employees of erstwhile IWT Directorate (emphasis added). Respondent at Page 3 of their reply themselves refer to applicant as an Assistant from the erstwhile IWTD, and again in para 4.2 of their reply he has been referred to as an employee of the erstwhile IWTD, and elsewhere also he has been referred to as one of those 23 employees who did not opt for absorption in IWAI. In para 9 of the judgment dated 8.6.90 in O.A. No. 2118/89 Shri B.M. Nayyar Vs. UOI & Ors. reference has been made to the services of

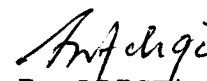
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23 employees of the erstwhile ISTD. The order dated 20.1.92 nowhere states categorically that promotions against the posts mentioned in that order will be confined only to the incumbents who came alongwith those posts, because all that the order says is that the posts would be filled up by promotion from amongst the eligible employees of erstwhile ISTD, and if respondents on their own showing admit applicant was an employee of the erstwhile ISTD Directorate, he cannot be denied consideration for promotion if he is otherwise eligible.

5. Accordingly this O.A. is disposed of with a direction to respondents to consider applicant for promotion against one of the two aforesaid post of S.O. from the date it fell vacant, if he is otherwise eligible in accordance with rules and instructions and pass a detailed speaking and reasoned order thereon within three months from the date of receipt of a copy of this judgment. In case as a result of such consideration applicant is found fit to be promoted, he shall be given notional promotion as S.O. without benefit of arrears of pay, but he will be entitled to refixation of retiral benefits together with arrears thereon.

6. This O.A. is disposed of in terms of Para 5 above. No costs.


(DR. A. VEDAVALLI)
Member (J)
/GK/


(S.R. ADIGE)
Vice Chairman (A)