

11

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 1956/92

New Delhi: this the 16<sup>th</sup> December 1997

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

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

A. C. Chakravarti,  
S/o Late Sh. B. B. Chakravarti,  
Sr. Surveyor,  
Archaeological Survey of India,  
Delhi Circle, Safdarjung Tomb,  
New Delhi- 110 003.

R/o 64/74, S-III, DIZ Area,  
R. K. Ashram Marg,  
New Delhi- 110 001

..... Applicant.

(By Advocate: Shri G. D. Bhandari )

Versus

Union of India through  
the Secretary, Culture,  
Ministry of Human Resources Development,  
Department of Culture,  
Shastri Bhawan,  
New Delhi.

2. The Director General ,  
Archaeological Survey of India,  
Janpath,  
New Delhi.

3. Shri K. K. Biswas,  
Surveyor Officer,  
Archaeological Survey of India,  
Calcutta,  
General Post Office Building,  
Fourth Floor,  
Block-DF,  
Sector-I,  
Salt Lake City,  
Calcutta- 1000064 .

..... Respondents.

(By Advocate: Shri S. M. Arif)

JUDGMENT

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

Applicant challenges respondents' order dated 21/24.2.92 (Annexure- 4) rejecting his representation dated 16.1.92 for promotion to the post of Surveyor Officer, Archaeological

/

Survey of India and respondents' order dated 13.5.92 transferring the said post from Delhi to Calcutta.

2. As per Recruitment Rules the post of Surveyor Officer which is a Group 'B' Gazetted post is filled 100% on promotion basis through selection from amongst the feeder category of Sr. Surveyor with three years' regular service in the grade, failing which with 5 years' regular service in the grade of Sr. Surveyor and Surveyor Instructor combined, and failing both Surveyor Grade I with 8 years regular service in the grade. As per Note submitted by respondents during hearing and taken on record, out of the two sanctioned posts of Surveyor Officer, 1 fell vacant as on 1.8.88 consequent to the retirement of its incumbent. As the post was a selection post, the zone of consideration was 5, but in 1988 there were only 4 persons including applicant with the requisite qualifications. In the DPC held on 25.10.88 the grading given was

Sl. No.	Name	Place of Posting	Grading
1	2	3	4
	S/ Shri		
1.	K. K. Biswas	Calcutta Circle	Very Good
2.	A. C. Chakravorty (Appl)	Delhi Circle	Good.
3.	R. B. Dalal (ST)	Bangalore "	Good.
4.	V. T. Chandey	Madras Circle	Very Good.

3. The DPC recommended S/ Shri Biswas and Chandey, but as Shri Biswas declined the promotion for personal reason, the offer made to him on 21.3.89 was cancelled, and he was

debarred for promotion for one year w.e.f. 28.11.88. The post was offered to Shri Chandey on 21.3.89 who accepted the offer on 28.4.89 and later joined on his return from tour to Kampuchea.

4. Respondents further contend that the 2nd post of S.O. fell vacant in 1990 consequent to the death of its incumbent. As per reservation Roster this post was to be filled by an S.T. candidate and accordingly the DPC in its meeting on 9.4.90 recommended Shri Dalal for promotion as he was the only S.T. candidate available in the feeder cadre and he joined on 6.8.90.

5. Consequent to Shri Chandey's retirement on superannuation the post of S.O. held by him fell vacant on 1.6.90. The DPC in its meeting on 18.7.91 considered the names of the two Senior Surveyors who were available and graded them as follows:

1. Shri K.K. Biswas	Outstanding
2. Shri A.C. Chakravorty (applicant )	Good.

and recommended Shri Biswas's name for promotion. The post was offered to him on 27.11.91 but he requested for his posting at Calcutta itself as he was to retire immediately after two years.

6. Respondents state that meanwhile a decision was taken to start a survey of Colonial Architecture in Calcutta for which a post of Surveyor Officer located in Calcutta was considered necessary. Accordingly the post of Surveyor Officer Delhi Circle which had initially been created for the Ladakh Project and was subsequently

transferred to different Circles as per administrative requirements, was transferred from Delhi Circle to Calcutta Circle w.e.f. 13.5.92 till the survey work of Colonial Architecture was completed and Shri Biswas was appointed against that transferred post at Calcutta w.e.f. 13.5.92. Respondents state that this post was transferred back to Delhi immediately after completion of Survey work in Calcutta.

7. During hearing Shri Bhandari asserted that applicant had an excellent record of service and had even been deputed abroad at Govt. expense and being senior to Shri Chandey could not have been superseded by him. He also stressed that respondents' Note indicated that in the OPC meeting dated 25.10.88 two names viz. S/ Shri Biswas and Chandey were recommended while in the OPC meeting on 18.7.91 only 1 name viz. that of Shri Biswas was recommended which showed that respondents were illegally, arbitrarily and malafidely bent on not recommending applicant's promotion. He also contended that there were no averments in respondents' reply to the OA that as per reservation roster one post fell to the share of ST quota candidate and that the OPC in its meeting held on 9.4.90 recommended Shri Dalal (S.T.) for the vacancy created owing to the unfortunate demise of its incumbent Shri Avtar Singh. It was also urged by him that the transfer of the post of Surveyor Officer from Delhi Circle to Calcutta Circle was ordered

12

malafidely only to suit the convenience for Shri Biswas, so that he could be promoted in Calcutta itself as he had earlier declined promotion as it meant he would have to leave Calcutta. Shri Bhandari emphasised that had the post been allowed to continue in Delhi applicant might well have been promoted against that post, Shri Biswas not being inclined to shift from Calcutta.

8. We have considered these arguments carefully. The applicant had a legal enforceable right to be considered for promotion, if eligible and there is no doubt that he was considered by the OPC in its meetings both on 25.10.88 and 18.7.91. The OPC graded him as 'Good', while it graded Shri Biswas who was admittedly senior to him as 'Very Good' and Shri Chandey who was junior to him also as 'Very Good'. As the post was a selection post, no irregularity was committed by respondents in promoting Shri Chandey, (after Shri Biswas had declined promotion) by superseding the applicant. There is nothing to indicate that the OPC was not regularly constituted or to show that any member of the OPC was prejudiced against the applicant. It is well settled that the Tribunal cannot sit in appeal over the OPC's recommendations, and give its own grading on the comparative merits of those who come within the zone of consideration. There is also no doubt that upon Shri Biswas declining the promotion, respondents would have had to make the offer of promotion to Shri Chandey, he having been

graded as Very Good, while applicant was graded only as Good.

9. Coming to the vacancy that became available in 1990 and which was reserved for an ST candidate as per the Reservation Roster, even if that fact was not specifically mentioned in respondents' reply, they have clarified the position in the aforesaid Note and we have no reason to doubt the correctness of the same. The relevant OPC minutes which were shown to us also confirm that Shri Dalal was recommended against that vacancy being an ST candidate, and as the post was a reserved one, applicant cannot lay claim to that post.

10. As regards the transfer of the post of Surveyor Officer from Delhi to Calcutta, applicant himself has stated that it was originally created for the Ladakh Project (para 4 (xxvi) of reply) and was transferred to Delhi. This indicates that this post was transferred ~~in the past~~ <sup>in the</sup> from one place to another depending upon administrative exigencies. Under the circumstance, if respondents considered that a post of Surveyor Officer was necessary to conduct the survey of colonial Architecture in Calcutta and they decided to transfer the aforesaid post from Delhi Circle to Calcutta Circle, against which Shri Biswas was promoted after its transfer, the decision cannot be said ~~per se~~ to be malafide, unless supported by other material. In the present case, no such material has been produced. Secondly even if that post had not been transferred

to Calcutta it does not automatically follow that applicant would have been promoted to that post, because Shri Biswas had not refused promotion. He had accepted the promotion but had requested respondents for his posting in Calcutta as he was due to retire after two years and under the circumstance if respondents felt that by transfer the post from Delhi to Calcutta not only would the public interest be served of getting the survey of colonial Architecture in Calcutta completed, but Shri Biswas who had been rated as outstanding got a promotion at the fag end of his career, it cannot be said that respondents' action *per se* was malafide.

11. We also note that while Shri Biswas retired on superannuation on 31.1.94, applicant himself retired on superannuation on 30.11.95.

12. In the facts and circumstances of this case therefore we find no good grounds to interfere. The OA is dismissed. No costs.

A. Kelkar

( DR.A. VEDAVALLI )  
MEMBER(J)

S. R. Adige

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