

Central Administrative Tribunal, Principal Bench

Original Application No.3044 of 1992

New Delhi, this the 9th day of September, 1999

Hon'ble Mr.Justice K.M. Agarwal, Chairman
Hon'ble Mr.N.Sahu, Member (Admnv)

Narendra Singh Pangtey, son of Shri Kalyan Singh Pangtey, r/o : G-237, Nanakpura, New Delhi-110021. employed as Deputy Director (W&M), Ministry of Civil Supplies, Consumer Affairs & Public Distribution, 12-A, Jamnagar House, New Delhi-110011.
(By Advocate - Shri D.R.Gupta)

- Applicant

Versus

1. Union of India through the Secretary, Ministry of Civil Supplies, Consumer Affairs and Public Distribution, Krishi Bhavan, New Delhi-110001.

2. Shri P.K.Krishnamoorthy, employed as Deputy Director, Regional Reference Standard Laboratory, Bangalore, Jakkur, Bangalore-560064
(By Advocate Shri P.H.Ramchandani)

- Respondents

O R D E R

By Mr.N.Sahu, Member(Admnv) -

The applicant is aggrieved by the memo no. A-32018/4/91-Estt.II dated the 12th August, 1992 rejecting his representation regarding fixation of seniority in the grade of Deputy Director (in short 'DD'). The applicant's name was shown below to that of Shri P.A.Krishnamoorthy. Shri Krishnamoorthy's service was counted from the date of his initial appointment on deputation. The applicant has been holding the post of DD with effect from 22.7.1986 on regular basis. He is also aggrieved by the amendment made by the respondents to the Recruitment Rules (in short 'RRs') for the post of Director whereby he had been rendered ineligible for promotion to that post.

2. The applicant has filed an additional affidavit on 27.1.1998 with the permission of the Court.

3. In order to appreciate the issues involved it is necessary to give a brief synopsis of the facts. The applicant was appointed as Assistant Director (in short 'AD') on 10.11.1978. The RRs for the post of Director in the Weights and Measures, dated 9.5.1980 prescribed higher qualifications for direct recruitment. On 1.4.1983 one Shri Haque was promoted as Director (W&M). The applicant was not given promotion to the resultant vacancy of DD. Two posts of DD were created in Weights and Measures on 1.6.1983 and applications were called for filling in these two posts on 11.8.1983. On 10.11.1983 the applicant completed five years as AD and became eligible for promotion to the post of DD according to the then RRs. His grievance is that he was not given adhoc promotion to the vacancy of Shri Haque. On 27.11.1983 and 19.12.1983 one Shri Tiwari and another Shri Nair from outside the cadre were appointed as DD on adhoc basis for one year. These posts again fell vacant on 22.11.1984 and 6.2.1985. As things stood thus on 10.1.1986 Shri Krishnamoorthy was appointed as DD on deputation basis for two years which was extended from time to time up to five years. On 19.3.1986 Shri Krishnamoorthy requested for permanent absorption as DD on transfer. This request was rejected by an order dated 18.4.1986. The applicant was himself promoted as DD on 22.7.1986. Again another request made by Shri Krishnamoorthy on

32

22.5.1987 for permanent absorption was rejected vide order dated 16.6.1987. On 11.4.1988 in the provisional seniority list the applicant was shown at no.3 after Shri Haque and Shri Goswami. Again in 1988 and 1999 Shri Krishnamoorthy's requests for permanent absorption were rejected. However, Shri Krishnamoorthy was appointed as a DD Bangalore after absorption with effect from 27.8.1991 and a provisional seniority list of DDs was issued placing Shri Krishnamoorthy as senior to the applicant. The applicant represented before various fora including the National Commission for SC/ST for discrimination shown to him in making his promotion. In the meanwhile Shri Krishnamoorthy was promoted as a Director (Weights & Measures) in the place of Shri Haque who went to Mauritius on deputation and eventually Shri Krishnamoorthy was promoted as a Director on regular basis. In the light of the above facts the applicant prayed for the following reliefs -

- "8.1 To allow the application with cost.
- 8.2 To quash the inter se seniority in the grade of Deputy Directors whereby the applicant has been made junior to Shri P.A.Krishna Moorthy as being violative of the Department of Personnel & Training instructions regarding fixation of seniority and of Article 14 and 16(1) of the Constitution.
- 8.3 To declare the recruitment rules for the post of Director (W&M) notified by the respondent vide G.S.R. No. 1084 dated 7.11.1985, as unconstitutional being violative of Article 14 and 16(i) of the Constitution.
- 8.4 To direct the respondent to postpone the date of promotion of the applicant to the post of Deputy Director against the resultant vacancy of Shri S.Haque who was promoted as Director on ad-hoc basis w.e.f. 14.1.1983, by relaxing the condition of experience by ten months or at least from the date he became eligible for promotion to that post on completing 5 years service in the grade of Assistant Director.

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8.5 To grant consequential relief such as fixation of pay and allowances, payment of arrears and other service benefits, including seniority consequent to the preponement of the date of promotion from 22.7.1986 to 14.1.1983.

8.6 Any other relief which the Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case.

4. The official respondents submit that Shri Haque was a Director on adhoc basis from January, 1983 to January, 1985 whereafter he was reverted to the post of DD with effect from 16.1.1985. Because of the very short duration of his adhoc appointment, the vacancy was not treated as a regular vacancy and hence the applicant was not considered for the same. It was only in 1988 Shri Haque was appointed to the post of Director on regular basis and from 1985-1988 he was holding the post of DD. With regard to the posts of DD created in June, 1983, these posts were not covered under the RRs for Group 'A' posts. These were encumbered on notification of new RRs in November, 1985. The respondents contend that these posts were not in direct line of promotion for the applicant. With regard to the cases of Shri Tiwari and Shri Nair, it was stated that they were purely appointed on adhoc basis and the RRs were not applicable to these posts at that time. Hence the adhoc appointment. Thus, because there were no RRs for the two newly created posts of DD, it was not possible for the department to give any promotion to the applicant during 1983, 1984 or 1985. He was given promotion only after the revised RRs were notified for all the six posts of DD (Weights & Measures) on 23.11.1985. The qualification of M.Sc. for the post of Metrological Assistant was

made in view of advances in technological development in Metrology. Shri Krishnamoorthy's promotion to the post of Director initially on adhoc basis and later on regular basis was done as per the then existing RRs. The respondents categorically state that the applicant was not considered because he did not fulfil the condition of educational qualification.

5. Shri Krishnamoorthy, respondent no.2 filed a counter affidavit stating that even in accordance with the RRs notified during May, 1980 for the post of Director, the applicant did not fulfil the educational qualification because he possessed only a bachelor's degree.

6. We have carefully considered the submissions. The Fifth Central Pay Commission's recommendations on Assured Career Progression Scheme was referred to by the applicant. Of late these recommendations were accepted and notified. The respondents could not be blamed for not acting on these recommendations because no decision was taken by the Central Government. The RRs were framed in consultation with the Ministry of Law, UPSC and DOPT. Prescribing a higher qualification in the RRs and certain conditions thereunder are not violative of any fundamental rights. We are unable to see any ground to impugn those RRs. There is no violation of any fundamental right whatsoever.

7. Shri Haque was promoted as Director on adhoc basis on 14.1.1983. Because the applicant had not completed five years' service as Assistant Director he

Haque

35

could not be considered for promotion as DD. No doubt two posts of DD were created in 1983 but these were outside the normal cadre. Assuming without admitting that the applicant should have been considered, we are not in a position to give credence to the applicant's contention because this was a matter very old and stale and we hold that the applicant's right to contest this matter is hit by laches and delay. The Government cannot be faulted for filling up the two newly created posts by transfer on deputation for a period of one year because these posts were not encadered. Shri Tiwari and Shri Nair were accordingly appointed in November/ December, 1983. It is correctly pointed out that there is no reservation for SC/ST candidates while filling up posts by transfer on deputation. It was only when the new RRs were notified on 23.11.1985 that these posts were encadered and before that as pointed out these posts could be filled up by DDs for a period of one year without consulting the UPSC by transfer on deputation. Therefore, there was nothing illegal on the part of the respondents in doing this. After Shri Nair and Shri Tiwari left, the applicant should have been considered. This was not done because the merger of these posts was under consideration. According to the November, 1985 RRs for the post of DD, AD with five years' regular service in the grade and possessing Master degree in Physics, Mathematics etc. are eligible for promotion to grade of DD. The applicant did not possess the essential educational qualification prescribed for promotion. However, his interest was safeguarded by providing that these

qualifications will not be insisted upon for AD, who has been working on regular basis on the dates the RRs commenced. He was accordingly promoted as DD on 22.7.1986.

8. We have carefully considered the submissions. We are unable to find any infirmity in the steps taken by the respondents. That apart, the applicant cannot in 1992 impugn the omissions and commissions made in 1983, 1984 and 1985. We are not satisfied by the reasons given for waiving limitation. The representation, rejected on 12.8.1992 related to fixation of seniority. It has nothing to do with promotion as DD.

9. In the result, the OA is dismissed. No costs.

fm/wmt
(K.M. Agarwal)
Chairman

h.sahu
(N. Sahu)
Member (Admnv)

rkv.