

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SMT. LAKSHMI SWAMINATHAN, MEMBER (J)
HON. SHRI R.K. AHOOJA, MEMBER (A)

(19)

OA NO.451/1992

NEW DELHI, THIS 8th DAY OF OCTOBER, 1997.

SHRI I.K. KAPUR
II-K/10 Lajpat Nagar
New Delhi-24

...APPLICANT

(Applicant in person)

VERSUS

1. The Secretary (TD) and
Director General (TD)
Directorate Gen. of Tech. Development
Udyog Bhawan
New Delhi
2. Union of India
Ministry of Industry
Government of India
Udhog Bhawan
New Delhi
through its Secretary
3. Shri D.K. Aggarwal
Industrial Advisor
Directorate Gen. of Tech. Development
Udyog Bhawan
New Delhi

...RESPONDENTS

(By Advocate - Shri K.R. Sachdeva)

ORDER

R.K. AHOOJA, MEMBER (A)

This is the second round of litigation in the matter of inter se seniority of promotees and direct recruits in the erstwhile Directorate General of Technical Development (DGTD for short). The facts leading to the present litigation are that the applicant Shri I.K. Kapoor was originally appointed as Junior Field Officer/Junior

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Technical Officer in 1959. Thereafter he was promoted as Assistant Development Officer (Chemical) on 30.11.1964 on regular basis. Originally, the DGTD class I Recruitment Rules provided for 66-2/3% posts to be filled in by direct recruits and 33-1/3% by promotion. These rules were amended in 1982 providing for 50% direct recruitment and 50% by promotion. The applicant along with others challenged in OA No.1070/87 the seniority list dated 16.4.1984 in respect of Assistant Development Officer on the ground that the same had not taken into account his regular appointment from 30.11.1964. While this O.A. 1070/1987 was pending, the applicant retired as a Development Officer. The tentative seniority list was quashed by the judgement of the Tribunal dated 31.10.1990.

2. The applicant submits that on his claim being allowed by the Tribunal he became entitled to proper fixation of seniority as Assistant Development Officer and his consequent promotion to the grade of Development Officer from an earlier date. The applicant was actually promoted as Development Officer ~~topment Officer~~ on the basis of incorrect fixation of seniority only w.e.f. 3.4.1980. He submits that if this promotion is taken from the date his junior respondent No.3 was so promoted, then his notional promotion will be from 16.3.1971 and he will be entitled to be considered for the post of Additional Industrial Advisor and Industrial Advisor from the same dates as respondent No.3. He points out that the respondents had issued, as a result of the judgement of the Tribunal, a revised seniority list in which he was placed at No.11 while respondent No.3 was placed at S.No.13. The post of Development Officer is to be filled on the basis of promotion (90%) from the rank of Assistant Development Officer and is a non-selection post. The applicant's grievance is that the respondents did not take into account the change of seniority apart from the post of

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Assistant Development Officer and maintained respondent no.3 as senior to him in the list of Development Officers whereby he could not get consequential reliefs for consideration as Additional Industrial Advisor and Industrial Advisor. The applicant has now come before the Tribunal praying that the impugned seniority list dated 24.7.1991 of the post of Development Officer (Chemical) in which he has been shown junior to respondent No.3 be quashed and directions be issued to the respondents to consider his deemed date of promotion as 16.3.1971 to the post of Development Officer above respondent No.3 and to promote him as Additional Industrial Advisor w.e.f. 4.7.1984 and further as Industrial Advisor from 31.8.1989 and to pay him the difference in pay and allowances and other related benefits.

3. The respondents in reply admit that the applicant became senior to respondent No.3 Shri D.K. Aggarwal as a result of the revised seniority list prepared on the directions of the Tribunal. They submit that the applicant had been placed at S. No. 11 in the revised seniority list and above the direct recruit, who was in the earlier list of 1984 placed above the applicant. The applicant was given promotion as Development Officer with reference to the date of promotion of his next junior direct recruit. On the other hand, respondent No.3 had been officiating in the grade of Development Officer from 16.3.1971 and therefore on the basis of continued officiation in the higher rank of Development Officer, he was given seniority above the applicant. In a subsequent additional affidavit filed by the respondents, they say that the applicant was duly considered for the post of Additional Industrial Advisor by the review DPC on the basis of his revised seniority and was notionally promoted as Additional Industrial Advisor w.e.f. 8.8.1995. His pay was also fixed

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notionally and the pensionary benefits on the basis of revised pay have also been granted vide order dated 9.9.1993.

4. We have heard the applicant and the learned counsel for the respondents. It is admitted on both sides that in the seniority list of Assistant Development Officers as on 1.4.1984 (P-5) issued on 24.7.1991, the applicant is at S.No.11 while respondent No.3 Shri Aggarwal is at S.No.13. There is one Shri H. Khaparde (an SC candidate) who is at S. No.12. In the seniority list of Development officers issued vide letter dated 20.11.1991 (P-10), Shri Aggarwal has come down to no.14 while the applicant has been placed at S. No.23 and Shri Khaparde at S.No.24. The 1d. counsel for the respondents explained that the higher seniority of Shri Aggarwal was based on the fact that on the basis of earlier seniority, he was promoted as Development Officer on 16.3.1971. On the other hand, Shri Khaparde, next below the applicant, was promoted on 28.6.1976. The seniority under the rules had to be fixed with respect to the next junior and hence the notional promotion of the applicant also w.e.f. 28.6.1976. According to the 1d. counsel, the applicant has no claim vis-a-vis the seniority fixed of Shri Aggarwal. This being so, all further promotions of the applicant, according to the respondents, have been rightly considered and he has been duly promoted as Additional Industrial Advisor from 1985.

5. We have carefully considered the contentions advanced by the 1d. counsel on both sides and have also gone through the record. The problem has arisen because respondent No.3 is not the next junior of the applicant but is one position removed. It has not been brought out as to how respondent No.3 got his promotion as Development Officer on 16.3.1971 while his senior Shri Khaparde, who

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also belonged to SC community, was promoted only in 1976. Since the post of Development Officer is to be filled only on a non-selection basis, the only way respondent No.3 could have superceded Shri Khaparde would have been if the latter had been categorised as "unfit" at the relevant time. Since the applicant was not in the picture at that time at all, respondent No.3 was neither considered vis-a-vis the applicant nor could it be stated that he had superceded him because the applicant had been declared unfit. The officiation of respondent No.3 as Development Officer from 1971 was only because the applicant was not then in the picture as he had been wrongly kept out of his rightful place in the seniority list on the basis of his continued officiation as Assistant Development Officer. We have therefore no hesitation in concluding that the respondent No.3 cannot steal a march over the applicant merely because on the basis of the superceded seniority list of 1984, he had come to enjoy a promotion as Development Officer from 1971. Any other conclusion would only lead to a cancellation of the benefits granted by this Tribunal vide order dated 31.10.1990 in OA No.1070/87.

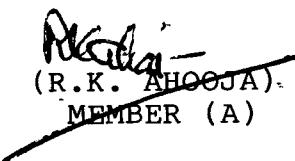
6. A point which is a cause of worry in this case is that respondent No.3 not only went above the applicant but a number of other promotees, except Shri A.K. Das and Shri A.R. Mandal who also belonged to the SC category and were recruited directly. Thus, a number of officers who were senior both to the applicant and Shri Aggarwal, would have a claim against Shri Aggarwal and because of their relative seniority over the applicant, their claim would be even stronger. However, none of those have chosen to seek their relief before this Tribunal.

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7. In the facts and circumstances of the case, we have come to the conclusion that this situation in which the fortuitous promotion of respondent No.3 as Development Officer has given him an undue advantage, need not deter us from granting the relief to the applicant.

8. The respondents are therefore directed to conduct a review DPC to consider the suitability of the applicant for promotion to the post of Development officer, and further as Additional Industrial Advisor and also as Industrial Advisor, from the date his junior, respondent No.3, Shri Aggarwal, was so promoted. This will be done within a period of four months from the date of receipt of a copy of this order.

9. The O.A. is disposed of accordingly. No costs.


(R.K. AHOOJA)
MEMBER (A)


(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)