

Central Administrative Tribunal, Principal Bench

O.A.No.739/92

Hon'ble Smt. Lakshmi Swaminathan, Member(J)  
Hon'ble Shri R.K.Ahooja, Member(A)

16

New Delhi, this 30<sup>th</sup> day of June, 1997

Shri G.L.Paliwal  
s/o Shri Ram Lal Ji Paliwal  
retired Professional Assistant  
India Meteorological Department  
Palam Airport  
New Delhi  
r/o B3/94, Paschim Vihar  
New Delhi - 110 063. ... Applicant

(By Shri K.P.Dohare, Advocate)

Vs.

Union of India through  
Director General of Meteorology  
Mausam Bhawan  
Lodi Road  
New Delhi - 110 003. ... Respondent

(By Shri K.R.Sachdeva, Advocate)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A)

The grievance of the applicant, who superannuated from the service of the respondent as Professional Assistant on 31.10.1986, is that he should have been so promoted as Professional Assistant w.e.f. 1982 instead of 1986. The applicant submits that he had a right to be promoted in 1982 when his junior in the seniority list was given such a promotion. He had submitted a number of representations to the department but without any response. He thereafter approached the Industrial Disputes Tribunal but was advised that this being a service dispute, he should approach the Central Administrative Tribunal. Hence the present application.

2. The respondents in reply raised a preliminary objection that the OA is barred by limitation, as the matter relates to 1982 while the present application has

On

been filed in 1992, i.e., after a lapse of 10 years. On merits they state that the applicant was duly considered by the Departmental Promotion Committee(DPC) along with other candidates for promotion to the post of Professional Assistant. The DPC recommendations in his case were kept in the sealed cover as disciplinary proceedings were pending against him for mis-appropriation of Government money. The disciplinary proceedings were concluded with a minor penalty. On completion of the penalty period, the DPC recommendations kept in the sealed cover were opened but he could not be promoted as Professional Assistant as the DPC had assessed him as "not yet fit" for promotion. He was however, promoted as Professional Assistant w.e.f. 14.7.1986 on the basis of the recommendations of the subsequent DPC which was held in 1986. He was also duly informed of this position vide office letter dated 29.11.1989(Annexure - III). Applicant in his rejoinder admitted the fact of the disciplinary proceedings against him but alleged that the DPC held in 1983 should not have taken into account the pendency of the disciplinary proceedings against him while assessing his performance based on his ACRs from 1977 to 1982.

3. We have heard the learned counsel on both sides. Shri K.P.Dhale, learned counsel appearing for the applicant submits that the Tribunal had issued a notice to the respondents on the admission including the question of limitation. The respondents however, did not respond at the admission stage and thereafter the Tribunal after considering the issue admitted the OA. Under Section 21 of the Administrative Tribunals Act, 1985, the Tribunal cannot admit an application if it is

barred by limitation. The fact that the application had been admitted therefore meant that the Tribunal was satisfied that either the limitation did not apply or if there was any delay the same was condoned. In this connection, he also cited the Judgment of the Bangalore Bench of this Tribunal, A.Christopher, Major & Others vs. Union of India & Others, 1989(4) (CAT) 161 in which it was held that when an application has been admitted after considering a point of limitation the issue of limitation cannot be reagitated at the hearing stage. On merits the learned counsel for the applicant submits that the DPC could not be influenced by the fact that a disciplinary matter was pending against the applicant. The proper course in such situation was for the DPC to follow the sealed cover procedure; the recommendations would however solely <sup>b</sup> based on the service record of the concerned employee. The learned counsel for the applicant vehemently argued that the applicant had claimed that his ACRs for the period 1977 to 1982 were 'VERYGOOD' and this averment had not been controverted by the respondents in their reply. There could thus be no basis whatsoever for the conclusion of the DPC that the applicant was not yet fit. The learned counsel for the applicant sought support for his argument from the judgment of the Tribunal in D.H.Oza Vs. The State of Gujrat and Others, AISLJ 1988(4) CAT 542 wherein, in a case involving appointment by promotion to the IAS, it was held that reasons for non-inclusion in the select list must be indicated otherwise a DPC would not be doing its task.

12

18

4. We have considered the above arguments carefully. We have also perused the DPC records, a copy of which has also been taken on record. The minutes of the DPC states that the case of the applicant was considered for his fitness of promotion to the post of Professional Assistant on the basis of seniority cum fitness and the recommendations of the committee was that he was "not yet fit". The recommendations of the DPC were also approved by the competent authority.

(19)

5. As regards limitation, we are of the view that the respondents can take the plea of limitation which is a legal plea, at any stage of the proceedings. We have, however, considered it fit to also examine the merits of the case in order to see whether in the circumstances of the case the plea of limitation would be only a "technical" one. We are however unable to find anything in the case of the applicant which would justify our interference. It is true that the DPC has not recorded the reasons for its recommendation that the applicant was "not yet fit". The applicant had however only a right for consideration for promotion but no automatic right for promotion. Admittedly, his case was duly considered by the competent Departmental Promotion Committee. There is no mandatory requirement that the DPC must record its reasons for reaching its conclusion. In Rajaiah Vs. I.G.Registration and Stamps, ATJ 1996(1) SC 615 the Supreme Court observed that it is difficult to say either that ordinarily the DPC should record reasons for not selecting a senior or that atleast the record should indicate some reasons thereof; it is fair and desirable but not obligatory or necessary and selections cannot be set-aside for not complying with the said requirements.

D

The Supreme Court has also reiterated in that order that the right of the Government servant is a right to be considered and not a right to promotion. In view of the law laid-down by the Supreme Court, we cannot set-aside the proceedings of the DPC on the ground that it did not contain reasons for not recommending the applicant for promotion. It is not possible for the Tribunal to substitute its judgment for that of the DPC by reappreciating the material before the DPC in the service records of the applicant. Applicant having been duly considered by a competent DPC and the respondents having followed the correct sealed cover procedure during the pendency of the disciplinary proceedings against the applicant there is neither a violation of legal right of the applicant nor any contravention of the Rules and regulations governing the conduct of the DPC.

20

6. In view of the above facts and circumstances, we find that the application fails both on account of laches and merit. The OA is dismissed. There will be no order as to costs.

Rao  
(R.K. AHOON)  
MEMBER(A)

/rao/

Lakshmi  
(SMT. LAKSHMI SWAMINATHAN)  
MEMBER(J)