

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

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O.A. No.159 of 1993 decided on 6.8.1998.

Name of Applicant : Sh. Roomal Singh

By Advocate : Shri S.R.Dwivedi

Versus


Name of respondent/s UOI through the Secy,
Department of Posts & another

By Advocate : Shri S.M.Arif

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A.Vedavalli, Member(J)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No


(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.159 of 1993

New Delhi, this the 6th day of August, 1998

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Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A. Vedavalli, Member (J)

Sh. Roomal Singh, S/o Sh. Chhida
Singh, R/o 1/3980, Bhagwanpur Khera,
School Gali, Loni Road, Shahdara,
Delhi-32, employed as Asstt.
Superintendent, R.M.S., New Delhi
Sorting Div. New Delhi -110001.

-APPLICANT

(By Advocate Shri S.R. Dwivedi)

Versus

1. Union of India, through the
Secretary, Department of Posts, Dak
Bhawan, New Delhi-110001.
2. The Chief Postmaster General, Delhi
Postal Circle, Meghdoot Bhavan, New
Delhi-110001.

-RESPONDENTS

(By Advocate Shri S.M. Arif)

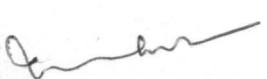
ORDER

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

The applicant is aggrieved against an order dated 31.12.1992 reverting him to the post of Inspector, R.M.S..

2. The admitted facts are that the applicant was given adhoc promotion to the post of Assistant Superintendent of Railway Mail Service (in short ASRM) by an order dated 21.9.1981. He worked even earlier in this post against leave vacancy. He continued to work in this post for a period of 11 years until by the impugned order he was reverted. This order was challenged by him before this Tribunal in O.A. No.637/92. The Tribunal by its order dated 18.9.1992 held as under :

"4.....In our opinion, due weightage should be given to Confidential Reports of the applicant for the higher post of ASRM,



when his case is to be considered along with his juniors, who were still working as Inspector. It is not clear whether this was done in the instant case.

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5. In the conspectus of the facts and circumstances of the case, we are of the opinion that the impugned order of reversion is not legally sustainable. The impugned order of reversion dated 7.2.92 is hereby set aside and quashed. The respondents are directed to hold a review DPC, which should give weightage to the service rendered by the applicant in the higher post for about ten years as also his seniority in the cadre of Inspectors. **The principle of seniority-cum-fitness as per rules has to be strictly followed in this case.** The applicant shall be allowed to continue to work as ASRM, till a properly constituted review DPC has considered his case afresh, as directed above. The application is disposed of on the above lines."

3. The respondents state that the applicant was appointed on purely temporary and adhoc basis to officiate as ASRM against a vacant post. He was subsequently transferred and posted against a newly sanctioned post by an order dated 21.9.1991. He could not be considered for regular promotion to the cadre of ASRM as no regular vacancy was available. On the availability of regular vacancy in 1991 the DPC was held on 14.11.1991. His case was considered by the DPC but on the basis of the confidential reports he was not recommended for promotion. His junior Shri Lala Ram was cleared for the post of ASRM. Under the Recruitment Rules promotion to the post of ASRM from the feeder cadre of Inspector RMS requires three years' regular service in the grade and selection is made on the basis of seniority-cum-fitness. At page 2 of the counter it is clearly stated that as per the directions of the Tribunal's order dated 18.9.1992 a "review DPC to

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consider the case of the applicant for promotion to ASRM cadre on regular basis was held on 24.12.1992 but DPC did not recommend his case for promotion to ASRM cadre". At page 3 of the counter in reply to para 4(ix) it is stated as under -

"The assessment of his performance for the period while he was officiating as ASRM were also examined by the DPC. On the basis of examination of ACRs for the above mentioned period, the DPC did not recommend the promotion of the applicant to the cadre of ASRM".

4. The DPC, therefore, followed the directions of the Tribunal and examined the CRs of the applicant when he was in higher post of ASRM. For completeness of record it must be stated that the applicant was ultimately promoted as ASRM on a regular basis by an order dated 4.7.1997. The applicant's claim is that under the instructions of the DOPT OM NO.28036/8/87 dated 30.3.1988 the continuance of an official on adhoc appointment including adhoc promotion would be subject to the over all restriction of one year. As the applicant was treated as ASRM for an aggregate period of 12 years, the reversion had hurt him badly. He attributed malafide intention to the respondents and stated that reversion without giving him an opportunity violated the principles of natural justice. He cited a decision of Ernakulam Bench of this Tribunal in the case of K.V.Madhavan Vs. Garrison Engineer & others, 1991(1)SLJ(CAT) 285. In this case reversion was held to be illegal in that it violated the principles of promissory estoppel. The Tribunal cited the Supreme Court decision in Rajendra Prasad Vs. Karnataka University AIR 1986 SC 1448 and

the decision of Madras High Court in

V.P.Thirunavukkarasu Vs. State of Tamil Nadu. 1974

(1) LLJ 323. In that case the order reverting the applicant to the lower post of field surveyor when he had been allowed to continue in the higher post for 20 years on discovery of his not possessing the minimum educational qualification was held to be illegal on the ground of estoppel. He cited a decision of CAT Hyderabad Bench in the case of Ramaswamy Mallaiah & others Vs. Divisional Railway Manager. 1991(4) SLR 355. The principle laid down in that decision is that where the selection of an adhoc employee was made in accordance with the rules, they must be deemed to be regular promotees and mere use of the word "adhoc" would not determine the nature of promotion.

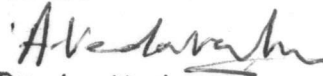
5. We have heard the learned counsel for both the sides at length. The dispute springs as far as this OA is concerned from the orders of this Court on 18.9.1992. According to the directions in this order, the review DPC was held. The CRs of the applicant for the period during which he worked as ASRM were considered but the DPC could not recommend him for promotion. On the contrary they recommended for promotion of several other candidates, junior to the applicant. No doubt the post of ASRM is not a selection post but even so on the basis of seniority-cum-fitness, the applicant was considered and yet the DPC found him as not fit. Thus two DPCs: one held on 14.11.1991 and the other on 24.12.1992 considered him unfit for promotion on the basis of

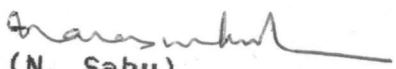
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his CRs. Under the rules a regular promotion can be made only if the applicant qualifies for the post. By putting in three years in the cadre of Inspector, he can be promoted only if the DPC recommends his case. Even under the criterion of seniority- cum-fitness the applicant although senior has been found to be unfit. The law is settled that the DPC can evolve its own bench mark and evaluate the record of candidates within the zone of consideration on the basis of that bench mark. It is not the case of the applicant that extraneous considerations weighed in the minds of the DPC members. It is also not his case that the CRs were not properly evaluated and that his over-looking was not bonafide. A routine allegation of malafides would not advance his case. Any official has only a right to be considered for promotion and has no right to demand promotion. The applicant's case that he was adhoc for 12 years and, therefore, he should be given automatically promotion against a regular post is not the correct law on the subject. The promotion granted to the applicant, even though for a long period he worked was only adhoc in the higher post, was dehors the rules. Adhoc service cannot ipso facto weigh in a regular appointment unless the adhoc appointment itself was made in accordance with the rules. One of the conditions for a regular promotion against a vacant post as ASRM is that the DPC should consider his claim and approve of the same. Two DPCs could not recommend his case because his CRs were not upto the bench mark fixed for the post of ASRM. This Tribunal cannot interfere in the findings of the DPC,

particularly when there is no challenge to such findings on the ground of malafide or extraneous consideration. As held in (Mrs) Anil Katiyar's case 1997(1) SCC 280 : Having regard to the confidential procedure which is followed by the DPCs in the UPSC, the grading of one candidate by the DPC as "Very Good" instead of "Outstanding" was held to be not arbitrary and not subject to judicial review. Even the correctness of the grading given in the ACRs too was not subject to judicial review. We do not think it necessary to interfere with the impugned order dated 5.1.1993 reverting the applicant to IRM cadre from 5.1.1993.

6. In the result, the O.A. is dismissed. No costs.


(Dr. A. Vedavalli)
Member (J)


(N. Sahu)
Member (Admnv)

rkv.