

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No.254 /1998

Date of Decision: 11 - 9 - 1998

Shri Dr. S. P. Manik ..

APPLICANT

(By Advocate ~~S. P. Manik~~ B.S. Mainee with
Ramakrishna

versus

Union of India & Ors. ..

RESPONDENTS

(By Advocate Shri P.S. Mehandru

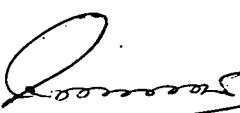
CORAM:

THE HON'BLE SHRI T. N. Bhat, Member (J)

THE HON'BLE SHRI S.P. BISWAS, MEMBER (A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER
BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member (A)

Cases referred:

1. M/s. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of UP
AIR 1979 SC 621
2. Direct Recr. Class II Eng. Officers Assn. Vs. State of Maharashtra
SLJ 1990 (2) SC 40
3. All-Manipur Regular Substitute Teachers Assn. V. State of
Manipur, AIR 1991 SC 2088
4. R. Mahapatra Vs. State of Orissa AIR 1991 SC 1286
5. Syed Khalid Rizvi V. UOI 1993 Supp (3) SCC 575
5. IAS (SCC) Assn. Vs. UOI 1993 Supp (1) SCC 730
7. Raghunath Prasad Singh Vs. Secy. Home (Police) Dptt. Govt. of
Bihar & Ors. AIR 1988 SC 1033
8. CSIR Vs. K.G.S. Bhatt, AIR 1989 SC 1972

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.254/1993

New Delhi, this 11th day September, 1998

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

Dr. S.P. Manik
s/o late Shri Gobardhan Manik
C-172/1, Manaknagar
Lucknow-226011

Applicant

(By Advocates Shri B.S. Mainee with Shri
Ramakrishna)

versus

Union of India, through

1. Secretary
Minisrtry of Railways
New Delhi
2. Secretary
Railway Board
Rail Bhavan, New Delhi
3. Director General
RDSO, Lucknow
4. Director (M&C)
RDSO, Lucknow
5. Shri M.P. Verma
Addl. Director (MET)
RDSO, Lucknow
6. Dr. S.N. Chakravarty
Director (M&C)
RDSO, Lucknow .. Respondents

(Through Advoacate Shri P.S. Mehandru)

ORDER

Hon'ble Shri S.P. Biswas

As directed by the Hon'ble Supreme Court, we are required to examine the merits of the applicant's claim with reference to order dated 21.5.91, promoting Shri M.P. Verma, R-5, to the post of Additional Director (MET), Research, Designs & Standards Organisation (RDSO for short), Lucknow.

2. Background facts, relevant for the purpose of disposal of this case, are briefly stated as follows:

RDSO is an attached office of the Railway Board comprising large number of directorates. Metallurgical & Chemical (M&C) Directorate is one of them. Applicant is working in this directorate. The Director General (DG for short) is the Head of RDSO with the powers of General Manager (GM for short) of the Railways. M&C directorate comprises chemical and metallurgical wings and is headed by Director (M&C). The chemical wing consists of various sections dealing with lubricants, rubber, paints etc. Similarly, metallurgical wing comprises welding and foundaries etc. Below the post of Director of M&C Directorate, there are posts of Joint Director and Deputy Directors which are in Class-I (Group A). The applicant was appointed in the M&C Directorate directly as Deputy Director on 16.3.72 through selection held by UPSC in Railway Service Class-I in senior scale of Rs.700-1300 plus Rs.200 as special pay p.m. The said appointment was pursuant to notification/advertisement (A-2) dated 24.4.71. At the time of appointment, he was having qualification of B.Sc.(Hons) Chem., B.Tech(Chem. Engg. & Chem Tech.), M.Tech (Chem Engg. & Chem Tech.-Polymer), Ph. D. (Rubber Technology). Applicant was ~~.....~~ confirmed in the substantive post of Deputy Director with effect from 28.1.80.

3. The order dated 20.5.91 mentions that "Shri M.P. Verma, senior Chemist & Metallurgist/ICF on reporting for duty in RDSO is promoted to grade Rs. 5100-5700 and posted as Additional Director (Met.) w.e.f. 20.5.91 FN. He will be incharge of Chemical discipline, including Plastics & Rubber".

4. The applicant has assailed the aforesaid order on several grounds as in para 5 of the OA. However, for the sake of brevity we intend to bring to sharp focus only those having legal issues involved and yet heavily relied upon by the applicant.

5. Shri B.S. Maine, learned counsel for the applicant argued strenuously to say that all the officers vis-a-vis the applicant who have joined or have been inducted in the Railway Service Class-I senior scale at much later dates have been promoted to Senior Administrative Grade (SAG for short), equivalent to Director in RDSO. Applicant deserved to be promoted since he is senior to R-5 by five years in terms of date of appointment as Class-I officer in the Railways. It is the case of the applicant that transferring officers of C&M Wing from the Zonal railways to the RDSO on deputation basis and appointing them in higher positions in RDSO is illegal and void in terms of the decision of this Tribunal in the case of J.K.Verma & Anr. vs. UOI & Ors. in OA No.1683/87 decided on 17.10.89. That in the absence of specific rules

for Class-I services in RDSO, only officers belonging to this organisation are entitled to promotions arising therein under Article 73/77 of the Constitution of India.

6. The learned counsel further contended that the applicant was the seniormost Deputy Director after joining RDSO in 1972, since all other Deputy Directors were only transferred on tenure basis from CMT cadre of Zonal Railways based on 1965 R&P rules and those officers do not belong to RDSO cadre. Applicant continued to suffer because of 19 years of negligence on the part of the respondents in not encadering him in the M&C cadre of RDSO despite respondents' intention to do so as at Annexure A-17 dated 3.5.91. Besides claiming that 1965 rules cannot be applied for promoting R-5 pursuant to the order of Allahabad Bench dated 17.10.89, the applicant has assailed 1985 R&P Rules on the basis of which promotional order for R-5 dated 20.5.91 has been issued. Learned counsel seeks to challenge 1985 R&P rules on the basis that production work and research work being dissimilar, those two cadres cannot be combined together for promotion in research organisation like RDSO and the combination of different cadres are nothing but a fraud on the part of the State which defeats the very purpose of formation of RDSO. It was argued that provisions under Rule 108 and 111 of the Indian Railway Establishment Code Vol. I, 1990 support such a stand. That even according to 1985 R&P Rules, the post of applicant stood excluded

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since only 7 pinpointed posts of Joint Directors (Chemical) are included who are all from CMT and ACMT officers of Zonal Railways. 1985 R&P rules have been framed without taking care of the career prospects of employees like the applicant herein. 70

7. Respondents, on the contrary, argued that the applicant was promoted in the next higher grade i.e. Joint Director by upgradation of his previous post of Deputy Director for which he was alone considered. Since the applicant was appointed against an isolated and separate post of a Specialist (ex-cadre), the said post was not included in the cadre of M&C in RDSO or in any other cadre for that matter. In other words, since he was appointed against an ex-cadre post with a special purpose, the applicant was not having any further avenue of promotion. Since he did not belong to any cadre whatsoever, he could not claim seniority alongwith other Deputy Directors. Even the present 1985 R&P rules for promotion to the post of Additional Director and Director (M&C) do not apply to the applicant as he does not belong either to M&C cadre of RDSO or CMT cadre of Zonal Railways. It has been submitted that the applicant has no locus standi either in 1965 or 1985 rules since he was not recruited in the cadre of C&M department of Indian Railways including that of RDSO. All the Chemists and Metallurgists recruited through UPSC possess minimum of degree in metallurgical engineering whereas the applicant does not have any engineering degree as such. The d

applicant is holding the post of a super-specialist in nature and therefore its merger in CMT cadre will affect the career prospects of cadre officers therein.

(1)

8. The adjudication of the basic issue remanded back to the Tribunal by the Hon'ble Apex court will, in turn, depend on determination of a few basic issues. They are: (i) What is an ex-cadre post and if the post presently held by the applicant could be termed really as an ex-cadre one or the post has all the trappings of a cadre post? This goes to the root of the issue before us. (ii) Could the requirements for promotion as stipulated in 1985 R&P Rules be applied in favour of the applicant and later be considered for promotion to the post of 'Additional' Director(MET) when the respondents decided to promote and post R-5 to hold the said post? (iii) Whether the applicant can legally make a claim for promotion to Additional Director(MET) or Director, M&C/RDSO?

9. We shall examine the issues in seriatim:

The character of ex-cadre post vis-a-vis status of cadre post could be enumerated in juxtaposition as hereunder:

(2)

CADRE POST

(72)

EX-CADRE POST

- (a) Temporary in nature
- (b) Unclassified
- (c) Created for special task unconnected with the ordinary work of the Service/Department
- (d) Not directly recruited from open market/through UPSC
- (e) Incumbent should have parent cadre where he holds lien
- (f) Not added to the strength of a cadre
- (g) Desirable to fix consolidated rate of pay

- (a) Permanent
- (b) Classified
- (c) Created for the ordinary work of the dept-the work already existed, existing & will continue
- (d) Incumbent directly recruited from open market by UPSC
- (e) The post is a part and parcel of the cadre
- (f) Added to the strength of the Cadre
- (g) Created in time scale

(see page 32 of Rly. Establishment Code Vo. II of 1990 (Ann. AR 17)

10. It is evident that the post of Deputy Director/Joint Director (R) the applicant is holding has all the ingredients of a cadre post.

11. Based on the factors aforesaid, the post held by the applicant falls in the category of cadre post and cannot be termed as ex-cadre one. There are enough of evidences on record to treat the post as such. We mention only those undisputed by either parties.

(A) Details in Annexure AR-13 contain the availability of all ex-cadre posts in the entire organisation of RDSO as on 1.1.92. The sanctioned strength of Deputy Directors/Joint Directors in various directorates in RDSO

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over different Zonal Railways/Organisations. The post of Deputy Director (Rubber) upgraded as Joint Director has been shown not as ex-cadre one within the organisation of RDSO.

(74)

(D) The gazette notification dated 29.5.1972 pertaining to applicant's appointment indicates the following:

No. 70/E(GR)1/12/6 - The President is pleased to appoint Shri Sital Prasad Manik as Deputy Director (Rubber) on probation in the Metallurgical and Chemical Directorate of the Research Designs and Standards Organisation, Lucknow with effect from 16.3.1972.

(E) Even in terms of Railway Board's own definition of cadre and ex-cadre posts, as available in the Board's Memorandum dated 15.12.76, the post of Deputy Director/Joint Director (Rubber) cannot be termed as ex-cadre post.

(F) Suffice it so say that right from 1969, when the post first got created till 1.12.97, when the said post was designated as Director, there is no mention, not even once, in any communications either of the Board or of the Railways treating the post or even addressing the same as an ex-cadre post, except in the present counter reply filed by the respondents.

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alongwith those of ex-cadre nature are indicated separately in brackets directorate-wise. In this official document, JD(Rubber) is shown as constituent part within the cadre of chemical wing of M&C Directorate as on 1.1.92. Respondents have not disputed this.

(B) To determine if the post was ex-cadre one or belonging to cadre, we have called for the relevant papers/files on the subject of creation of the post of Deputy Director(Rubber) in RDSO. The Railway Board while communicating its original sanction (temporary) for the post of Deputy Director (Rubber) indicated the following:

"2. Sanction of the Railway Board is hereby communicated to the creation of a post of Deputy Director in the rubber testing, research and development laboratory of the Metallurgical and Chemical Wing, RDSO, for a period of one year from the date filled.

"3. The Board have decided that the incumbent of the above post should be recruited by special advertisement through the Union Public Service Commission, and necessary action in this regard is being taken separately."

This original sanction does not indicate anywhere that the applicant's post would be ^{an} ~~ex-cadre~~ one.

(C) Again, while restructuring of gazetted cadres of Indian Railways vide its order dated 10.4.80 (AR-5), Railway Board intimated the sanction of the Ministry of Railways for different posts (upgraded and re-designated)

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(G) The classified list of Gazetted establishment of Indian Railways, 1990 (AR-19) mentions applicant's status as a part of the cadre only. (F5)

(H) Even in A-6 dated 27.11.78 upon which the respondents have placed heavy reliance while declining to assign seniority to applicant does not mention that Dr. Manik was holding an ex-cadre post.

12. Under these circumstances and for reasons recorded as aforesaid, we are not in a position to accept respondents' submission that the post of Deputy Director/Joint Director (Rubber) is ex-cadre one. Respondents have failed to produce any authentic record in support of their contention that the applicant was holding an ex-cadre post. The whole edifice built by respondents on this foundation falls flat.

13. The next issue for consideration is whether the applicant's claim for encadrement is justified in terms of law. We find that the only source of strength for respondents is the communication at A-6 dated 27.11.78. In this communication, Railway Board appears to have communicated as hereunder:

"Since the qualification prescribed for the posts of Dy. Director/Rubber, RDSO are different from those laid down for the posts of Chemist & Metallurgists, the proposal to include the post of Dy. Director/Rubber, RDSO in the cadre of Chemist & Metallurgist has not been found feasible for adoption. In view of this,

Dr. S.P. Manik's request for assignment of seniority in the M&C Cadre cannot be acceded to." 76

14. In short, respondents have declined to include the post of Deputy Director (Rubber) in the CMT cadre and consequently have expressed their inability to assign appropriate seniority to the applicant in the said cadre. Nowhere in the counter, respondents have come out with the subsequent developments that took place as are available at Annexures A-14, A-15 and A-16 dated 27.1.89, 7.3.90, 25.12.90 respectively. Vide its A-17 communication dated 3.5.91, the Board has mentioned that the Ministry of Railways "are proposing to encadre the post of Joint Director (Rubber) in the scale of Rs.5100-5700 in the M&C of the Railways". The detailed reasons that could support such a proposal of encadrement are available in DG/RDSO's letter dated 29.1.89 (A-14). This is also not in dispute. Respondents, therefore, cannot go backwards in terms of law laid down in the case of M/s. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of UP, AIR 1979 SC 621. Respondent No.3 was directed to send detailed comments in the matter so that further actions could be taken at the Ministry's level. There have been no developments thereafter, presumably because the applicant by that time had approached the Lucknow Bench of the Tribunal by filing OA 212/91.

15. We find that respondents are now inclined to reconsider the proposal of encadrement. In their counter, filed on 13.12.91, the respondents have

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77

submitted that "the question of encadering the post has again been recently taken up but the decision as required in administrative interest will be taken. It can be applied only prospectively. In case it is decided to encadre the post in M&C Cadre, applicant will be entitled for consideration and promotion in that cadre only with prospective effect? It would be apposite at this stage to bring out the rules for determination of seniority in such matters. The Hon'ble Supreme Court in Direct Recruits Class-II Engineering Officers Association Vs. State of Maharashtra SLJ 1990(2) SC 40 has held that "Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation".

16. Yet another issue for determination is whether the applicant's plea for promotion to the post of Additional Director (MET), now being held by R-5, could be considered while A-11 promotional order in favour of R-5 was issued on 20.5.1991?

17. 1985/Rules stipulate that Joint Director (Chemical), Senior Chemists and Metallurgists with 5 years regular service in the grade are eligible for consideration of promotion to the post of Additional Director (M&C). Respondents appear to have taken a stand strictly in terms of technical requirement as is stipulated in 1985 R&P Rules. It was open to them to enter into a finding that the applicant could also be considered for the

aforesaid post alongwith R-5 because (i) he (applicant) had the necessary academic qualifications of being a B.Tech in Chemical Engineering; (ii) was controlling as a supervisory officer the activities of Deputy Director (Chemical); (iii) arranging transfers/postings of chemical staff in ARO(CM)4; and (iv) in view of the provisions under 1985 R&P Rules stipulating that personnel possessing degree in Chemical Technology in the field of either Polymer or Petroleum products or Paints and corrosion are automatically inducted in the main cadre stream of chemical and metallurgical department of Indian Railways. Respondents appear to have proceeded only on one consideration i.e. the applicant did not physically hold the post of Joint Director (Chemical) though, in terms of discharging day-to-day responsibilities, applicant fulfilled all the necessary conditions.

18. That apart, under Section 5 of the R/Rules, 1977 (RDSO-Deputy Director (Rubber) Group A Recruitment Rules, 1997), the respondents could, for reasons recorded in writing and in consultation with the UPSC, relax any of the provisions or rules with respect to any class or category of persons. The Hon'ble Supreme Court has laid down the law on such issues and have also allowed relaxation of rules in identical deserving cases. If any authority is required for this proposition, it is available in All-Manipur Regular Substitute Teachers Association Vs. State of Manipur, AIR

1991 SC 2088 and R. Mahapatra Vs. State of Orissa,

AIR 1991 SC 1286. Applicant's case for

consideration of promotion could be taken up under the provisions as aforesaid because of the facts and circumstances of this peculiar case. If A-14 proposals dated 27.1.89 were processed in time, such controversies would not have surfaced today.. We do not, however, find any illegality in the A-11 order of promotion in favour of R-5. This is because he was duly promoted by the competent authority keeping in view the stipulations in the relevant Rules.

19. We now come to the last issue. No employee has a right for promotion but he has only a right to be considered for promotion according to the rules. Chances of promotion are not conditions of service and are defeasible. While inter-se seniority can be acquired under relevant rules, there is no vested right to seniority or promotion. Authority is legion in this respect and is available in Syed Khalid Rizvi Vs. UOI 1993 Supp (3) SCC 575 and IAS(SCS) Assn. Vs. UOI 1993 Supp (1) SCC 730.

20. Applicant, however, seeks to challenge the denial of his promotion vis-a-vis R-5 and R-6, who appear to have stolen a march ahead of him ignoring principles of natural justice. The Table below highlights the foundation of applicant's claim for promotion vis-a-vis R-5 and R-6.

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80

| Sl. No. Name | Dates of holding various posts in RDSO | | | | Lien held in orgn./ cadre |
|------------------------------|---|--------------------------|---------------------------|----------------------|--|
| | DD | JD | Addl. Director | Director Director | |
| 1. Dr. S.P. Manik | 16.3.72 to 18.7.80 | 19.7.80 todate | | | RDSO/ M&C |
| 2. M.P. Verma | 19.3.80 to 2.9.82 | 30.6.84 to 28.6.88 | 20.5.91 todate | | North Front- ier Riy (C&M) CMT CLW (C&M)/ CMT |
| 3. Dr. S.N. Chakra- varty | 21.12.76 to 23.12.78 | 18.6.84 to 25.6.87 | 26.6.87 to 31.10.89 | 11.10.90 todate | |

21. From the Table above, it is evident that the applicant is senior to R-5 and R-6 both as Deputy Director and Joint Director. Applicant is also working in RDSO continuously and he has never been found lagging in terms of efficiency in work. Respondents, on the contrary, have on record admitted that there will be difficulties in finding a suitable replacement against the applicant because of his extraordinary qualifications. It is only against the background of applicant's praiseworthy working efficiency in RDSO that the post of Deputy Director was upgraded to that of Joint Director and has now been designated as Director. Applicant's claim for consideration cannot, therefore, be ignored. This is simply because a person is appointed not just for job but for whole career. It would be appropriate here to recall the principles enunciated by the Apex Court in matters pertaining to absence of promotional prospects in public services. In Raghunath Prasad Singh Vs. Secretary, Home (Police) Department,

Govt. of Bihar & Ors., AIR 1988 SC 1033, it has been held that reasonable promotional opportunities could be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly¹¹.

22. Again, in the case of CSIR Vs. K.G.S.Bhatt, AIR 1989 SC 1972, the apex court while considering promotional prospects of scientific and technical officers, held that "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors"¹².

23. In the instant case, applicant has suffered and stagnated for nearly 18 years in the same scale from 1980 onwards due to defective promotional policy. Even the Fifth Pay Commission has highlighted the need for creating adequate promotional avenues to keep the employees contented.

24. In the result, the application is allowed with the following directions:

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(1) Respondents shall consider determining/redetermining applicant's seniority with effect from the date he joined RDSO as if he was appointed in M&C cadre. This shall be done by putting on prior notice to those likely to be affected.

(2) Respondents shall consider issuing appropriate orders conferring upon the applicant benefits of seniority as well as notional promotion from the time it fell due to applicant in all the grades including that of Additional Director (MET). This is to ensure that applicant's case for further promotions, when due, does not get prejudiced on grounds of seniority in the cadre.

(3) To put an end to the ongoing injustice to the applicant, respondents shall also consider upgrading his present post temporarily to the level of Additional Director(MET) or equivalent from the date applicant had become eligible for that post till he gets adjusted against the post of Additional Director(MET) in normal course without disturbing R-5. While the benefits of notional promotion/seniority to the next

higher grade, i.e. Additional Director(MET) shall accrue to the applicant with retrospective effect, but the actual financial benefits shall be allowed only from the date the post is upgraded and the applicant takes over. This is because he has not shouldered the responsibilities of the higher post physically.

83

(4) The above directions shall be complied with within a period of six months from the date of receipt of a copy of this order.

(5) For the reasons recorded in item (3) aforesaid, there shall be no arrears of salary or backwages.

(6) Applicant shall have the liberty to re-agitate the issues, as set out in this OA, in case his grievances continue unresolved even after the period as ordered by us.

(7) There shall be no order as to costs.


 (S.P. Biswas)
 Member(A)


 11.9.98
 (T.N. Bhat)
 Member(J)

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