

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH
NEW DELHI.

OA No. 1061/93

(b)

New Delhi, this the 28th January, 1994.

Hon'ble Mr B.N.Dhoundiyal, Member(A)

Hon'ble Mr B.S.Hegde, Member(J)

M K Jain
Son of Shri C.L.Jain
R/O A-83, Moti Bagh-I
New Delhi.

(through Mr D.C.Vohra, Advocate)

... Applicant.

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1. Union of India
through
the Secretary
Ministry of Health & Family Welfare
Nirman Bhawan
New Delhi.

2. Director General of Health Services
Nirman Bhawan
New Delhi.

3. Mr R S Gupta
Administrative Officer
CGHS North Zone
New Rajinder Nagar
New Delhi.

4. Mr Lal Singh
Office Superintendent
CGHS North Zone
New Rajinder Nagar
New Delhi.

... Respondents

(R 1 & 2 through Mr P.P.Khurana)
(R3 & 4 through Mr R.Doraswamy)

Order(oral)

PER B.N.DHUNDIYAL, MEMBER(A)

In this application, filed by Shri M.K.Jain
orders dated 17.1.92, 21.1.92, 27.3.92 and 17.8.92,
relating to his reversion from the post of office
Superintendent, subsequent re-appointment on adhoc basis,
lowering in seniority in the cadre of Office Superintendent
and rejection of his representation, have been
challenged.

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2. The admitted facts of the case are as under. In pursuance of the recruitment rules, the post of Office Superintendent was to be filled up 50% by promotion and 50% by limited departmental examination. After the limited departmental examination held on 17.3.1976, the recruitment rules were revised in the year 1977 providing for filling up vacancies 100% by promotion and no departmental examination was held between 18.3.76 and 8.12.91. Applying the revised recruitment rules, five persons were promoted as Office Superintendents, including the applicant with effect from ~~20.1.1988~~ ^{30.3.88}. This appointment was challenged through OA No.84/88 in the case of J.C. Bhutani vs. Union of India and others and by order dated 1.9.1989, the following directions were given by the Tribunal in its judgment:

"(i) respondents 1 and 2 are directed to hold limited competitive examination in accordance with the 1975 Rules in respect of vacancies of OS which were intended to be filled up from that source when the circular dated 10.12.1985 was issued. Eligibility of candidates for appearing in the said examination will be determined as on 20.5.1986 as indicated in circular dated 6.5.1986.

(ii) Such limited competitive examination should be held within four months from the date of receipt of this order and the results of the examination announced within two months thereafter.

(iii) Persons selected for appointment through the limited competitive examination to be held as directed above should be appointed as OS immediately after the announcement of results, reverting any or all of respondents 3 to 7, if it becomes necessary to do so for this purpose.

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In pursuance of this direction, the Limited Departmental Examination was held on 9.12.1991 to fill up four posts and appointments were made on that basis w.e.f.14.1.1992. According to the respondents, Shri R.S.Gupta was appointed as Office Superintendent on regular basis in the same D.P.C., held on 13.1.1992 on seniority basis in the promotion quota under the pre-revised rules. Thereafter, three officiating Office Superintendents, including the applicant were reverted as U.D.C. w.e.f.13.1.1992 by order dated 17.1.1992. The applicant was again appointed to the post of Office Superintendent, on adhoc basis, w.e.f.14.1.1992 by an order dated 21.1.1992.

3. The applicant has prayed that the impugned orders dated 17.1.1992 and 21.1.1992 may be quashed and he be declared as regular against the post of Office Superintendent w.e.f.20.1.1988 and that his seniority in the grade of Office Superintendent be counted from the date of his initial appointment with consequential benefits.

4. We have perused the records and heard the learned counsel for the parties. It is clear that the judgment dated 1.9.1989 of this Tribunal is now final, an S.L.P. having been filed by the respondents in that case having been dismissed by the Supreme Court. The limited point to be examined is whether the afore-mentioned directions of the Tribunal resulted in quashing of the panel prepared by the D.P.C. on 20.1.1988. The learned counsel for the applicant has argued that ^{By} ^{Cancellation of} ^{the} promotion against the four vacancies, which have now gone to those, who appeared in the Limited Departmental Examination, held in 1991, ^{By} ^{it} does not necessarily mean that the panel prepared by the D.P.C.

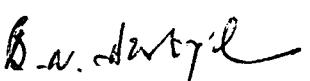
has been quashed so far as promotees are concerned or that the order of seniority, as recommended by the D.P.C. has also undergone a change. If this is so, then the seniority of Shri R.S.Gupta, as U.D.C. would not be relevant and the applicant had a prior claim for promotion to the post of Office Superintendent in terms of the old recruitment rules. The respondents have taken the view that any seniority list of Office Superintendents, circulated prior to the Tribunal's judgment ^{is irrelevant}. However, it is doubtful whether the panel prepared by the D.P.C. can be changed by administrative orders subsequently. We are also not clear as to the number of vacancies for the promotion quota that remains to be filled up after the adjustment of the successful candidates from the Limited Departmental Examination of 1991. In paragraph 9 of the counter, it is mentioned that the post of Administrative Officer had fallen vacant due to superannuation of Shri M.S. ~~Gupta~~ ^{Soldi Bvi}, the then Administrative Officer. It is also not clear as to what happened to this vacancy and the consequent vacancy of Office Superintendent.

5. In the facts and circumstances, and in the interest of justice, we direct that a fresh D.P.C. should consider this matter and determine the first vacancy that would become available under the promotion quota after adjusting the successful candidates of Limited Departmental Examination. The promotion of applicant should be considered against such a vacancy and he should be regularised against that post from the date it became available. We also clarify that this would not affect the interests of respondents R.S.Gupta or Lal Singh.

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6. The O.A. is disposed of with the above directions but with no order as to costs.


(B. S. Hegde)
Member (J)


(B. N. Dhoundiyal)
Member (A)

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