

(AH)

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 247 of 1986.

Munnoo Lal	....	Applicant.
	Versus	
Union of India & another	....	Respondents.

Hon'ble G.S. Sharma, J.M.  
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

The applicant in this case, Sri Munnoo Lal, is a Joint General Manager in the Ordnance Equipment Factory (OEF), Kanpur. He has preferred this application under Section 19 of the Administrative Tribunals Act, 1985 against the Union of India and the Director General, Ordnance Factories, for the purpose of getting himself confirmed as Deputy Manager (Dy.M) before 31.5.1967 and Deputy General Manager (Dy.GM) from before 1.4.1971 when his juniors were confirmed on these posts. The case is thus essentially one of seniority and promotion. The applicant had earlier filed a writ petition in the High Court of Judicature at Allahabad in which a direction was issued by that Court to the respondents for disposing of the representation made by the petitioner within a specified time limit. The applicant had filed another writ petition in the same Court which he had later on withdrawn and has preferred the present application before this Tribunal.

2. The facts of the case, in brief, are that the applicant joined as a probationer in the Indian Ordnance Factories Service Class I in July, 1962 as Assistant Manager (Non-Technical) (AM(NT)). He passed his probationary period on 26.7.1964 and was posted as Assistant Manager (Administration) (AM(A)) in the Ordnance Factory, Ambarnath. In 1963, he was shown at Sl.No. <sup>7</sup> ~~8~~ in the seniority list circulated at that time. He was confirmed with effect from 26.7.1964 as AM. He was promoted on an ad hoc basis as Dy.M. w.e.f. 30.5.1966. The following officers were also promoted on an ad hoc basis to the post of Dy.M. w.e.f. 31.5.1967 and 12.6.1967 :-

1. Sri S. Das Gupta,
2. S.R. Sridharan, &
3. K.J. Pappachan.

10/

The abovenamed three officers are junior to the applicant in the 1963 seniority list. The applicant was thereafater reverted to his substantive post of AM by an order dated 28.11.1967, whereas his juniors who were promoted along with the applicant and after him on purely ad hoc basis, were not reverted. The applicant was thereafter again promoted as Dy.M. w.e.f. 29.3.1969. He was later on confirmed as Dy.M. from 12.9.1970. The applicant states that in the seniority list circulated under the letter dated 31.8.1983 the three officers, mentioned above, were shown as senior to the applicant, S/Sri S. Das Gupta and S.R. Sridharan were given promotion as Joint General Manager (Jt.GM) earlier to the applicant and Sri K.J. Pappachan was promoted along with the applicant. The applicant claims that his confirmation at various levels being earlier, he ought to have been promoted and given seniority above the persons mentioned above and other persons also mentioned in the application. The applicant filed <sup>a</sup> representation against the said seniority list in 1983. He also represented to the Commissioner, Scheduled Caste/ Scheduled Tribe, New Delhi in the same year. After the writ petition, referred to above, the Government of India rejected the representation of the applicant in 1985. The applicant feels that the Departmental Promotion Committee (DPC) which met in 1967, did not act according to rules and did not select the persons according to the instructions on the subject but acted arbitrarily in promoting the persons who were not liable to be promoted. The applicant also stated that he being a SC candidate should have been given greater consideration and ranking in the matter of promotion.

3. In the counter affidavit filed by the respondents it has been submitted that the post of Dy.M. was a selection post and promotion to this grade on a regular basis is made in accordance with the recommendations of the duly constituted DPC and ~~with~~ that the seniority is only one of the factors which was considered by the said Committee, the other factors being assessment of performance, merit, etc. The applicant was promoted from 19.5.1966 purely <sup>30</sup> ~~1966~~

(AM/3)

on a stop-gap basis. The DPC did not include <sup>14A</sup> him in the select list and included his juniors on consideration of merit. The applicant was regularly promoted only in 1969 and the seniority of the applicant had been correctly fixed on the basis of the date of his regular promotion. It is denied that there has been any violation of any rules or regulations, as alleged by the applicant. As regards the question of relaxation in respect of SC candidates mentioned by the applicant, the respondents aver that as per the instructions issued by the Department of Personnel and Administrative Reforms there is no reservation in the matter of promotion within a Group 'A' post. The case was heard when Sri N.K. Nair, learned counsel for the applicant and Sri K.C. Sinha, learned counsel for the respondents, made their arguments. Sri Sinha produced a copy of the DPC proceedings for perusal of the Tribunal. The learned counsel for the applicant also submitted his written arguments on behalf of the applicant.

4. We have very carefully considered the arguments advanced by Sri Nair on behalf of the applicant and the reply made by Sri Sinha on behalf of the respondents. The crucial issue in this case is the reversion of the applicant in 1967 after about a year of officiating at the higher post though on an ad hoc basis. It is clear that his promotion in 1966 having been cut short by his reversion in November, 1967, did not contribute anything for retaining his original seniority. His seniority was counted only w.e.f. 29.3.1969 when he was again repromoted on a regular basis. The applicant's contention is, so to say, to ignore completely the above interregnum of reversion. He, therefore, <sup>14A</sup> cites his confirmation in various grades as the basis for fixing his seniority in preference to the date of regular promotion. The respondents' only answer is that a duly constituted DPC found him unsuitable for regular promotion in 1967 and the same committee found the other persons, as named by the applicant, to be fit for promotion. It is stated that the applicant had lost his seniority on merit. The applicant is critical of the DPC proceedings and findings. According to him he had no adverse remarks

14A

at all communicated to him and he should have been found good and fit. Further he claims that he is entitled for one grading higher than his actual grade <sup>and</sup> because of his being a SC candidate.

5. The respondents have clarified that for such group 'A' post, there is no reservation for SC. It has also been stated that there are no instructions applicable to these posts for giving a higher grading as claimed by the applicant. It is seen that the applicant had moved the Commissioner for SC & ST in regard to this matter and if there had been any violation of any specific order of the Government in this respect, the applicant would have got the matter settled in his favour. But no such thing had obviously happened.

6. As regards the DPC proceedings, a perusal of the records submitted show that the DPC had considered 26 names on the non-technical side in 1967 and out of ~~these~~ 26 candidates, 15 have been found to be 'not yet fit' and the rest have been found 'very good'. The applicant belongs to the former group. The persons named by the applicant, viz. S/Sri S. Das Gupta, S.R. Sridharan & K.J. Pappachan have all been rated 'very good'. A perusal of copy of the ACRs of the applicant does not show that the grading <sup>by</sup> ~~of~~ the DPC of the applicant is perverse or such as no reasonable person would arrive at. It is found that the applicant was found 'very good' in the DPC of 1968.

7. It is well established that this Tribunal would not interfere in the findings of the DPC unless it is shown that it has been <sup>unfairly</sup> ~~invariably~~ constituted or it had violated basic rules of procedure or that it was <sup>biased</sup> ~~biased~~ in any manner or that it had functioned arbitrarily and in a manner no reasonable person would act. It has been held by the Madras Bench of this Tribunal in R. Krishnamurthi v. Manager, Government Press (ATR 1986 CAT 273) that gradations made by the DPC cannot be questioned. In this case none of the negative factors mentioned above have been shown against the DPC. Obviously this Tribunal cannot constitute itself ~~er~~ DPC and

AY  
S

-: 5 :-

and try to reassess the relative merits of the candidates. In the circumstances, there is no scope for interfering with the findings of the DPC in this case. Arising out of this, the applicant was rightly reverted from his ad hoc promotion and the other persons mentioned were rightly regularised in the higher post in preference to the applicant. The ~~law~~<sup>loss</sup> of seniority follows as a consequence. The seniority in the higher post will have to be governed by the date of promotion on a regular basis to that grade.

8. In the result the application fails and is accordingly dismissed with no order as to costs.

LM (Law)

MEMBER (A).

13, 1989.

Subbarao

MEMBER (J).