

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALIAHABAD BENCH

ALIAHABAD.

Allahabad this the day 15th of Sep. of 1997.

CORAM : Hon'ble Dr. R.K. Saxena, J.M.

Hon'ble Mr. D.S. Baweja, A.M.

T.A. NO. 1279 OF 1987.

(W.P. 816 OF 1983)

S.P. Singh Rathore,

Tajmahal, Agra. Applicant.

(By Advocate Shri G.C. Bhattacharya)

Versus

1. Union of India through the Secretary,
Ministry of Education and social Welfare,
New Delhi.
2. Director General, Archaeological Survey of India,
New Delhi.
3. Director (Admn.) Archaeological Survey of India,
New Delhi.
4. B.L. Kaul, Asstt. Superintending Horticulturist,
Archaeological Survey of India, Safdarjung Tomb,
New Delhi.
5. S.P. Shukla,
Asstt. Superintending Horticulturist,
Archaeological Survey of India,
Southern Zone, Mysore.

.... Respondents.

(By Advocate Shri N.B. Singh)

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ORDER (RESERVED)

(By Hon'ble Dr. R.K. Saxena, J.M.)

1. This Writ Petition no. 816/83 which was filed in the High Court stood transferred to this Tribunal and was given number T.A. no. 1279/87.

2. The facts of the case are that the petitioner S.P. Singh Rathore was working as Assistant Superintending Horticulturist in the Garden Branch of Archaeological Survey of India from several years. He had also worked as Senior Horticulturist Assistant for about 17 years.

3. Three posts of Deputy Superintending Horticulturist were sanctioned but only two posts were filled on 24.4.1982 by promoting the respondents no. 4 and 5. The contention of the petitioner is that he was senior to respondent no. 5 and thus he should have been considered and promoted as Deputy Superintending Horticulturist. He has, therefore, challenged the order dated 24.4.1982 of appointment of respondents no. 4 and 5 as Deputy Superintending Horticulturist and the order dated 7.6.1982 which was passed on the representation of the petitioner. The advertisement dated 18.12.1982 for recruitment of two Deputy Superintending Horticulturist is also challenged.

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4. The applicant had sought interim relief and the Hon'ble High Court has passed the order on 14.3.1983 on adhoc appointment on the post in question should not be made by the respondents till 1.4.1983. Subsequently the said order was made operative till further orders. It appears that an application ^{for} modification of the stay order was moved and on 20.6.1983 ^{and} a direction was given that promotion to one of the four posts on Deputy Superintending Horticulturist, would be subject to the result of the Writ petition.

5. The respondents contested the case by filing counter affidavit of Dr. D.B. Guha. It is contended that one post of Deputy Superintending Horticulturist was in existence from the court and ^{three} two more posts were created w.e.f. 1.3.1982. The post was required to be filled by promotion on the basis of selection and the criteria of selection was seniority subject to rejection of unfit. It is averred that the names of only three Assistant Superintending Horticulturist were considered but the work of the petitioner was not found upto the mark and the work of the petitioner was required to be observed for a period of six months. Vide letter dated 7.6.1982, he was not yet found fit for promotion. It is, therefore, contended that the claim of the applicant that he was ignoring ^{ed for} the selection for the post of Deputy Superintending Horticulturist was not correct.

6. The applicant filed rejoinder reiterating the facts which were mentioned in the petition. It was now contended that the posts of Deputy Superintending Horticulturist were increased from 1 to 4 yet he was not promoted. He also contended that the promotion on adhoc basis of two other Officers was illegal. The petitioner had also moved an application before the Hon'ble High Court that an order was passed by the respondent no. 2 on 14.7.1983 appointing Shri Shyam Singh and Shri S.P. Shukla ^{to} were officiating as Deputy Superintending Horticulturist which posts were in dispute and had sought stay. The prayer also made was that Shyam Singh be made respondent no. 6 in the case. It appears that ^{they} escaped the ~~attention~~ contention of the Hon'ble High Court and no order of impleadment of Shyam Singh as respondent, was passed. When this fact was came to our notice, we had passed the order on 6.5.1997 directing the applicant to implead Shyam Singh as respondent and on impleadment of Shyam Singh, notice was directed to file counter affidavit within three weeks and Supplementary Rejoinder Affidavit within a week thereafter. This order was not complied with and Shyam Singh was not impleaded as one of the respondents. Thus while considering the case of the applicant viz-a-viz Shyam Singh, we would take this aspect into account.

7. In this case the arguments were started on 30.1.1997 but during arguments necessity of perusal of the record relating to the petitioner and ~~to~~ the ^{proceedings} departmental promotion committee was felt.

The matter was, therefore, adjourned but the matter could not be taken up for final hearing on one ground or the other. After the order of impleadment of Shyam Singh was passed on 6.5.1997, the matter was listed for final hearing on 14.7.1997 and then on 11.8.1997. When the case was taken up on 11.8.1997 none had appeared for the parties and, therefore, the judgement was reserved. In the meantime one Misc. Application no. 2831/97 was moved on behalf of the respondents ^{with the prayer} that the record which was ordered to be produced, be taken on record. This application was taken up for consideration on 29.8.1997 again none of the counsel for the parties was present. Thus we are ~~lack~~ ^{left} ~~lack~~ of the arguments which were made on 30.1.1997 and of which notes were taken.

8. In this case, the petitioner has challenged the adhoc promotion of respondents no. 4 and 5 as Deputy Superintending Horticulturist and has also challenged the order dated 7.6.1982 through which the petitioner was informed that he was not yet found fit for promotion. Subsequently by getting the petition amended, the advertisement for selection of two posts of Deputy Superintending Horticulturist was also challenged. It appears that during the pendency of this petition, Shyam Singh and S.P. Shukla were promoted for the post of Deputy Superintending Horticulturist. We had already allowed the application for impleadment of Shri Shyam Singh as respondent but no amendment was made. Thus the petitioner cannot be allowed to seek any relief against Shri Shyam Singh.

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9. So far as the adhoc promotion of respondents no. 4 and 5 is concerned, the respondents have categorically stated that the performance of the petitioner was not found good and thus he was not found unfit for promotion whereas the respondents no. 4 and 5 were found fit. This aspect about poor performance of the petitioner could not be controverted by him. when D.P.C / which has been shown to us on behalf of the respondents indicates that the name of the petitioner was again considered alongwith S.P. Shukla and one Shyam Singh . The D.P.C graded Shyam Singh very good where as Shri S.P. Shukla and S.P. Rathore were graded good. It indicates that the performance of the petitioner was not good and, therefore, his claim for promotion as Deputy Superintending Horticulturist fails.

10. The learned counsel for the petitioner while arguing on 30.1.1997 had pleaded that the promotion was arbitrarily denied to the petitioner and vague replies were given in the counter affidavit. It was argued that no enquiry was held against the petitioner. We do not find any averments about any punishment having been given to the petitioner and thus there was no question of any enquiry against him. The contention of promotion having been arbitrarily denied is not found establish when we see the performance record of the petitioner and all other Officers who were promoted.

11. On the consideration of all these facts and circumstances, we come to the conclusion that there is no merit in the petition and thus

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it is dismissed. No order as to costs. Interim
order stands vacated.

J. B. Gray
MEMVER (A)

D. D. DeLoach
MEMBER (J)

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