

CENTRAL ADMINISTRATIVE TRIBUNAL, ALIABAD BENCH,
ALIABAD.

O.A. No. 618 of 1987.

R.D.Tiwari Applicant.

Versus

Union of India & others Respondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Chavva, A.M.

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

Feeling aggrieved from the non-promotion, the applicant approached this tribunal praying that respondent no.1 be directed to give promotion to the applicant to the post of Youth Assistant Grade-I w.e.f. 4.9.76 or such other subsequent dates as on the facts and circumstances of the case, this Hon'ble tribunal thinks fit and proper because the applicant cannot be deprived of his rights if meeting of the Departmental Promotion Committee is not convened. The applicant has also prayed that the proposed seniority list as on 31.12.82 circulated by letter dated 3.3.83 be quashed and the said seniority list be directed to be prepared afresh treating the applicant being in Government service as Upper Division Clerk/Store Keeper from the time he held the said post in the National Fitness Corps as he is entitled to the benefit of service done on his appointment on adhoc basis when he was later on substantively appointed to the post. The order of the Government of India dated 20.1.86 be also set aside and the applicant be given his due promotion treating the period of his working as on adhoc basis as being on regular basis.

2. The applicant was appointed as as Upper Division Clerk in the National Fitness Corps on 4.9.71 and was disbanded w.e.f. 30.6.72 and about the same time, a new Organisation namely the National Service Scheme Organization was introduced and after that he

was appointed as Store Keeper/Upper Division Clerk by order dated 3.10.72.

3. The total number of the sanctioned posts of Upper Division Clerk was 22 out of which 10 of Camp Assistant Grade II and 12 of Camp Assistant Grade I. The Government of India issued a letter on 7.9.72 in which it has been mentioned that posts below the rank of Camp Assistant Grade I and Grade II had to be offered to the National Fitness Corps Staff and the NPC's recruitment Rules dated 31.7.71 would govern the method of recruitment.

4. The applicant, as per his averment, had five years service experience as Upper Division Clerk from the date of his appointment in the National Fitness Corps. and the five years completed on 4.9.76 and he was entitled to be promoted to the post of Youth Assistant Grade II but he was not promoted and others were promoted even juniors to him.

5. According to the respondents, the applicant was not eligible for consideration to the promotional post when selection to the post of Youth Assistant Grade II took place. His case for promotion to that post could not have been considered until he completed five years' service in the National Fitness Corps. He was promoted on adhoc basis w.e.f. 13.11.81 and this promotion was regularised w.e.f. 25.3.83. In August, 1981 there were eight vacancies of Youth Assistant Grade II. Under the Service Rules, as were in existence, 25% posts were to be filled in by promotion and 75% by direct recruitment. The Staff Service Commission made selection for three posts towards direct quota. Out of remaining five posts, three posts were to be filled in by promotion and the remaining two posts by direct recruitment. As the direct recruitment was to take

time, it was decided to fill in all five posts by promotion of eligible departmental candidates; three on regular basis and two on adhoc basis. He was not promoted as he had not completed five years of service as Youth Assistant Grade II on regular basis. The applicant was given adhoc promotion and after creation of more posts, these promotions were regularised. Although Recruitment Rules were finalised in 1975 but Departmental Promotion Committee's meeting took place thereafter only in 1981 though under the rules, it was required to meet every year. A draft seniority list as on 31.12.83 was published and objections were invited vide letter dated 3.3.83. The applicant being aggrieved filed objections against the same but his representation was rejected as his promotion was on adhoc basis. Subsequently, on 31.3.84, an order was passed showing that the applicant, who has been officiating as Youth Assistant Grade II on adhoc basis, is appointed to officiate as Youth Assistant Grade II on temporary basis. The applicant made representation to the Ministry but that too was rejected on 29.1.86 on the ground that he and other Group-C incumbents were not eligible for promotion. Vide Office order dated 23.4.86 the applicant was appointed in substantive capacity on the post of Upper Division Clerk w.e.f. 10.4.85 and vide order dated 1.5.86, he was appointed in substantive capacity as Youth Assistant Grade II w.e.f. 10.4.85. The applicant made representation for assignment of seniority with retrospective effect and it was after his representation that respondents no.2 to 5 were promoted retrospectively as Youth Assistant Grade I vide order dated 18.3.87 though prior to which date they never performed duties as

W

Youth Assistant Grade I. It was after rejection of the said representation, the applicant has approached this tribunal.

6. Learned counsel for the applicant contended that because of the delay and violation of rules by the respondents in not holding Departmental Promotion Committee every year and holding it in 1981 instead of 1977, the applicant cannot be made to suffer and deprived of his promotion as well as seniority. It is true that DPC normally should have met every year but it could not meet. When it met, it was to take into consideration yearwise vacancy and then recommend promotion of eligible candidates.

7. The applicant was admittedly appointed as Upper Division Clerk on 28.8.72 and the period of five years service in the grade was to be counted from 28.8.72. Thus, he completed five years of service on 28.8.77. The applicant has placed the vacancy position which is on record. In the year 1977, the total number of vacancies were six; out of which three were to be filled in by the promotional quota and this position was repeated in the 1978 and in the year 1979, the posts in the promotional quota were four while in 1980 it became five and in the year 1981, it became six. During these years, the posts were not filled in. In case, the DPC could have met earlier/regularly, the applicant's case for appointment to the said post could have been considered in that very year. It appears that the respondents have not considered the case of the applicant in relation to the year when he became eligible but have considered his case in 1981 when he was selected. Accordingly, the respondents will be required to consider the case of the applicant for promotional post not from 1981 but from 1977 or

1978 when he had completed five years of service read with vacancies. The vacancy being available and the applicant being within the zone of consideration, was entitled to promotion from that year and not from 1981. Let the respondents will consider the case of the applicant within a period of three months from the date of communication of this order for giving him retrospective promotion with relation to vacancy and in view of the fact that the Departmental Promotion Committee which could have met earlier, did not meet earlier. In case, the applicant gets selection with effect from the previous year, he will be given national promotion with effect from that year and actual promotion from 1981. The case of the applicant to the post of higher grade shall also be accordingly considered simultaneously and in case the applicant becomes entitled to the promotion to the higher grade by virtue of shifting of promotional year, the same may also be given to him within another three months. With these observations, this application stands disposed of. No order as to costs.

Gupte
MEMBER (A)

Lev
VICE CHAIRMAN.

DATED : JANUARY 11, 1993.
(ug)