

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 14th day of August, 2000

Original Application No. 769/1995

District : Gorakhpur

CORAM :-

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Hon'ble Mr. S. Dayal, A.M.

Virendra Kumar Srivasyava,
Son of Sri Gopi Nath Srivastava,
Tax Assistant, Custom Preventive Division,
Betia Hata, Gorakhpur.

(Sri KK Mishra, Advocate)

..... Applicant

Versus

1. Union of India through
Ministry of Finance, New Delhi.
2. Commissioner Central Excise and Customs,
Allahabad.
3. Dy. Commissioner (P&V), Central Excise and
Customs, Allahabad.

(Sri Vikram Gulati, Advocate)

..... Respondents

O R D E R (O_r_a_l)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

We have heard learned counsel for the parties on
merit.

2. By this application, the applicant has sought
relief that he may be posted on the post of Dy. Office
Superintendent on the basis of DPC held in 1993. It is
not disputed that the applicant ~~had~~ already been
promoted as Dy. Office Superintendent w.e.f. September,
1995. Now the grievance of the applicant is confined
to the fact whether his promotion to the post of Dy.
Office Superintendent should be w.e.f. 1993 or 1995.

In this connection learned counsel for the applicant

has placed before us Para 17.12 of the Seniority and Promotion Rules (Swamy's Compilation), which reads as under :-

"17.12. When a Government employee does not want to accept a promotion which is offered to him he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotions, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises whichever is later. On the eventual promotion to the higher grade, such Government servant will lose seniority vis-a-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above mentioned policy will not apply where ad hoc promotion against short term vacancies are refused."

3. The undisputed facts in this connection are that the applicant was considered for promotion by the D.P.C. held on 17-7-1992 in respect of vacancy of 1992. On promotion being offered the applicant refused it by his letter dated 20-8-1992. Under Para 17.12 if the promotion offered is refused, the employee becomes dis-entitled for being promoted for a period of one year till the next vacancy arises, whichever is later. In the present case learned counsel for the applicant has submitted that the vacancy for 1990-92 was filled up on 7-9-1993 i.e. after more than a year from the date of his refusal dated 20-8-1992. Therefore, the applicant is entitled for promotion from 1993. In our opinion the submission is based on misconception. On his own saying the vacancy filled on 7-9-1993 was in respect of the years 1990-92 for which the applicant was considered and promoted but he refused to join.

Even if this vacancy was filled in on 7-9-1993, the applicant could not be accommodated against this vacancy in view of the provisions contained in Para 17.12 quoted above. He could be entitled only for the next vacancy which could arise after 1990-1992. The applicant has been promoted with effect from 1995 when the vacancy arose.

4. The next question for consideration is whether any vacancy arose in 1994. In Para 4(vi) of the OA the applicant has specifically claimed that respondents published a list for promotion ^{of} Dy. Office Superintendent in 1993 and 1994 and lastly in 1995. Learned counsel for the applicant has submitted that this fact has not been denied. In the counter affidavit in Para 9 of the counter affidavit in reply to Para 4(vi), it has been stated that Sri V.K. Srivastava has been reverted to the grade of UDC ^{vide} Estt. Order No. I/A/187/94 dated 8/9/4-1994. Further Sri Srivastava has been promoted in the grade of Dy. Office Superintendent ^{vide} order dated 20-9-1995 after completion of one year from the date of issue of his reversion order i.e. 8/9-4-1994.

5. In reply to the aforesaid Para 9, the applicant has submitted in Para 11 of the rejoinder affidavit that Sri V.K. Srivastava, who had been reverted to the grade of UDC by order dated 8/9-4-1994, was another ^{person of the same} Vinod Kumar Srivastava and not the applicant whose full name is Virendra Kumar Srivastava. It has also been claimed that in fact the respondents have not come with clean hands before the Tribunal and an attempt has been made to create a confusion by making a wrong statement. From the aforesaid pleadings of the parties, it appears that there is some confusion on part of the Department.

The applicant was already serving as UDA and he was not promoted in a higher post. There was no question of his reversion as UDA. The applicant has already made it clear that somebody ^{with} ~~in~~ the name of Vinod Kumar Srivastava was reverted to the post of U.D.A. The respondents have not denied that there was a vacancy in 1994. If this fact is true, the applicant's claim ought to have been considered against that vacancy under the provisions contained in Para 17.12.

6. Considering the aforesaid facts and circumstances, this application is disposed of finally with direction to the respondent no.2 to reconsider the whole matter in the light of observations made above and allot the correct year of promotion to the applicant in the light of the provisions contained in Para 17.12. The order in this regard shall be passed within three months from the date a copy of this order is filed. There shall be no order as to costs.


Member (A)


Vice Chairman

Dube/

In

23.7.2001.

Hon'ble Mr. S. Dayal, A.M.
Hon'ble Mr. Rafiq Uddin, J.M.

Sri K.K. Misra for the applicant. Sri V. Gulati for the respondents.

The learned counsel for the applicant moves M.A. No. 1769/01 praying for direction to the respondents to pay arrears with effect from 20.8.93 for the post of DOSL-II and arrears for the post of DOSL-I w.w.e.f. 20.9.95.

The learned counsel for the applicant has referred to the order passed in O.A. no. 769/95 on 14.8.2000 directing the respondents to consider the matter in the light of the observations made in the order and let the correct order of promotion be passed of the applicant in the light of the provisions contained in para 17.12. We find from the O.A. that the applicant had asked for all the service benefits from the date of junior of the applicant's promotion. The same has, however, not been made a part of the order.

The applicant in this application under Rule 24 has shown the order dated 13.12.2000 by which the applicant has been allowed notional promotion in the grade of DOSL-II w.e.f. 20.8.93 and is being placed above Sri Devi Prasad and below Sri OM Prakash in the seniority list. The applicant has also been allowed the notional promotion of DOSL+I w.e.f. the date of his immediate junior and he has been given the seniority above Sri Devi Prasad and below Smt. Toshi Saxena.

Thus, we find that the order of the Tribunal has been complied with. The present claim that he has been paid arrears from 1996 onwards, but has not been paid arrears from 1993 to 1996 has to be taken-up by him with the respondents by means of a representation and thereafter he should file O.A. in case he is so advised after the

respondents have decided his representation. M.A. no. 1769 of 2001 is, therefore, dismissed as not maintainable.


J.M.


A.M.

G.S.