

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT NAINITAL

Original Application No. 1191 of 2000

Nainital this the 24th day ^{8th} April 2003.

HON'BLE MAJ. GEN. K.K. SRIVASTAVA, MEMBER-A

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

N.S. Verma S/o Sri B.S. Verma,
R/o 68-B, Garhi Cantt., Dehradun.

.....Applicant.

(Counsel for the applicant : Sri C.D. Bahuguna)

V E R S U S

1. Union of India through Secretary
Ministry of Science & Technology, New Delhi.
2. Surveyor General,
Survey of India,
Dehradun.

.....Respondents.

(Counsel for the respondents : Sri G.R. Gupta)

O R D E R (Oral)

MAJ GEN K.K. SRIVASTAVA, MEMBER (A)

In this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought the following reliefs:

- "(a) That it may be held that the applicant was entitled in law for being considered for promotion to the post of Chief Draughtsman and the respondent no.2 arbitrarily and mala fide deprived the applicant of his right to be considered for the said promotion, prior to date of his superannuation, in utter violation of Article 14 & 16 of the Constitution of India.
- (b) That it may be held that the applicant is entitled for deeming promotion to the post of Chief Draughtsman in the Map Publication Directorate, Survey of India, Dehradun, immediately before the date of his superannuation

-ion, and is entitled for all consequential benefits accruing from the said deeming promotion.

(c) That the respondents may be directed to re-determine the amount of pension and other retiral benefits of the applicant, on the basis of the salary of the post of Chief Draughtsman w.e.f. the date of his superannuation.

(d) That the respondents may be directed to pay the re-determined amount of pension to the applicant alongwith 18% interest on the arrears of the difference of pension.

(e) -----.

(f) -----."

2- The facts, in short, are that the applicant was appointed as Draughtsman in the respondents' establishment in March '64. He was promoted to Grade-V in the year 1965 after passing the trade test and later on promoted as Draughtsman Division-I in the year 1987. As a result of cadre review, 35 posts of Chief Draughtsman were created by order dated 30.1.1996. As per the applicant, Draughtsmen's (Cartographic) Association, Survey of India, Dehradun, as well as the applicant represented before the respondent no.2 to fill-up these 35 vacancies of Chief Draughtsman. They also requested that since the plea of the respondent no.2 was that Recruitment Rules (in short RRs) were not received, he could be promoted on the post of Chief Draughtsman on adhoc basis. The respondent no.2 did not take any action in this regard and even after RRs dated 5.7.2000 were received by the respondent no.2 on 3.8.2000, the respondent no.2 did not take any action to convene timely DPC and the DPC was held only after the applicant superannuated on 31.8.2000. Aggrieved by this, the applicant has filed this O.A., which has been contested by the respondents by filing Counter reply.

3. Sri C.D. Bahuguna, learned counsel for the applicant submitted that the respondent no.2 deliberately did not hold timely DPC as he wanted to favour one lady Smt. Elsy Fransis and Mr. S. panchpagesan. The respondent no.2 waited ^{for} the superannuation of the applicant as well as one Sri R.C. Kothiyal, so that the two persons whom the respondent no.2 wanted to favour were brought into the zone of consideration and could be promoted. The learned counsel further submitted


That as per law laid down by the Hon'ble Supreme Court in the case of Ajit Singh & Ors. (II) Vs. State of Punjab (1999(7)JT 153) promotion is facet of fundamental right under Article 16(1) of the Constitution of India. RRS were received by the respondent no. 2 on 03.8.2000, yet the respondent no. 2 deliberately delayed in holding of DPC, thereby denying the rightful promotion to one Sri R.C. Kothiyal and also the applicant.

4. The learned counsel for the applicant also argued that the respondent no. 2, in absence of RRS could give adhoc promotion to the applicant, even-though the RRS had not been notified. He has placed reliance on the judgment of Hon'ble Supreme Court in the case of S.K.Mathur Vs. U.O.I. & Ors 1998(2)JT 403.

5. Concluding his arguments, learned counsel for the applicant is entitled for promotion and the Tribunal should direct for deemed promotion of the applicant from 30.1.1996, the date 35 posts of Chief Draughtsman were created as a result of cadre review. However, if the Tribunal does not consider appropriate to give promotion from 31.1.1996, the Tribunal should direct for deemed promotion at least from the date the RRS dated 05.07.2000 were notified.

6. Opposing the claim of the applicant, Sri G.R.Gupta, learned counsel for the respondents submitted that no injustice has been done to the applicant. In absence of RRS, it was not feasible for the administration to convene the D.P.C. The moment the RRS dated 5.7.2000 were received by the respondent no. 2, prompt action was taken. DPC was convened and promotion orders of 35 Draughtsman D-I to the post of Chief Draughtsman were issued on 14.9.2000 (Annexure A-1).

7. We have heard the counsel for the parties, carefully considered their submissions and closely perused the records as well as the pleadings.



8. In the instant case, the applicant has alleged malafides and favouritism on the part of the respondent no.2 on the ground that the respondent no.2 deliberately did not grant adhoc promotion and also delayed holding of timely DPC, so that the applicant could ^{h m h} get the benefit of higher scale prior to his superannuation. Admittedly, 35 posts of Chief Draughtsman were created on 30.1.1996 on account of cadre review. The grievance of the applicant is that ^{a h} adhoc promotion was not given, ^{a h} If that be so, he could have approached the Tribunal at that time itself, which he did not. He has approached this Tribunal only after his superannuation. The legal position is well settled that an employee cannot claim right for adhoc promotion. It is no denying a fact that consideration for promotion is the right of the employee. The Hon'ble Supreme Court in the case of Ajit Kumar Singh (supra) in para 22 has held as under :

"----- Article 16(1) issues a positive command that "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

----- Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be 'considered' for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be 'considered' for promotion, which is his personal right.

"promotion" based on equal opportunity and "seniority" attached to such promotion are facets of fundamental right under Article 16(1)."

Further the Hon'ble Supreme Court in the case of S.K. Mathur (supra) has held as under :

"15. The appellants, who were initially working as Asstt. Inspector (Control) in the India Security press, Nasik Road, were appointed on the posts of Inspector (Control) in the press on deputation during the period from 9th February, 1973 to 10th January, 1974, while there were no recruitment rules for regulating the appointments or other conditions of service in the press which was established only in 1972.-----

-----The Rules, namely the Bank Note press (Class III posts) Recruitment Rules, 1974 were promulgated on 20.11.1974 when the appellants had already been appointed. Their appointment on deputation, therefore, could not have been faulted by the Tribunal on the ground that there was no provision for appointment on deputation on the posts of Inspector (Control) under the Recruitment Rules as it is well settled that in the absence

of Statutory Rules made under Article 309 of the Constitution, appointments and other conditions of service can be regulated by administrative orders or executive instructions."

9. From the above decisions of the Hon'ble Supreme Court, it is clear that adhoc promotion in the absence of RRs can be regulated by administrative orders or executive instructions, which interalia means that administration has to take a decision in regard to adhoc promotion and unfortunately for the applicant the administration did not ^{take} decision as per his view point. It has been admitted by the applicant in para 8 of the Rejoinder that the name of the applicant was at sl. no. 26, which means that there were 25 more persons senior to him, who were similarly placed. On a specific query by the Court whether any-one senior to him was given adhoc promotion. The reply of the learned counsel for the applicant was in negative. We do not find any trace of discrimination in the action of the respondent no.2.

10. The applicant has himself admitted in para 9 of the Rejoinder that RRs were received by the respondent no.2 by 3.8.2000. The contention of the applicant that had the DPC been convened prior to 31.8.2000, Smt. Elsy Fransis and Mr. S. panchpagesan, who are alleged to have been favoured by the respondent no.2, could not have come within the zone of consideration as their names were existing in the final seniority list at sl. no. 38 & 39 respectively. The contention of the applicant is totally mis-conceived. When-ever any DPC is convened for promotion, ^{names of persons} three times of the number of the vacancies to be filled-up are considered and even if the DPC was held before 31.8.2000, Smt. Elsy Fransis and Mr. S. panchpagesan would have very well fallen in the zone of consideration. We would also like to observe here that when Sri R.C. Kothiyal and the applicant were to retire on 31.8.2000, nothing could have stopped ^{by} the respondent no.2 to promote Smt. Elsy Fransis and Mr. S. panchpagesan immediately after superannuation of the

applicant and Sri R.C. Kothiyal. It is an admitted fact that RRs dated 5.7.2000 were received in early August'2000 by the respondent no.2. We find substance in the arguments^h of the learned counsel for the respondents that the prompt action was taken to convene the DPC, which was convened on 9.9.2000. The ^hadministration^h has to take a number of measures like getting up-dated ACRs of all the candidates within zone of consideration etc. for which quite a ^hconsiderable^h long time is required. The DPC was convened on 9.9.2000 and the result was declared on 14.9.2000. In our considered opinion, the respondent no.2 took prompt action after receipt of RRs.

11. For ~~the~~ aforesaid reasons, we do not find any good ground for interference. The O.A. is devoid of merits and is liable to be dismissed. The O.A. is accordingly dismissed. No costs.



MEMBER (J)



MEMBER (A)

GIRISH/-