

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA No. 1421/1996.

Date of order: 31.8.2006.

HON'BLE SMT. SHYAMA DOGRA, MEMBER (J).
HON'BLE SHRI A.R. BASU, MEMBER (A).

Sanjit Kumar Chakraborty
Working for gain as Technical Supervisor
At Regional Design and Technical Development Centre
Office of Development Commissioner, Handicrafts
9-12, Old Court House Street, Calcutta - 700 001
and residing at 125/2-A, Beleghata, Main Road
Calcutta - 700 010.

(By: Shri S.K. Dutta, advocate)

.....Applicant.

Versus

1. Union of India through Secretary
Department of Handicrafts, Ministry of Textiles
West Block No. VII, R.K. Puram
New Delhi.
2. Development Commissioner, Govt. of India (Handicrafts)
Ministry of Textiles, West Block No. VII, R.K. Puram
New Delhi.
3. Regional Director (Eastern Region)
Office of Development Commissioner (Handicrafts)
M.S.O. Building, 'A' Wing, DF Block (3rd floor)
Salt Lake City
Calcutta.
4. Shri A.K. Raizada, Asstt. Director (Technology)
Design and Technical Development Centre
Office of Development Commissioner (Handicrafts)

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Okta Industrial Estate, New Delhi.

..... Respondents.

(By: Smt. U. Sanyal, advocate)

ORDER

(By: Hon'ble Smt. Shyama Dogra, Member (J))

The applicant in the present case has prayed for issuance of directions to the respondents to consider him for promotion to the post of Asstt. Director (Technology) from the date when his junior (Respondent No. 4), namely, Shri A.K. Raizada was promoted as such in September, 1993 in order to safeguard the status of seniority list as well as the pay protection.

2. In the alternative, the applicant has also prayed for upgradation of his salary to avoid stagnation in the Assured Career Progression (ACP) Scheme or otherwise keeping in view that he has been continuing in the same post of Technical Supervisor for the last 21 years.

3. Briefly, the facts as narrated in the OA are that applicant was appointed as Technical Supervisor and was at Sr. No. 2 in All India Seniority List vide Seniority List dated 26.11.1993 (Annexure 'A'). He claims that Respondent no. 4, though is junior to him, has been promoted to the post of Asstt. Director while superseding the applicant in very illegal, arbitrary and unjustified manner. Copy of said order dated 20.11.95 is also placed on record vide Annexure 'B'. Before coming to this court, he made a representation for considering his case for such promotion wherein he has also prayed for removal of stagnation in his pay scale of Rs. 1640-2900. But

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he got no reply to that representation or its reminders submitted subsequently by him.

4. Learned counsel for the applicant has also drawn our attention to the decision rendered by Principal Bench on 1.6.90 in OA No. 2247/89 in the case of Respondent no. 4 whereby following directions were given by the court:-

"Following the ratio in the aforesaid judicial pronouncement and in the context of above discussion, we order and direct that the respondents shall encadre the post of Technical Supervisor to one of the existing cadres and consider the appointment of the applicant against one of the said posts at a suitable time. The experience acquired by him in the present post as Technical Supervisor should be kept in view while amending the rules. It appears that there are two posts of Tech. Supervisor and both the incumbents, including the applicant have made representations to the respondents in this regard. Even though the other colleague of the applicant is not before us, we hope that respondent will consider his case for similar encadrement. If the post of Tech. Supervisor can not be encadred for some insurmountable reasons, we further direct that the applicant should be considered for promotion in the next higher grade following the principles of "flexible Complementing" by granting the next higher scale of pay to the applicant in the same post preferably not later than on completion of 15 years of service."

While referring to this decision Annexure 'F', the plea of the applicant is that respondents have not implemented this order in its letter and spirit while considering the case of the applicant also for said promotion.

5. The official respondents have filed their reply with the submissions that the order passed by Principal Bench in aforesaid case of Respondent No. 4 has been duly complied with, as in order to implement it, the respondents

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got recruitment rules amended for the post of Asstt. Director to provide promotion avenues to the post of Technical Supervisor held by Respondent no. 4 and the applicant. Since the said post is selection post as per recruitment rules and is under the purview of the UPSC, in order to fill up the post by promotion the candidature of applicant, Respondent no. 4 and two others, were sent to UPSC along with ACRs, Vigilance Clearance and Integrity Certificates. The UPSC's Selection Committee has found Respondent no. 4 more suitable than the applicant on the basis of ACRs pertaining to the performance of the individual. Therefore, the contention of the applicant that post of Asstt. Director is a promotional post and is to be filled up on the basis of seniority is not tenable. There are only two posts of Asstt. Director (Technology), one reserved for SC candidate as per rules on reservation. There was no SC official in the seniority list/existing consideration zone, the respondents approached the Deptt. of Pers. & Training (DOPT) for de-reservation of the post by filling up the post of Technical Supervisor, but, the said proposal was not approved by the DOPT. In the meantime, the said post of Asstt. Director (Technology) has been abolished as per Govt. of India's instructions under 10% cut under economy measures, vide Annexure 'R', therefore the applicant's prayer is baseless since his case was duly considered by the UPSC.

6. It is also averred by learned counsel for the respondents that the applicant has no indefeasible right to be promoted but he has a right to be considered for promotion which has duly been done by the UPSC which is otherwise not made party in the present case. Therefore, this OA is devoid of merits on this point, particularly, keeping in view that drive was made by the respondents to de-reserve the reserved post to re-consider his candidature

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further which, however, could not be done in view of the disapproval of the said proposal as well as abolition of the said post subsequently.

7. So far as payment of stagnation increment is concerned, the respondents contend that as per recommendations of the Fourth Pay Commission, this increment is sanctioned every alternative year subject to three times. However, they have not categorically mentioned that applicant has also been sanctioned this stagnation increment after every alternative year.
8. No rejoinder whatsoever has been filed by the applicant to rebut all these averments made by the respondents in their reply.
9. We have heard learned counsel for the parties and perused the pleadings on record including the guidelines to be followed by DPC while assessing the candidates for promotion.
10. There is no doubt about the fact that applicant was senior to Respondent no. 4. It is also undisputed that in order to implement the orders passed by Principal Bench in the aforesaid case of Respondent no. 4, the relevant rules relating to Asstt. Director (Technology) were amended vide notification dated 10.6.93, wherein it has been specified the post of Asstt. Director as a selection post in Column no. 5 of the schedule. It is settled law of the service jurisprudence that for the selection post, seniority is not the sole criterion to be considered one's candidature for promotion but, merit is to be assessed while scrutinizing his ACRs. We find no reason to disbelieve

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the respondents' submission with regard to findings of the UPSC's Selection Committee, whereby Respondent no. 4 was found to be more suitable on the basis of his ACRs for such promotion, particularly, in view of the fact that the applicant has not rebutted these contentions of the respondents either in rejoinder or has made any allegations of biased attitude of the Selection Committee of the UPSC or any kind. He has not even alleged any kind of malafide on the part of particular official concerned.

11. Otherwise also, the assessment made by the Selection Committee can not be interfered by the courts while substituting its own view on the assessment of the candidates unless and until it is found that the assessment of the candidate has been made in violation of the recruitment rules or smacks any kind of arbitrariness, malafide etc. As observed hereinabove, it is not the case of the applicant to that effect, therefore, we are of the view that applicant has failed to substantiate his case keeping in view that the respondents have duly complied with the orders passed by the Principal Bench of the Tribunal in the case of Respondent no. 4, as thereafter his case was duly considered for such promotion. Thus, there is no infringement of his right to be considered for promotion to the next higher post.

12. Be that, it may so, we have further noticed that the respondents have not given specific reply to show that later part of the order, A/F (supra) has been complied with by them while following the principle of "flexible complementary". They have also not categorically emphasized that applicant has been paid increment on every alternative year as per his eligibility.

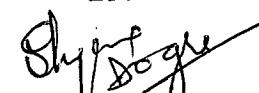
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13. Therefore, keeping in view that applicant has been working on the same post for the last more than 20 years, respondents are hereby directed to consider the case of the applicant to remove such stagnation in his pay scale under any of the relevant Scheme or Rules, if applicable in his case, in order to show due compliance of the later part of the order, Annexure A/5 (supra). Thus, appropriate order to that effect with reasons, duly communicated to the applicant, be passed within a period of three months from the date of receipt of copy of this order.

14. Thus, for the foregoing reasons, this OA stands disposed of with directions as above, while rejecting the plea of the applicant for considering his case for promotion to the post of Asstt. Director (Technology). No costs.


(A.R. BASU)

MEMBER (A)


(SHYAMA DOGRA)
MEMBER (J)

Dated: 31.8.2006.

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