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CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH

**ORIGINAL APPLICATION NO. 158/2008
JODHPUR, THIS IS THE 27 MARCH, 2009**

CORAM:

**HON'BLE MR. JUSTICE M. RAMACHANDRAN, VICE CHAIRMAN(J)
HON'BLE Dr. RAMESH CHANDRA PANDA, MEMBER (A)**

Smt. Vatsala Sarkar
Superintending Anthropologist (Cultural),
Anthropological Survey of India,
192/1 Kaulagarh Road
Dehradun - 248195

(None present for the applicant)

.... Applicant.

VERSUS



1. Union of India
Through the Secretary,
Ministry of Culture,
Sastri Bhawan, New Delhi - 110001
2. The Secretary
Union Public Service Commission
Dholpur House
Shahjan Road,
New Delhi
3. The Director-in-Charge
Anthropological Survey of India
27 Jawaharlal Nehru Road,
Kolkata - 700016
4. The Head of Office
Anthropological Survey of India
192/1 Kaulagarh Road
Dehradun - 248195
5. Dr. N.K. Das
Superintending Anthropologist (Cultural)
Anthropological Survey of India,
Khudiram Bose Chowk
Harihar Singh Road
Morabadi, Ranchi - 834008
6. Dr. Suresh Patil
Superintending Anthropologist (Cultural)
Anthropological Survey of India
Manav Bhawan, Bogadi
Mysore - 570012
7. Dr. Baby Francis Kulirani
Superintending Anthropologist (Cultural)
Anthropological Survey of India

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Mawblei, Madanriting
Block - B, Shillong-793024

.... Respondents.

(Mr. M. Godara, Proxy counsel for Mr. Vinit Mathur, Advocate for Respondents 1 to 4 and none present for respondent Nos. 5 to 7).

ORDER

[**PER Dr. RAMESH CHANDRA PANDA, MEMBER (A)]**

Smt. Vatsala Sarkar, presently working as Superintending Anthropologist (Cultural) in Anthropological Survey of India has approached this Tribunal in this O.A. under Section 19 of the Administrative Tribunal Act, 1985 with the following prayers:-

"a) to quash the impugned orders dt. 08-03-2002 giving promotion to the three junior officials as mentioned herein, as illegal and arbitrary.

b) to direct to respondents to hold a review DPC to consider the case of the applicant for promotion to the post of Superintending Anthropologist (Cui) on completion of the debarment period of one year, and to grant any other relief or reliefs as the Hon'ble Tribunal may deem fit and as proper under the circumstances of the case."

2. Brief facts of the case, as submitted by the applicant, are that she was appointed to the post of Anthropologist (Cultural) on 8-7-1985 in the Gazetted Group-A service of the Anthropological Survey of India and being eligible, she was selected for promotion to the higher post by the duly constituted Departmental Promotion Committee and offered promotion to the post of Superintending Anthropologist (Cultural) on 07.11.2000 (**Annexure-I**). The applicant declined the offer of promotion on 22.01.2001. The Head of Office of the Anthropological Survey of India vide the office order dated 15.02.2001 (**Annexure-II**) accepted the expressed inability of the applicant of the promotion offer to the post of Superintending Anthropologist (Cultural). The applicant submits that her three juniors (respondent No. 5 Dr. N.K. DAs, respondent No. 6 Dr. Suresh Patil and respondent No. 7 Dr. B.F. Kulirani) all juniors to the applicant were

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promoted to the post of Superintending Anthropologist (Cultural) vide office order dated 08th March 2002(**Annexure-IV**). They joined the said post on promotion in the month of March/April, 2002. The applicant, however, was again offered the promotion to the post of Superintending Anthropologist (Cultural) in March, 2003 which the applicant accepted and she joined the said post on 03.04.2003. This offer was after more than two years from the date on which the applicant has declined the first offer of promotion. The main grievance of the applicant is that respondents promoted her three juniors from the feeder post to the post of Superintending Anthropologist (Cultural) without offering the post for promotion to her though she was eligible for the higher post. She alleges that this action and in action of the official respondents are arbitrary and the office order dated 8th March 2002(**Annexure-IV**) was liable to be quashed and set aside.



3. We have heard Shri M. Godara, Proxy counsel for Mr. Vinit Mathur, representing the respondent No. 1 to 4, and perused the pleadings. Though notices were served on respondent No. 5, 6 and 7, none represented them nor did they submit written submissions in this OA. With the available records and the pleadings and the written submissions submitted by the official respondents, the issue which comes up for our consideration and determination is in narrow focus.

Is the applicant eligible to be considered for promotion to Superintending Anthropologist (Cultural) after the completion of one year when her juniors were offered promotion?

4. The admitted facts by the rival parties are as follows:-

- The applicant was at serial No.2 in the seniority list of the officers in the grade of Anthropologist (Cultural) in the Anthropological Survey of India as on 2nd February, 1998.

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- The respondent No. 5, 6 and 7 were at the serial No. 4, 5 and 6 of the seniority list of the officers in the grade of Anthropologist (Cultural) in the Anthropological Survey of India as on 2nd February, 1998.
- The post of Anthropologist (Cultural) is the feeder category for promotion to the post of Superintending Anthropologist (Cultural).
- The applicant was issued the offer of promotion to the post of Superintending Anthropologist (Cultural) vide office order dated 27.11.2000 (**Annexure-1**).
- The applicant vide her application dated 22.01.2001 expressed her inability to accept the promotion.
- Vide office order dated 15.02.2001 the official respondents accepted the applicant's letter declining to accept the promotion.
- In May, 2001, the Departmental Promotion Committee decided by circulation to fill up three posts of Anthropologist (Cultural) by promotion for the year 1997-1998, 2000-2001 and 2001-2002 and recommended (i) respondent No. 5 (Dr. N.K. Das) for the vacancy of 1997-1998, (ii) Shri Suresh Patil for the vacancy of 2000-2001 and (iii) Dr. B.F. Kulirani for the year 2001-2002 vacancy.
- Vide office order dated 08th March, 2002, the respondent No. 5, 6 and 7 were offered to be promoted to the post of Superintending Anthropologist (Cultural).
- Accepting the offer of the promotion the respondent No. 5, 6 and 7 joined the post of Superintending Anthropologist (Cultural) on 10.04.2002, 11.03.2002 and 15.04.2002 respectively.



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- The applicant was promoted to the post of Superintending Anthropologist (Cultural) vide office order dated 13th March, 2003.

5. The Government instructions issued by the Ministry of Home Affairs in O.M. No. 22034/3/81-Estt. (D) dated 01.10.1981 on the policy to be followed in case where persons refused promotion to a higher post was decided and issued the guidelines thereon. The earlier instructions of the Government of India vide O.M. Dated 22-01-1975 as per which those officers who refuse promotion should not be issued any fresh offer of a promotion for a period of six months **from the date of such refusal**. Thus, the instructions dated 22-01-1975 was modified by the Government instructions in the O.M. dated 01-10-1981, as per which the officer who refused promotion, no fresh offer of a promotion will be issued to the officer for a period of **one year** instead of six months provided in the earlier instructions. The Government instructions dated 01.10.1981 holds the field as on date, and is fully valid and operational.

6. As per the above cited extant Government instructions, the present case is examined by us. We find that the applicant refused to accept promotion vide her letter dated **22.01.2001**. Thus, she was debarred to get the fresh offer of promotion on or before 21.01.2002. As stated above, we find that the respondents No. 5, 6 and 7 who were offered the promotion to the post of Superintending Anthropologist (Cultural) vide the office order dated **08th March, 2002** where they were requested to intimate their acceptance or otherwise of the said promotion by 25th March, 2002 and to report for duty by 10th April, 2002. Further it is also highlighted within that the respondent No. 5, 6 and 7 joined the promoted post on **10th April, 2002, 11th March, 2002 and 15th April, 2002** respectively. It is very clear from these facts that applicant was not offered to intimate

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her acceptance or otherwise for the promotion to the post of Superintending Anthropologist (Cultural) along with her 3 juniors. The learned counsel for the official respondents contended that since the DPC met within the prohibited period of one year, the case of the applicant was not considered. We find that DPC minutes were approved in circulation and the proposal for the consideration of DPC included the fact of the applicant's debarment for a period of one year. But the principle determines the commencement and conclusion of one year is based on (i) **the date of such refusal** and (ii) **the date on which the promotion is offered**. In the present case the date of such refusal was **22-1-2001** and the date on which the promotion was offered is **8-3-2002**. The action of the official respondents in this regard is de hors of the extent Government instructions issued in O.M. dated 1.10.1981 of the Ministry of Home Affairs. The applicant is, therefore, made out a strong case in her favour and established legally sustainable position in support of her prayers.

7. We also take note that the respondent No. 5, 6 and 7 have already been promoted, and the applicant has also been posted to the post of Superintending Anthropologist (Cultural). The only point is that the immediate juniors to the applicant being respondents No. 5, 6 and 7 and respondent No. 6 having joined on 11.03.2002, the applicant will be entitled to get promoted to the post of Superintending Anthropologist (cultural) w.e.f. 11.03.2002. However, it is trite law that matters relating to promotion and the Departmental Promotion Committee come within the exclusive functional domain of the executives. The courts and Tribunals will interfere in those matters if, there are mala fide. We notice that there is negligence on the part of the official respondents by treating the date of DPC as the date on which the applicant's debarment was to be considered. There is no

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mala fide on the part of the official respondents. The established legal position is that whether she was debarred on the date on which his immediate juniors were offered promotion to the higher post. The period of debarment being over on 21st January, 2002 and the offer of promotion having been issued to the respondents 5, 6 and 7 on 08th March, 2002 it is clear violation of the extant instructions of the Government of India that the applicant was not considered for the same. We come to the firm finding that she was clearly eligible to be considered for promotion on 8-3-2002.

8. Taking the total facts and circumstances of the case and our discussions and observations within, we come to the considered conclusion that the applicant should have been considered for promotion to Superintending Anthropologist (Cultural) after the completion of one year when her juniors were offered promotion. We, therefore, direct the official respondents to convene the review Departmental Promotion Committee to consider exclusively the case of the applicant for promotion to the vacancy of Superintending Anthropologist (Cultural) for the year 1997-1998 when her immediate junior (Dr. N.K. Das) was recommended to be promoted to the said post. We also direct that on the basis of the recommendations of Review DPC, in case the applicant is found eligible to be promoted for the vacancy of Superintending Anthropologist (Cultural) for the year 1997-1998, her promotion will be w.e.f. 11.03.2002(the date on which her junior respondent No. 6 joined the promoted post of Superintending Anthropologist (Cultural)) and consequently (i) the seniority list between the applicant and the respondents No. 5, 6 and 7 will undergo change and need to be revised and issued by the official respondents as per the extant procedure, and (ii) the applicant will be entitled to other consequential benefits like salary and allowances, and

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other admissible benefits. In terms of the above directions, the office order dated 08th March, 2002 is quashed and set aside. We also note that the respondent No. 5, 6 and 7 and the applicant are presently working in the post of Superintending Anthropologist (Cultural). Therefore we direct that the official respondents to keep the respondent No. 5, 6 and 7 in their respective post without reverting any of them and carry out the directions as given above. The exercise in respect of the above directions shall be completed within a period of three months from the date of receipt of a certified copy of this order.

9. With the above observations and directions to the official respondents the Original Application is disposed of. No costs.


[Dr. Ramesh Chandra Panda] [Justice M. Ramachandran]
Member (Admn.) Vice Chairman (J)

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Part A and B destroyed
in my presence on 8/8/15
under the supervision of
section officer (J) as per
order dated 07/07/2015

Section officer (Record)

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