

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA ABENCH
(Circuit at Gangtok)

O.A. NO. 887/SKM/97

Present : Hon'ble Mr. Justice S.N.Mallick, Vice-Chairman
Hon'ble Mr. B.P.Singh, Administrative Member

TAPASH BHOWMICK
Accounts Officer,
O/o Dy. A.G., Sikkim
Gangtok

VS

1. Comptroller & Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi- 110 002
2. Accountant General, Sikkim,
~~Lower Secretariat Building,~~
Gangtok, Sikkim-737 101
3. Dy. Accountant General,
O/o Sr. Dy. Accountant General,
Gangtok, Sikkim
4. Shri Premba Lama,
Accounts Officer,
Accountant General's Office,
Gangtok, Sikkim

...., respondents

For the applicant : Mr. S.K.Dutta, Counsel

For the respondent No. 1 to 3: Mr. U.P.Sharma, Addl.SC
For the respondent No. 4 : None

Heard on : 24.2.99 : Order on : 24.2.99

O R D E R

S.N.Mallick, V.C.:

We have heard Mr. S.K.Dutta, the 1d. counsel appearing for the applicant and Mr. U.P.Sharma, 1d. Addl. Standing Counsel appearing for the respondent Nos. 1 to 3. None appears for the private respondent No. 4 although he has been duly served. Reply and rejoinder are on record. An additional reply filed by the respondents is also on record.

2. In this original application, the petitioner's grievance is that although he and the private respondent No. 4 were working as Asst.

Accounts Officer, which is the feeder cadre for promotion to the post of Accounts Officer, and that the said respondent No. 4 was junior to him, the official respondents have unjustly promoted the said respondent No. 4 to the post of Accounts Officer ignoring his claim. It is submitted that the respondent No. 4 was given promotion as Accounts Officer w.e.f. 30.8.1994 whereas the petitioner has been promoted to the said post only w.e.f. 5.5.1995. It has been contended by Mr. Dutta, the 1d, counsel for the applicant that there was hostile discrimination against the petitioner as there was no reason to deprive him of the said promotion before the private respondent No. 4 was promoted.

3. The official respondents's défence is that since the DPC considered private respondent NO. 4 as a better candidate than the petitioner, the said respondent No. 4 was given earlier promotion. In their additional reply, a copy of the DPC proceedings dt. 22.7.94 has been annexed. The observation of the DPC made there is quoted below:

"After seeing the confidential reports, the committee graded the officers as under -

1. Shri T.Bhowmick - Good

2. Shri P.Lama - Very Good

and the committee recommends empanelment of Shri P.Lama in the panel for promotion."

4. It has been urged on behalf of the respondents that the said promotion was given to the private respondent No. 4 on the basis of a circular issued by the Deptt. of Personnel & Training OM No. 22011/7/88 -Estt.(D) dated August 19,1988 circulated under the letter of Comptroller & Auditor General bearing No. 883-N2/135-88 dt. September 30, 1988.

5. In terms of the above circular, a person getting the ~~higher~~ grading ~~higher~~ higher/ than the bench mark would be considered for promotion in exclusion of others.

6. Mr. Dutta has contended that the respondent authorities have taken a wrong decision on the basis of the above circular which was no longer in vogue at the time of the impugned selection of the private respondent No. 4. It has been contended by Mr. Dutta that the guidelines

for promotion have since been modified by the Govt. of India, Deptt. of Personnel & Training OM No. 22011/1/90-Estt.(D) dated 12th October, 1990 and 2nd April, 1992 which is available at pages 690-695 of Swamy's Complete Manual on Establishment & Administration, 1994 Edition. Our attention has been drawn to para 6.3.1 of the said OM under the heading "Principles to be observed and preparation of Panel" which runs as follows :-

" The list of candidates considered by the DPC and the overall grading assigned to each candidate, would form the basis for preparation of the panel for promotion by the DPC. The following principles should be observed in the preparation of the panel :-

(i) Having regard to the levels of the posts to which the promotions are to be made, the nature and importance of duties attached to the posts a bench-mark grade would be determined for each category of posts for which promotions are to be made by selection method. For all Group C, Group B and Group A posts upto (and excluding) the level of Rs. 3700-5000/- excepting promotions for induction to Group A posts or Services from lower groups, the bench mark would be "Good". All officers whose overall grading is equal to or better than the bench mark should be included in the panel for promotion to the extent of number of vacancies. They will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each of them has an overall grading equal to or better than the bench mark of "Good".

7. Mr. Sharma, the 1d. Addl. Standing Counsel appearing for the respondents has in all fairness conceded that in view of this revised

circular, which was in force at the time of giving promotion to the private respondent No. 4, he has nothing to say to oppose the claim of the petitioner.

8. After considering the submissions made on behalf of both the parties and after going through the rules and circulars in this regard, we are of the view that the petitioner was glaringly discriminated against vis-a-vis private respondent NO. 4 who was junior to him in the matter of getting promotion to the post of Accounts Officer when such promotion fell due to him. It is admitted that the petitioner has been subsequently given promotion to the post of Accounts Officer w.e.f. 5.5.95.

9. In view of the aforesaid ~~rule~~ ^{legal} position, we agree with the contention of Mr. Dutta that the petitioner should have been given promotion to the said post w.e.f. 30.8.94 considering his seniority in the feeder grade of Asst. Accounts Officer.

10. In the circumstances, we are of the view that the petition should succeed. The application is allowed and the official respondents are directed to give promotion to the petitioner to the post of Accounts Officer from the said date when his junior was promoted to the said post i.e. from 30.8.94 with all consequential benefits including restoration of seniority. There will be no order as to costs.

B.P.Singh

(B.P.Singh)

MEMBER(A)

S.N.Mallick

(S.N.Mallick)

VICE CHAIRMAN