

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 1062/1997

Date of Decision 05.10.2004

Pintu Kumar Biswas, son of late
Sudhir Kr. Biswas, residing at
Manirampur, P.O. Barrackpore, Dist.
North 24 Prs., and working for gain
as Technical Assistant (T-II-3),
Canning Survey Centre, Central
Inland Capture Fisheries Research
Institute, R.N. Tagore Road, Canning - 743 329
Dist. South 24 Prgs.

..... Applicant

Versus

1. Union of India, service through the
Secretary, Ministry of Agriculture,
New Delhi = 1
2. Indian Council of Agriculture Research,
Service through the Chairman,
New Delhi
3. Central Inland Capture Fisheries Research
Institute, Service through
The Director General, New Delhi
4. Director, Central Inland Capture
Fisheries Research Institute,
Barrackpore, Dist. North 24 Prgs.
5. Sr. Administrative Officer,
Central Inland Capture Fisheries
Research Institute, Barrackpore,
Dist. North 24 Prgs.

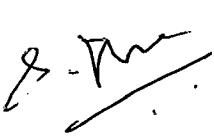
... Respondents

Present for Applicant : Mr. S.K. Dutta
Present for Respondents : None

O R D E R

PER SARWESHWAR JHA. A.M. :

This application has been filed against denial of promotion of the applicant to the post of Technical Assistant (T-IV) and also non-disposal of his representation dated 18.8.1997 in this regard. The applicant has prayed that he may be given promotion to the said post with reference to his junior, who has since been promoted to the said post and be allowed consequential benefits including arrears of pay.

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2. The facts of the matter, briefly, are that the applicant, who was initially appointed as Junior Clerk on 28.4.1972 and who was promoted to the post of Senior Clerk on ad hoc basis on and from 7.5.1979 till April, 1980, was subsequently reverted to the post of Junior Clerk. In this connection, he has referred to the case of all the promotees in the same scale having not been reverted, against which he moved an Application before the Hon'ble High Court at Calcutta vide CR No.14257 (W) of 1983 on 20.12.1983 and in which a direction was given by the Hon'ble High Court that promotion be given to him by the authorities concerned. He has also referred to the fact that he was asked to withdraw the case from the Hon'ble High Court before the necessary promotion order in favour of the applicant w.e.f. 7.5.1979 was released. It has been alleged that the authorities concerned did not offer him the post of Senior Clerk inspite of his having withdrawn the case.

3. Referring to the advertisement made in the year 1985 regarding filling the post of T-II-3 (Enumerator & Farm Manager) by way of direct recruitment, the applicant has submitted that he applied for the same and was successful in the interview and examination held therefor and was selected and also appointed to the post of Technical Assistant (T-II-3-Enumerator). He joined the said post w.e.f. 9.1.1987 and has been discharging the duties of the said post. Then came the Office order of the respondents on 7.12.1993 whereby his merit promotion to the grade of T-IV through 5 yearly assessment for the period ending 30.6.1992 was to be considered. He has claimed that he was eligible for reassessment next year, though his juniors got promoted to the grade of T-IV w.e.f. 1.1.1993. He has claimed that there was nothing adverse communicated to him during the period in question. He has referred to a letter of appreciation given to him on 16.8.1991. He has also referred to the fact that on 22.10.1992 he

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was asked to discharge the duties and functions attached to the Grade of T-IV in the absence of the regular incumbent of the post, which is a two stage higher post than that of T-II-3 which the applicant was holding at the time of filing this OA. His grievance is that he was denied promotion to the post of T-IV from the post of T-II-3 unjustly and against which he filed OA No.1512/1993, whereafter, to his surprise, he was transferred from Barrackpore to Ellure (A.P.) on 18.5.1994, against ~~which~~ ^{which} he filed another Application vide OA No. 633 of 1994 in which the respondents were directed to re-transfer the applicant within two months. It had been alleged that the Director of the Institute did not carry out the said order and instead issued an Office order/memorandum dated 22.8.1994 conveying that the applicant cannot be transferred in the interest of work. The applicant appears to have given the said background to reinforce his allegation that he was not considered by the Director for promotion to Grade T-IV even though his juniors had been considered and given promotion to the said Grade even though he performed the duties of the higher post.

4. The applicant has referred to a Memorandum having been issued to him communicating adverse remarks for the year 1993-94 and also to a representation having been submitted by him requesting expunction of the said adverse remarks in August, 1995. He again received a communication regarding adverse remarks for the year 1994-95 on 14.8.1995. The applicant submitted another representation against the said communication. The adverse remarks were/are reported to have been expunged vide orders of the respondents dated 10.1.1996. The applicant seems to have raised the issue of his promotion to the post of T-IV after expunction of the adverse remarks. In this connection, he has also submitted a representation on 18.8.1997. So far he has not heard in the matter from the respondents.

S. J. [Signature]

5. On perusal of what has been submitted by the respondents, we find that the applicant was not considered for promotion from the post of Junior Clerk to the post of Senior Clerk for the reason that he had been offered a higher post, i.e., Technical Assistant (T-II-3 Enumerator) in the scale of pay of Rs.1400-2300/- against direct recruitment quota. On the question of the applicant claiming good performance, the respondents have made a statement that he could not be a judge of his own qualities; instead, it should have been decided by his superiors. They have admitted that some adverse remarks were conveyed to him in the years 1993-94 and 1994-95, but the same were subsequently expunged on sympathetic consideration of his representation. They have, however, referred to the Memorandum dated 19.8.1995 which reads as under:

"However, Shri Biswas is hereby warned not to take recourse to the irregular practices like displaying of misbehaviour with the Officers and fellow colleagues etc. which are unbecoming of an employee of ICAR and any recurrence of such practice in future will be viewed very seriously."

They have not appreciated the fact that a letter of appreciation can be taken as a basis for consideration of candidature of the applicant for career advancement. Referring to the applicant's claim for performing the duties of higher post, the respondents have referred to the duties of these posts as indicated at Annexure - I and have claimed that the duties attached to these posts are of identical nature and that an employee can be asked to look after such duties in addition to his/her own duties depending on the exigencies of work. But such arrangement, according to them, would not entitle an employee to career advancement.

S. M.

6. Giving reasons for his transfer, which has been referred to by the applicant in his submissions, the respondents have referred to an incident in which the Director of the Institute was reported to have been hit by a Scooter rider on 18.5.1994. It appears that this blame has been put on the applicant and hence his transfer. In any case, it appears that the applicant has a chequered history and that has affected his career. The respondents, however, appear to have denied the allegation of the applicant that he was not considered for promotion as he had approached the Tribunal for redressal of his grievance. They have confirmed that the assessment promotion to the Grade of T-IV could not be given to the applicant, as the Assessment Committee did not recommend his case. They have confirmed having received his representation on 20.8.1997. But the same does not seem to have been considered for the fact that he approached the Tribunal on 14.9.1997 within a month of the receipt of the representation and did not thus allow any time to the respondents for its consideration. It has also been confirmed that the applicant was granted two advance increments w.e.f. 1.1.1996 on the basis of the recommendation of the Assessment Committee. The said Committee, however, did not recommend his promotion to the Grade of T-IV, as already pointed out. The respondents have submitted that there has been no malice at all in not granting the applicant the assessment promotion to Grade T-IV, as alleged by the applicant.

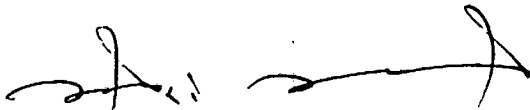
7. In this connection, reference has been made by the applicant to the decision of the Hon'ble Supreme Court in Civil Appeal No. 1976 of 1991 in the case of UOI & Others vs. E.G. Nambudiri as decided on 23.4.1991 in which it had been held, among other things, that 'any adverse report, which is not communicated to the Govt. servant or if he has ^{been} denied the opportunity of making representation to the superior authority cannot be

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considered against him. Reference to the said decision does not seem to be quite relevant in the present case, as the adverse remarks were conveyed to the applicant and were subsequently expunged.

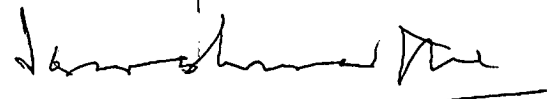
8. On closer examination of the facts of the case as submitted by both the sides, it is observed that the applicant has claimed promotion to the post of Technical Assistant (T-IV) from the post of Technical Assistant (T-II-3), which is done on the recommendations of the Assessment Committee appointed for the purpose. Obviously, his case was considered by the Assessment Committee and the same did not recommend it. Referring to the case of junior being promoted to the said grade, it does not appear to be quite relevant in the context of the fact that the said promotion is based on assessment of merit. It is difficult to concede the claim of the applicant that he should be given the said promotion as his junior had been promoted. It is also difficult to appreciate his allegation that the respondents have malice against him and hence denial of promotion to him. The submissions of the respondents in this regard are quite clear. It is also noted that the adverse remarks conveyed to him have been expunged by them. This confirms that the respondents have no malice against him. Reference to his transfer in the past and re-transfer on the basis of the decision of this Tribunal in the OA which he had filed in that regard does not appear to be quite relevant while considering the case of his promotion to the post of Technical Assistant (T-IV), which is based on assessment of merit.

9. Under these circumstances, we are inclined to allow the OA and accordingly, the same is dismissed. No order as to costs.



(Mukesh Kumar Gupta)
Member (J)

/pkr/



(Sarveshwar Jha)
Member (A)