

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No OA 1023 of 1997

Date of Order: 30.11.2004

Present : Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member
Hon'ble Mr. M.K. Misra, Administrative Member

SHRI ASOKE KUMAR DUTTA

VS.

UNION OF INDIA & OTHERS (DEPTT. OF TOURISM)

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

For the respondents : Ms. U. Sanyal, Counsel

O R D E R (ORAL)

Mr. Mukesh Kumar Gupta, JM:

By the present application, the applicant seeks a direction to respondents to consider his case for promotion to the post of Information Assistant from 19.4.93 in terms of recommendations made by the DPC and restore his seniority over his juniors, namely, respondent No. 4& 5 and regulate his pay, financial benefits, etc.

2. The admitted facts of the case are that Shri A.K. Topo and Shri S.R. Pal, junior to the applicant, were promoted along with applicant to the post of Information Assistant on purely temporary and adhoc basis with effect from 1.5.92 for a period of 2 months vide order dated 29.4.92/ 22.5.92. The said period was extended till 31.8.92 and later extended upto 30.11.92. The applicant was reverted vide order dated 30.11.92 & on applicant's reversion from the post of adhoc Information Assistant to Junior Stenographer, vide order dated 15.12.92, his pay was refixed. Subsequently, vide order dated 19.4.93, the applicant along with others was once again promoted to the post of Information Assistant purely on adhoc basis and was ordered to be posted to Bhubaneswar. He refused to join the said post on promotion to Bhubaneswar and requested to adjust him at Calcutta vide representation dated 21.4.93 followed by reminder dated 24.4.93. Since the applicant did not join the promotional post at Bhubaneswar, he was directed to report at Bhubaneswar after availing usual joining time, failing which the said adhoc promotion would stand cancelled.

The applicant once again made a plea to adjust him at Calcutta, which was not agreed to and ultimately vide order dated July 12/ 14, 1993, the said promotion order dated 19.4.93 was cancelled. Subsequently, representation made on 15.10.93 did not materialise. Ultimately, vide order dated 26.7.95, the applicant was once again promoted to the aforesaid post on purely adhoc and temporary basis & posted at Calcutta. It is contended that in the meantime, respondent No. 4 & 5 who are junior to the applicant were promoted ignoring his claim and they were adjusted at Calcutta. It is contended by the applicant that adhoc promotion was no promotion in the eyes of law and non-acceptance of adhoc promotion could disentitle him to claim regular promotion from the date when his juniors were promoted. There was no justification not to consider him for promotion to the said post along with his juniors & indifferent attitude of the concerned authorities could not be made the basis for applicant's suffering. Various representations filed by the applicant did not elicit positive result. His juniors promoted subsequently on adhoc basis were retained at Calcutta and as such the respondents discriminated him, which is illegal, arbitrary and violative of Articles 14 & 16 of the Constitution of India besides amounting to malice.

3. The respondents, in their reply contested the applicant's claim and stated that the applicant was promoted on adhoc basis and posted to Bhubaneswar, which he refused to join and insisted his retention at Calcutta. Until he joined Bhubaneswar Tourist Office as Information Assistant, he had no claim either for promotion or pay and allowances. Since the vacancy was available at Bhubaneswar, he was posted to that office and was given chance to accept such promotion, which he failed to avail. The temporary and adhoc promotions were not based on DPC recommendations. The recruitment rules for the post of

Information Assistant indicate that the same was a selection post besides the fact that it carries all India liability to serve. Since there was no vacancy available at Calcutta at the relevant point of time, his request to adjust him at Calcutta was not feasible. Despite intimation to the applicant, he did not comply the order of transfer to Bhubaneswar and therefore his promotion was cancelled and ultimately he was reverted. Applicant's allegations regarding refusal of leave were denied. Since the applicant's juniors, S/ Shri S.R. Pal and A.K. Toppo were found suitable by the DPC, they were promoted. Mere seniority had no relevance. As a vacancy occurred at Calcutta he was appointed on adhoc basis on 26.7.95 and he continued to serve at the same station till his retirement.

4. We heard learned counsel for the parties and perused the pleadings.

5. It is an admitted fact that the post in question was a selection post and no DPC was held in the year 1993 when the applicant was given ad hoc and temporary promotion and ordered to be posted at Bhubaneswar. DPC was held only thereafter & since his juniors alone were recommended by the DPC, he could not have been promoted. The applicant has not challenged his non-selection to the said post of Information Assistant. Merely because his juniors were promoted on adhoc ignoring the applicant's claim, we do not find any illegality in it particularly for the reasons that the post in question was a selection post. As and when the vacancy was available at Calcutta, he was duly adjusted in the year 1995 and he continued till his retirement.

