

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA NO.541/05

WEDNESDAY THIS THE 19th DAY OF SEPTEMBER, 2007

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Benjamin C. Varghese
Director of Fisheries
Agatti Island, UT of Lakshadweep
now residing at Quarter No. B-2
CPWD Quarters, Agaatti. Applicant

By Advocate Mr. George Cherian

Vs.s

- 1 The Union of India
represented by Secretary
Department of Animal Husbandry and Dairying
Ministry of Agriculture
Krishibhavan,
New Delhi.
- 2 Director General
Fishery Survey of India
Office of the Director General
Bottawalla Chambers, Sir P.M. Road
Mumbai 400 001 .. Respondents

By Advocate Mr TPM Ibrahim Khan, SCGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

In this Application the applicant has challenged the order dated 24.2.05 promoting him to the post of Zonal Director with effect from the date he assumes charge of the post, alleging that he is entitled

to be promoted with effect from the date his juniors are promoted and in any case with effect from the date of occurrence of vacancy. According to him the vacancy has occurred on 22.9.2003.

2 The applicant has a long history of litigation behind him as narrated by him, which can be briefly summarised as follows. The applicant joined the Fisheries Survey of India as a Senior Technical Assistant in 1981 and was selected for the post of Fisheries scientist in 1982. Though he was entitled for promotion as Senior Fisheries Scientist from 1987, as DPCs were not convened for a long time, the same was denied to him and he approached CAT Madras Bench in OA 347/95 which was allowed. But the respondents gave him promotion from 1997 only which was challenged by the applicant in OA 33/97 before the same bench successfully. The Tribunal directed the respondents to grant seniority to the applicant with effect from 1987 along with consequential benefits including considering the applicant for promotion to the post of Zonal Director. The respondents implemented the directions by granting him seniority from 1987 and arrears of pay etc vide Annexure A-3 order but he was not considered for promotion to Zonal Director and the vacancies from 1995 were filled up by his juniors. Thereupon the applicant filed OA 2188/99 before the Principal Bench in which it was directed to consider his promotion with reference to his seniority in the lower post from 1987, against the vacancies of Zonal Director arising from the year 1993 onwards by convening Review DPCs. The applicant has alleged that there was enormous delay on the

part of the respondents in convening the DPCs. Meanwhile he filed OA 2838/01 before the Principal Bench alleging that his ACRs which were considered by the Review DPC were not properly written and one Sri Premchand whose grading was also 'Good ' only got promotion against the vacancy of 1995, but the applicant was not given. Again when a junior to the applicant was promoted, he gave a representation in 2005, when the respondents issued order dated 24.2.2005 promoting the applicant as Zonal Director with effect from the date on which he assumes charge of the post. This condition has been challenged in this OA, as there has been no response to his representation to the 1st respondent made on 28.2.2005. The applicant has also submitted that the 2nd respondent has all along maintained a hostile attitude towards him which has caused several hindrances in his career which had also been commented upon by the Tribunal in its orders.

3 The following reliefs are prayed for;:-

- a) To call for the records leading to Annexure A7 and to quash the same to the extent it allows only prospective promotion from the date he assumes charge of the post
- b) To declare that the applicant is entitled to promotion as Zonal Director from the date on which the immediate junior in the cadre of Senior Fisheries Scientist was promoted to that post and to order that the applicant is entitled for all consequential benefits from the date of deemed promotion to the post of Zonal Director.
- © To declare that the applicant is entitled for all service benefits on promotion as Zonal Director from the date of occurrence of vacancy as promotion was delayed on account of no fault of the applicant.

(d) To allow the costs of this proceedings to the applicant and

e) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant.

4 A reply statement has been filed. It is submitted that as per the order dated 19.02.2001 passed by the Principal bench New Delhi in OA2188/99, a DPC meeting was held in September 2001 for the post of Zonal Director in which the applicant was not recommended. A subsequent meeting was held in March 2003 in which also he was not recommended. The applicant was well aware of these facts as he had approached the Principal Bench in OA 2838/01 for consideration of his subsequent ACRs and the said OA was dismissed stating that the OA was totally devoid of merits. The respondents have also refuted the contention of the respondents that his promotion was unduly delayed by them. A proposal had been sent to the Ministry on 18.12.2003 and the vacancy had arisen on 22.9.2003. As the seniority list of the feeder cadre had to be finalised on account of a CAT order dated 10.9.2002 in OA 1108/2000 there occurred some delay in sending the proposal to the UPSC. The UPSC held the DPC meeting on 2.2.2005 and the promotion order was issued on 24.2.2005. It is also pointed out by the respondents that even after the issue of the order, the applicant did not join the post and instead approached the Tribunal and Hon High court for a posting at Kochi and finally joined the post only after six months. It is further submitted that the Applicant got the gradings of "GOOD" in the ACRs which were considered by the Review DPC, when the Benchmark for promotion was "Very Good".

With reference to the promotion of Sri Premchand, the respondents have stated that he was promoted in compliance of the order of the CAT, Ahmedabad bench in OA 380/2000, as per the concessions granted to SC/ST candidates in promotion by selection in, OMs dated 23.12.74 and 21.9.1998 from DOP&T, by which the SC/ST who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies would be included in the list provided they are not considered unfit for promotion. The applicant's claim for similar treatment has no basis. Since his case was considered by the DPC which met on 20.9.2001 and 7.3.2003, but his name was not recommended, his performance having been graded as 'GOOD' which is below the benchmark prescribed for the post, the relief sought by the applicant for promotion from the date on which his junior was promoted cannot be granted as he did not possess the benchmark on that date.

5 A rejoinder has been filed more or less reiterating the averments in the OA. and attributing the denial of his rights to the malafide intentions of the 2nd respondent. It is also pointed out that the respondents did not fill up the vacancy which arose in 1997 and that the applicant joined the Ministry in 1997 and since then his performance has been graded as "Very Good" and "Outstanding". The applicant was also selected for the post of Director of Fisheries which is an equivalent post to Zonal Director by the UPSC and the benchmark for such selection was "Very Good".

6 We have heard the Learned counsel Sri George Cherian for the applicant and Sri Shaji for the SCGSC. The Learned counsel for

the applicant drew our attention to the earlier judgements of the coordinate benches of this Tribunal and the Principal Bench and stated that justice had not been done to the applicant. The respondent's counsel stated that the respondents had acted strictly within the framework of rules and that their detailed reply is self explanatory. On the direction of the court, the ACR record of the applicant and the proceedings of the Review DPCs held on 20.9.2001 and 7.03.03 were produced and we have perused them.

7 Though in this OA the applicant is seeking antedating of his promotion to the post of Zonal Director to the year 2003 when the vacancy arose it is true that he had been agitating his claims for seniority in the lower post of Senior Fisheries Scientist and promotion before the Tribunal since 1987 in a series of OAs viz. OA 33/97, OA 33/99, OA 2198/99 (MA 2026/01), OA 2838/01, and RA 141/2002 culminating in the present application. By the order in OA 33/99 before the CAT, Chennai bench, the applicant was granted seniority in the cadre of Senior Fisheries Scientist with effect from 1987 and by the order of the Principal bench in OA 2198/99, the applicant's right for consideration for promotion to the next higher post of Zonal Director on that basis from the year 1993 was confirmed and the respondents were directed to convene Review DPCs for considering his case. Since the applicant has averred that the earlier orders of the Tribunal were not implemented, we had to call for the records to verify the same. It is seen from the records that the Review DPC which met on 20.9.2001 had considered his case along with one Sri Premchand for the years 1993-94, 1994-95

and 1995-96 and did not recommend his name for the post of Zonal Director on the basis of the assessment which was rated as "Good" only. The DPC met on 7.3.2003 again to consider the vacancy for the year 1997-98 and found him unfit and recommended one Sri P. Sivaraj, ostensibly his junior for the post. The applicant has contended that at that point of time he had "Very Good" ACRs as in a separate proceeding, the UPSC had recommended him for the post of Assistant commissioner in the Ministry. However this contention of the applicant is on a mistaken understanding that the vacancy for which the DPC met on 7.3.2003 was a vacancy for the year 2003, but it is clear from the proceeding that it was for the year 1997-98. The applicant's ACRs would also indicate that he had only a grading of 'Good' consistently till 1997-98 and his record improved to 'Very good' only from 1998-99 onwards. Besides, the benchmark for the other post of Asst Commissioner was only "good" and so there is no merit in the contention of the applicant that the DPC had erred in assessing him. The final conclusion that could be derived from the records is that though the applicant became eligible for the promotion to the post of Zonal Director in the year 1993, in terms of the seniority granted in the feeder post by the Tribunal orders, he could not be selected against the vacancies that occurred thereafter till 2001 because he did not get the minimum benchmark. Though the applicant has raised doubts on the selection of Sri Premchand, he has not impleaded him in this OA. The respondents have justified his selection on the strength of certain instructions of the DOP&T dated 23.12.74 and 21.9.98, but we are not going into

the merits of that issue as the fact remains that the applicant was not eligible for promotion in that year also as he had not fulfilled the benchmark.

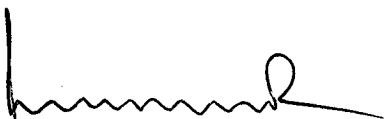
8 It is also brought out from the records that the applicant is well aware of this position and the reasons for his non-selection as he had filed OA 2838/01 before the Principal Bench which was dismissed with the observation that "the respondents cannot be faulted for not promoting the applicant as he had not reached the Benchmark. They also observed that the applicant deserved to be imposed with a heavy cost for making such allegations but considering that he is a person of limited means, it was not ordered. These observations were made after going through the records. The applicant deliberately did not mention the thing regarding the filing of the above O.A. The Principal Bench also dismissed the RA 141/02 filed by the applicant on this order. It is therefore thoroughly improper and impertinent on the part of the applicant to have come up with such arguments again wasting the time of the court and we strongly condemn this attempt of the applicant in raking up the settled matters again and again.

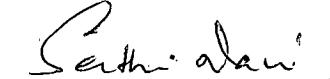
9 Coming to the prayer of the applicant in this OA for retrospective promotion from 2003, a decision on this point would depend on the answer to the question whether on the mere occurrence of the vacancy, any right is crystallised for an employee to get promotion. It is settled law that there is no legal right for promotion and the right is only for consideration. The vacancy arose on 23.9.2003 and according to the respondents the proposals could

be sent to UPSC only in June 2004 as the seniority list for the feeder category was under finalisation on account of a judgement of the Tribunal and the DPC was held on 2.2.2005 and according to the instructions of the Government promotions can be effective after the empanelment only. No doubt there has been some delay for administrative reasons. However, no junior to him had been promoted for the year 2003 against this vacancy. A junior was promoted against the vacancy in 1997-98 when the applicant was not found fit as he had not fulfilled the benchmark. Therefore the junior had overtaken him on the basis of merit after a selection procedure in which he was also considered thereby claim against his junior is unfounded. The applicant's claim for promotion from the date of vacancy is also untenable in law.

10 In the result, the OA is dismissed.

Dated 19.9.2007.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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