

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 11/2000

THURSDAY, THIS THE 24th DAY OF OCTOBER, 2002

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

S. Jayapaul S/o Sundaram
Assistant Technical Advisor
Community Food and Nutrition Extension Unit
Trivandrum
residing at 26/812, Trivandrum-1. Applicant

By Advocate Mr. M. R. Rajendran Nair

Vs.

1. Union of India represented by Secretary
to Government of India
Ministry of Human Resources Development
Department of Child Development
Shastri Bhavan
New Delhi.
2. The Deputy Technical Adviser
Food and Nutrition Board,
Southern Region
Shastri Bhavan, Madras-6
3. Vijayaraghavan Nair S/o CVV Nair
Demonstration Officer
Food Nutrition Board,
Madurai-6. Respondents

By Advocate Mr. C. Rajendran, SCGSC for R 1 & 2
By Advocate Mr. Rajasekharan Nayar for R-3

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant aggrieved by A1 order dated 30.12.99 issued by the first respondent by which he was reverted from the post of Assistant Technical Advisor in the scale of Rs. 8000-13500/- to the post of Demonstration Officer w.e.f. 30.12.99 filed this Original Application seeking the following reliefs:

(i) Quash Annexure A1

(ii) To declare that the applicant is entitled to be considered for regular promotion as assistant Technical Adviser w.e.f. 6.6.97 when his junior was promoted and to direct the respondents to consider the applicant's case for regular promotion as

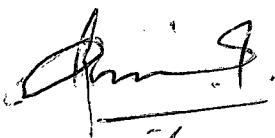


Assistant Technical Adviser w.e.f. 6.6.1997 and to promote him accordingly with all consequential benefits.

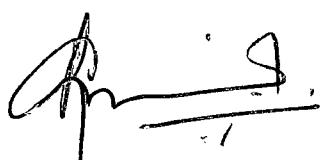
(iii) Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and

(iv) Grant the cost of this Original Application.

2. According to the averments of the applicant in the O.A he commenced service as Demonstrator in the Food and Nutrition Department on 2.6.73. He was recruited through Union Public Service Commission as a Demonstration Officer and was appointed as such with effect from 27.1.1976. In the seniority list of Demonstration Officers as on 1.1.97 the applicant was ranked as number 7 and S/Sri. B. Basak and K. Chakraborty were Ranked numbers 9 and 12 respectively. Applicant was promoted to the post of Demonstration officer on adhoc basis by A2 order dated 26.12.91 issued by the 1st respondent for a period of one year or till the regular incumbent became available whichever was earlier and posted to Calcutta. He was transferred from Calcutta to Trivandrum by A3 order dated 15.5.97. An order No. 24/98 dated 12.10.98 was issued by the 1st respondent in which it was stated that the period of adhoc promotion of the applicant was extended till 31.12.98 or until further orders or till it was filled on regular basis whichever was earlier. On finding that in the seniority list of Assistant Technical Officers circulated as per memo dated 30.4.98 the applicants juniors S/Shri B. Basak and K. Chakraborty were promoted as Assistant Technical Officer w.e.f. 6.6.97 and 5.9.97 respectively, applicant submitted A5 representation dated 14.5.98 to the first respondent pointing out that though he was holding the post of Assistant Technical Adviser w.e.f. 20.1.92 his name was not included in the seniority list with a request to look into the matter and make necessary corrections. Applicant received A6 reply dated 15.6.98



informing him that in the seniority list the names of officers holding the post on regular basis only were included. Thereafter applicant submitted A-7 representation dated 5.10.98 requesting to review the promotion from Demonstration Officers to Assistant Technical Advisers and to promote him as Assistant Technical Adviser on a regular basis placing him in the appropriate position in the seniority list. On finding that as soon as A7 representation was made, A4 order was issued, applicant made a comprehensive representation on 11.11.98 before the Joint Secretary to the Govt. which was followed by A8 representation dated 27.11.98 requesting that he may be confirmed in the post of Assistant Technical Officer. A7 and A8 did not evoke any response. By A9 letter dated 19.11.99 certain adverse comments in respect of the Annual Confidential Report for the year 1998-99 were communicated to the applicant. Applicant submitted representation against A-9. The said representation had not been considered. According to the applicant in the above said background as a punitive measure the impugned A1 order had been issued reverting him. According to him his posting had not been ordered and no substitute had been posted to make the reversion effective. Claiming that there were at least 3 vacancies in the category of Assistant Technical Adviser and there was no administrative necessity to revert him at that stage, the applicant filed this O.A alleging that denial of regular promotion to him while granting the same to his juniors was arbitrary, unreasonable and illegal. According to him his suitability could not be disputed because he was working for 8 years continuously without giving room for any complaint. He claimed that he belonged to Scheduled Caste community and submitted that he was the seniormost in the cadre of Demonstration Officers. Accordingly he sought the above reliefs through this O.A.

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3. Respondents filed reply statement resisting the claim of the applicant. According to them the Departmental Promotion Committee, Chairman of which was a Member of the Union Public Service Commission considered the applicant alongwith other eligible candidates for promotion to the next higher grade of Assistant Technical Adviser. The method of promotion was by selection i.e. merit- cum-seniority. The DPC had graded the applicant as "Average." Hence he was not selected. S/Shri B. Basak and Smt. K. Chakraborty were promoted on the basis of grading "Very Good" by the DPC. Since applicant was promoted on ad hoc basis, his adhoc promotion was without prejudice to the rights and privileges of the seniors in the grade and would not bestow on him any claim for regular appointment and the adhoc services rendered in the grade would not count for the purpose of seniority in the grade or eligibility for promotion to the next higher grade or confirmation in that grade, his adhoc appointment could be terminated without assigning any reason or giving notice etc. They further submitted that the representation submitted by the applicant was duly considered by the respondents and as his case was rejected by the UPSC having found him not fit to be promoted to the post of ATA the respondents had no other alternative except to terminate his adhoc appointment. They submitted that the purpose of communicating adverse entries was not to find fault with the official but the official should know of his shortcomings for rectification in future. Accordingly the adverse entries found in the ACR of the applicant was communicated to him. His comments had been received and it was under consideration as to whether the same could be retained or revoked. The applicant's case was considered by the DPC during 1997 and again during 1999 and as there was no improvement seen in his

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behaviour it was felt to revert him as Demonstration Officer by the competent authority since there was no point in his continuation though ample time was provided for his betterment.

4. Applicant filed rejoinder reiterating the points made in the O.A.

5. Heard learned counsel for the parties. The learned counsel for the applicant after taking us through the factual aspects as averred in the O.A submitted that the applicant was effectively functioning in the post of Assistant Technical Adviser without any room for complaint for the previous one decade and there was no complaint about the quality of his work, achievement of targets assigned to him or other performance. He submitted that the applicant had not been communicated with any adverse remarks and the only adverse remark which was communicated to him was A9 for the period ending 1998-99. The promotions of the juniors were effected w.e.f. 6.6.1997 and 5.9.97. He submitted that denial of regular promotion of the applicant was on the basis of irrelevant considerations and hence was illegal and therefore his reversion by A1 was liable to be quashed. He further submitted that during the pendency of the O.A. by A-13 order dated 29.6.2000 applicant was transferred and posted to Madurai against a vacant post of Assistant Technical Adviser and he was continuing there.

6. The learned counsel for the respondents submitted that the applicant has no valid cause of action. He had been considered by the DPC and having not found him suitable he had been reverted.

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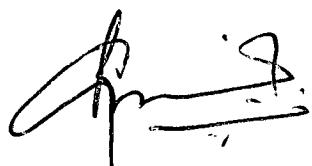
7. We have given careful consideration to the submissions made by the learned counsel for the parties and the pleadings of the parties and have perused the documents brought on record. Even though notice was issued to the third respondent no appearance was made on behalf of the third respondent nor any reply statement was filed.

8. During the course of the hearing we directed the respondents to produce the DPC proceedings for the year 1997 along with the ACRs referred to by the applicant in the O.A. for the years which were considered by the DPC. The respondents produced the same along with DPC proceedings of 1999.

9. We have gone through the DPC proceedings of 1997 as well as the ACRs of the applicant. We find that the applicant had been considered by the DPC along with others and he had been given overall grading of 'Average'. On the basis of the said overall grading of the applicant and those of others, the DPC had found the applicant not fit for promotion. It is now well accepted legally that in judicial review Courts/Tribunals generally cannot act as an appellate authority over the decisions/recommendations of the Departmental Promotion Committee. It can only examine whether the DPC has arrived at its conclusion on the basis of relevant material. What we find in this case is that the DPC had come to its conclusion on the basis of the performance of the applicant and others in the zone of consideration as reflected in their ACRs which is the relevant material for promotion. Thus we do not find any infirmity in the decision making process. Therefore, we do not find any substance in the applicant's contention that he had not been properly considered for regular promotion to the post of Assistant Technical Adviser.

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10. The learned counsel for the applicant submitted that the applicant had been working as Assistant Technical Adviser for the previous 8 years with no adverse remarks and hence even if the applicant was not found fit for regular promotion there was no need for his reversion as long as vacancies were available. The fact which is undisputed is that the applicant had been continuing as Assistant Technical Adviser from 1992 onwards having been promoted on adhoc basis. It is clear from the pleadings of the respondents that the applicant was considered for regular promotion by the DPC in 1997 and it was because of the higher overall grading given to the juniors that the applicant was not selected for regular promotion to Assistant Technical Adviser. We also find that the juniors were working as Demonstration Officers whereas the applicant was working as Asst. Technical Adviser on adhoc basis at the time of such consideration in 1997. The respondents did not revert him at that time. In fact we find that by A-4 Office Order dated 12.10.1998, his adhoc promotion was extended upto 31.12.98 and again by R-IA office order dated 27.7.1999 upto 31.12.1999. It is only by A1 order dated 30.12.1999 that the applicant had been reverted to the post of Demonstration Officer with effect from 31.12.1999. Prior to this order he had been issued with A-9 letter dated 19.11.99 containing the adverse remarks contained in the ACR for the year 1998-99. Thus we find substance in the applicant's contention that the reason for his reversion was the adverse remarks contained in the ACR for the year 1998-99. A perusal of adverse remarks as contained in A-9 letter dated 19.11.99 and A-10 representation we find that the same appears to be incident specific. In such cases the affected official has to be given an opportunity to explain his stand. We find that applicant's A-10 representation dated 29.11.1999 against the

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adverse remarks in the ACR for the year 1998-99 has not been considered. In R-IA office order by which the applicant's adhoc promotion had been extended upto 31.12.99 reads as under:

No.A-32013/5/95-HA
Government of India
Ministry of Human Resource Development
Department of Women & Child Development

Shastri Bhavan, New Delhi.
Dated 27.7.99

Office Order No. 12/99-NA

In continuation of this department's office order of even number dated 11.3.99, the period of adhoc promotion of Shri S. Jayapaul to the post of Assistant Technical Adviser in the pay scale of Rs. 8000-13500/- is extended upto 31st December, 1999 or until further orders or till the post is filled on regular basis whichever is earlier.

2. The adhoc extension is without prejudice to the rights and privileges of the seniors in the grade and will not bestow on him any claim for regular promotion and adhoc service rendered in the grade will not count for the purpose of seniority in that grade, eligibility for promotion to the next higher grade and confirmation in that grade. The adhoc promotion can be terminated without assigning any reason or giving notice etc. to the officer concerned.

3. This has the concurrence of Department of Personnel and Training.

Sd/- R. S. Sharma
Under Secretary to the Govt. of India

Even though it is stated in the above office order the adhoc promotion could be terminated without assigning any reason etc. the same could not be construed to give unlimited and unfettered powers to the authority to choose a senior adhoc promotee for reversion allowing a junior to continue. In such cases principles of natural justice demand that an opportunity is given to the senior to show cause against the reversion. We find that such an opportunity has not been given especially when the applicant had represented against the adverse remark.



11. In view of the foregoing we are unable to sustain A1 office order dated 30.12.99. Accordingly we set aside and quash A1 office order dated 30.12.1999. We also direct the respondent No. 1 - Secretary, Government of India, Ministry of Human Resource Development, Department of Child Development to consider A-10 representation of the applicant and pass appropriate orders. If on such consideration the first respondent comes to the conclusion that the adverse remarks are to be expunged the first respondent shall also constitute a review DPC to consider the applicant's case for regular promotion as Asst. Technical Adviser during 1999 afresh.

12. The Original Application stands allowed as above with no order as to costs.

The 24th October, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

APPENDIX

APPLICANTS' ANNEXURES

A1 True copy of the office order No. FN. A-32013/5/95-NA dated 30.12.99 issued by the 1st respondent to the applicant.

A2 True copy of the office order No. 24/91-NA dated 26.12.91 issued by the 1st respondent to the applicant.

A3 True copy of the office order No. 15/97-NA dated 15.5.97 issued by the 1st respondent to the applicant.

A4 True copy of the office order No. 24/98-NA dated 12.10.98 issued by the 1st respondent to the applicant.

A5 True copy of the representation dated 14.5.98 submitted by the applicant to the 1st respondent.

A6 True copy of the letter No. A-23014/1/98-NA dated 15.6.98 issued by the 1st respondent to the applicant.

A7 True copy of the representation dated 5.10.98 submitted by the applicant to the Joint Secretary to Govt., Food & Nutrition Bureau.

A8 True copy of the representation dated 27.11.98 submitted by the applicant to Smt. Rekha Bhargava, JS to Govt. Deptt. of Women and Child Development.

A9 True copy of the Order NO. 1(18)/99-2000/FN dated 19.11.99 issued by the Deputy Technical Advisor, Nutrition Board, New Delhi to the applicant.

A10 True copy of the representation dated 29.11.99 submitted by the applicant to the 2nd respondent.

A11 True copy of the Memorandum NO. PF/GO/47/FN dated 3.1.2000 issued by the 1st respondent.

A12 True copy of the office order NO. 3/2000-NA dated 18.1.2000 issued by the Under Secretary to the Govt. of India.

A13 True copy of the office order No. 19/2000 dated 29.6.2000 issued by the 1st respondent.

RESPONDENT'S ANNEXURES

R1A Photo copy of the Ministry's order NO. 12/99-NA dated 27.7.99