

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION : 30.10.1989

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.115/89

K.K.Kurian .. Applicant

v.

1. The Director, Directorate of Production Centre, Govt. of India, Ministry of Industry, Ettumanoor-686 631.
2. The Director, Small Industries Service Institute, Kanjani Road, Ayyanthole, Trichur-3.
3. The Deputy Director, Small Industries Institute, Kanjani Road, Ayyanthole, Trichur-3. .. Respondents

Shri R.Rajasekharan Pillai .. Counsel for the applicant

Mr.K.Prabhakaran, ACGSC .. Counsel for the respondents

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 24.2.1989 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as U.D.C in the Directorate of Production Centre, Government of India, Ministry of Industry, Ettumanoor has prayed that the impugned order at Annexure-D calling for the willingness of five LDCs for going on promotion as U.D.C, Ettumanoor, should be set aside and the respondents directed to regularise his promotion as U.D.C with effect from 1.4.1987. The brief facts of the case are as follows.

2. The applicant has been working as a regular L.D.C when he was promoted as U.D.C on an adhoc basis on 6.1.1986. Later on the basis of the recommendations of the Departmental Promotion Committee he was reverted in 1987 to give place to one Shri Mani another L.D.C who had been wrongly shown as senior to him. The applicant thereafter challenged the

seniority and promotion of Shri Mani in O.A.K 255/87 which was decided by the judgment of this Tribunal dated 26.2.1988 (Annexure-A). The Tribunal found that the applicant should be senior to Shri Mani, the third respondent in that case, and promotion to the post of U.D.C has to be made recognising the same. After a Contempt Petition and a Review Application were disposed of, the respondents revised the seniority of the applicant and placed him above Shri Mani with effect from 19.1.89. The D.P.C which met on 20.1.89 to make regular promotion to the post of U.D.C at Ettumanoor recommended that the applicant should be given the benefit of promotion with effect from 21.8.87, i.e., from the date of the issue of the order promoting Shri Mani. The D.P.C further recommended that for regular promotion to the post of U.D.C at Ettumanoor, five LDCs who were senior to the applicant, should first be offered the promotion on a regular basis because they had declined to accept adhoc promotion in the previous year and only if all of them decline to accept the offer to join as regular UDC, the next chance may be given to the applicant who is the sixth in the revised seniority list. Accordingly the impugned order at Annexure-D dated 14.2.1989 was issued offering the post to the five senior persons and seeking their willingness to join the post at Ettumanoor. The applicant has challenged this offer as a subterfuge on the part of the respondents to deprive him of his legitimate promotion as U.D.C on a regular basis. He has argued that the five persons senior to him cannot be offered the promotion as they had declined to go as U.D.C at Ettumanoor on an earlier occasion. The respondents have stated that the applicant has been promoted in place of Shri Mani on the basis of the revised seniority, but this appointment is on an adhoc basis as Shri Mani had also been appointed as a

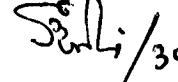
U.D.C on adhoc basis. Merely ~~because~~ ^{fact that} the applicant has become senior to Shri Mani cannot confer on him the right to hold the post on regular basis especially when there are five persons senior to him and Shri Mani in the cadre of LDC. They have further clarified that these five persons have declined the promotion as U.D.C in 1987 when the same was offered to them on an adhoc basis and since the promotion is now being offered on a regular basis and more than one year has passed since they declined, the D.P.C which met in 1989 recommended that these five senior LDCs should first be offered the regular promotion and the turn of the applicant would come only if all of them decline.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The five LDCs mentioned in Annexure-D are admittedly senior to the applicant even in the revised seniority list. The D.P.C which met on 20.1.1989 have in their proceedings (R-II) graded these five LDCs above the applicant in the seniority list and recommended that for regular promotion, their turn will come first and only after they express their unwillingness to go on transfer on promotion to Ettumanoor, would the claim of the applicant for regular promotion as U.D.C arise. The applicant cannot claim promotion over the heads of his five seniors, merely on the ground that they had earlier declined to go on adhoc promotion to the post at Ettumanoor. Refusal to go on adhoc promotion and that too more than a year ago cannot act as an estoppel against the seniors for getting regular promotion.

4. In the facts and circumstances we see no merit whatsoever in the claim made by the applicant for regular promotion as U.D.C. The application is dismissed without costs.


(N.DHARMADAN)
JUDICIAL MEMBER

30/7/89


(S.P. MUKERJI)
VICE CHAIRMAN