

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.330/92

Date of decision: 28.9.1993.

P. Krishnan

..Applicant

Shri OV Radhakrishnan, Advocate for applicant.

Versus

1. Joint National Savings Commissioner, Office of the National Savings Commissioner, P.B.No.96, 12 Seminary Hills, Nagpur.
2. National Savings Commissioner, National Savings Organisation, P.B. No.96, 12 Seminary Hills, Nagpur.
3. Union of India, Secretary, Ministry of Finance, New Delhi.
4. V Karthikeyan, Deputy Regional Director, National Savings Organisation, Thirupathi P.O., Andhra Pradesh.

..Respondents

Shri C Kochunni Nair, ACGSC for respondents 1 to 3.
Shri G Jayachandran Nair, Advocate for respondent 4.

C O R A M:

The Hon'ble Mr N Dharmadan, Judicial Member
and

The Hon'ble Mr R Rangarajan, Administrative Member

J U D G E M E N T

R RANGARAJAN, A.M.

Applicant joined service as District Organiser which was later re-designated as District Savings Officer under National Savings Organisation, Ministry of Finance, Government of India. He was promoted and appointed as Assistant Regional Director in Kerala Region on ad hoc and purely temporary basis as per Exhibit A1 dated 12.11.1982 against a vacancy which arose due to ad hoc promotion of one Shri CV Chacko as Deputy Regional Director, National Savings. He took over that post on 22.11.1982. He continued in that post till he was regularly promoted by the Departmental Promotion Committee held on 3.3.1989. He was regularly appointed in that grade as per Exhibit A11 dated 7.3.1989 and his seniority was fixed immediately above that of one Shri Aggarwal. He was deemed to have been promoted to the post of Deputy Regional Director(upgraded post of ARD--ARD posts were upgraded as DRD with effect from 27.10.1986 as per Exhibit A4) with effect from

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9.7.1988. Though he was promoted on ad hoc basis from 12.11.1982, he was not regularised till the issue of Exhibit A11 dated 7.3.1989. He represented his case (Exhibit A2) dated 16.4.1986 for his early regularisation. He was given a reply (Exhibit A3 dated 22.8.1986) wherein it was informed that the post is a reserved one (reserved for a Scheduled Tribe candidate) and that he can be regularised against this post only if deservation is obtained for which Ministry of Finance had been approached and that he will be informed in due course in this connection. He had also sent a further representations Exhibit A5, A6, A7 and A8 in connection with his regularisation. In the meantime, the 4th respondent was appointed as Deputy Regional Director as per the order dated 24.6.1988. The DPC held on 7.2.1984 in which the applicant though considered and recommended for regular promotion, could not be promoted against that vacancy as it was against a carried forward reserved vacancy for a Scheduled Tribe candidate. The recommendation of 1984 DPC was hence reviewed and the 4th respondent was promoted as ARD with effect from 7.2.1984 by exchanging the carried forward reserved vacancy with the Scheduled Caste candidate, Shri V Karthikeyan (4th respondent) being the 3rd year of recruitment. The 4th respondent was given seniority in the cadre of ARD with effect from 7.2.1984 as per Exhibit A13. This Exhibit A13 is reproduced below:-

"On recommendation of the review DPC held on 2.3.89 in lieu of DPC held on 7.2.84 Shri V Karthikeyan presently working as Dy Regl Director, National Savings Kerala Region is deemed to have been promoted to the post of Assistant Regional Director, w.e.f. 7.2.84 in the pre-revised pay scale of Rs. 550-25-750-EB-30-900. The seniority of Shri V Karthikeyan, Dy Regl Director Dy RD will be fixed accordingly.

Shri V Karthikeyan on his deemed promotion as ARD in Kerala Region will not be entitled for arrears of pay and allowances, however, his pay will be fixed at a stage which he would have reached had he been promoted on regular basis through DPC held on 7.2.84 by giving notional increment."

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2. The 4th respondent was also given seniority above the applicant though he was three years junior to the applicant in the cadre of District Savings Officer as seen from Annexure A9. To the applicant's representation, he was replied by Exhibit A15 dated 24.10.1991 stating that his representation was rejected as the vacancy being a reserved vacancy could not have been filled by an OC candidate and that the applicant continued only on ad hoc basis till he was regularly promoted with effect from 14.7.1988. The relevant paras 2 & 3 of Exhibit A15 are reproduced below:-

"2. Shri V Karthikeyan was promoted as ARD on regular basis against a reserved vacancy with effect from 7.2.84. Shri P Krishnan was promoted on ad hoc basis with effect from 22.11.82 being the senior-most District Savings Officer. Thus, Shri P Krishnan has no claim to the post to which Shri V Karthikeyan has been promoted. Ad hoc promotion of Shri P Krishnan does not confer any claim of seniority in the grade to him. Moreover, Shri P Krishnan was promoted as Dy Regional Director on regular basis with effect from 14.7.88 only, and as such, Shri P Krishnan will rank much junior to Shri V Karthikeyan. Shri P Krishnan can not claim any benefits for his continued holding of the post of Asstt. Regional Director/Dy Regional Director on purely ad hoc basis. Shri P Krishnan's apprehension that the position given to Shri V Karthikeyan is biased has no truth in it.

3. His representation therefore, is rejected after due consideration by Ag. National Savings Commissioner....."

3. Aggrieved by Exhibits A13 and A15, applicant has approached this Tribunal by filing this O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) " To call for the records relating to Exhibits A13 and A15 and to set aside the same;
- (ii) to direct the respondents 2 and 3 to regularise the officiating promotion of the applicant to the cadre of Assistant Regional Director with effect from 22.11.1982 and to regularise him in the upgraded cadre of Deputy Regional Director on that basis with all attendant service benefits;

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- (iii) to direct the respondent No.2 to assign rank and seniority to the applicant over the 4th respondent reckoning his service in the cadre of Assistant Regional Director subsequently upgraded as Deputy Regional Director with effect from 22.11.1982 in the seniority list of Deputy Regional Directors and in the All India Eligibility List of Deputy Directors of the National Savings Organisation as on 1.8.1990;
- (iv) to direct the respondents 2 and 3 not to promote the 4th respondent to the cadre of Regional Director overlooking the claims of the applicant in the matter of seniority and suitability;
- (v) to issue such other orders or direction which this Tribunal deems fit, just and proper in the circumstances of the case; and
- (vi) to award costs to the applicant.

4. Applicant contends that the deemed promotion of Shri Karthikeyan is irregular and fixation of his seniority above him is also not called for as he is discharging the duties of Assistant Regional Director from 12.9.1982. He disputes the reservation point and also contends that the vacancy being a first one cannot be filled by a reserved candidate on that year. He also avers that giving deemed seniority from an earlier date on the pretext of filling the roster point is illegal.

5. The first respondent, on behalf of other respondents also, has filed a reply statement denying all averments and allegations contained in the O.A. They state that the recommendation for appointment of Shri Krishnan (applicant) on a regular basis was a mistake on the part of DPC held on 7.2.84. As the carried forward vacancy of Scheduled Tribe can be exchanged with a Scheduled Caste candidate on the 3rd year of recruitment to which the vacancy is carried forward, promotion of 4th respondent with effect from 7.2.84 is in order and that by virtue of his promotion to the cadre of ARD against that vacancy, the 4th respondent ranks

senior to the applicant. The mistake has been corrected as directed by the Deputy Commissioner of the office of Commissioner for Scheduled Castes and Scheduled Tribes (Annexure R2). The Commissioner of National Savings Organisation has also informed of the above to the Regional Director, National Savings, Kerala, for suitably advising the applicant in regard to regularisation of the 4th respondent. This letter (Annexure R1) is self-explanatory and is reproduced below:-

"Please refer to the representation of Shri P Krishnan, Dy Regional Director in Kerala Region dated 8.6.89 on the subject noted above.

2. The representation of Shri P Krishnan, Dy Regional Director has been considered carefully and the same is not accepted.

3. Consequent on promotion of Shri CL Chacko as Dy Regional Director on ad hoc basis w.e.f. Nov 82, the post of Asstt. Regional Director had fallen vacant on ad hoc basis in Kerala Region. As the post was on ad hoc basis the senior most available District Savings Officer in Kerala Region, Shri P Krishnan was promoted on ad hoc basis w.e.f. 22.11.1982. Thereafter, when Shri Chacko's appointment was regularised as Dy Regional Director, w.e.f. 23.5.83, a Departmental Promotion Committee was held on 7.2.84 which recommended the name of Shri P Krishnan for promotion as Asstt. Regional Director in Kerala Region. Shri P Krishnan was recommended for promotion subject to the condition that dereservation proposals are obtained, because the vacancy against which he was recommended to be promoted was a carry over vacancy belonging to Scheduled Tribe category. The promotion order on the basis of the Departmental Promotion Committee's recommendations was not issued as he was already working on ad hoc basis w.e.f. 22.11.1982. Based on our proposal for dereservation which was forwarded to the Scheduled Caste/Scheduled Tribe Commissioner on 11.12.84, they have pointed out that since it is a carry forward vacancy to 3rd year it has to be exchanged with Scheduled Caste candidate, as per rules.

4. The decision to appoint Shri P Krishnan on a regular basis was a mistake on the part of the Departmental Promotion Committee held on 7.2.84. It was also a mistake to continue ad hoc arrangement of Shri P Krishnan working as Asstt. Regional Director indefinitely when the dereservation proposal was sent.

5. When the Departmental Promotion Committee met on 7.2.84, it was quite clear that a Scheduled Caste official was available and also was eligible for promotion.

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6. In order to set right the mistake done by the Departmental Promotion Committee which met on 7.2.84 the matter was referred to the Ministry of Finance. They have advised us to hold review Departmental Promotion Committee which was held on 2.3.89. According to the recommendations of the Review Departmental Promotion Committee, Shri Karthikeyan, Scheduled Caste candidate was promoted as Asstt. Regional Director/Dy Regional Director w.e.f. 7.2.84 and due seniority in Dy Regional Director's post has been fixed. Shri P Krishnan had no claim whatsoever against a reserved vacancy, nor any vacancy became available, thereafter, in the cadre of Asstt. Regional Director wherein Shri Krishnan could be adjusted. Factually speaking Shri Krishnan has enjoyed the promotion which was not due to him.

7. Shri P Krishnan may please be informed suitably."

6. Fourth respondent has also filed a reply statement on the above lines of the other respondents.

7. Applicant has filed a rejoinder inter alia reiterating his initial stand and also stating that a mistake committed by the Departmental Promotion Committee held on 7.2.1984 cannot be corrected later without giving a notice to the applicant and without giving an opportunity of being heard. He also states that bringing him down in rank junior to the 4th respondent without following the mandatory provisions, is illegal and violative of principles of natural justice and also provisions of Articles 16 and 311(2) of the Constitution.

8. We have heard the learned counsel on both sides and also perused the records. At the time of hearing, both the sides fairly submitted that the point against which 4th respondent was regularised with effect from 7.2.1984 is a carried forward vacancy reserved for a Scheduled Tribe candidate from an earlier Roster Point and that filling the vacancy as on 7.2.84 is the 3rd year of recruitment. Thus, there is unanimity as far as this point is concerned. However, the learned counsel for the applicant disputed the interpretation of the rule for filling up this vacancy by a Scheduled Caste candidate. Mainly, two issues arise from the above submission, namely:-

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- (1) Whether the carried forward vacancy earmarked for a Scheduled Tribe candidate can be filled by appointing a Scheduled Caste candidate; and
- (2) Whether the deemed promotion given to the 4th respondent is in order or in other words, the bringing down of the seniority of the applicant vis-a-vis that of the 4th respondent without giving notice to the applicant as it visits with civil consequences and an opportunity to be heard, is violative of the principles of natural justice and infringement of the rights of the applicant?

9. We have considered the above two issues in detail. Rule 8 in the Office Memorandum No.27/25/68-Est(SCT) dated 25.3.1970 of MHA provides for exchange of vacancies between Scheduled Castes and Scheduled Tribes in the last year to which the reserved vacancies are carried forward. This rule is extracted below:-

"The question of utilisation of vacancies reserved for Scheduled Castes in favour of Scheduled Tribes and vice versa has also been considered by Government and it has been decided, in modification of the orders contained in this Ministry's OM No.1/7/62-SCT(1), dated 24th September, 1962, that while vacancies reserved for Scheduled Castes and Scheduled Tribes may continue to be treated as reserved for the respective community only. Scheduled Tribes candidates may also be considered for appointment against a vacancy reserved for Scheduled Caste candidates where such a vacancy could not be filled by a Scheduled Caste candidate even in the third year to which the vacancy is carried forward. While advertising or notifying a vacancy which has been carried forward to the third year, it should, therefore, be made clear in the advertisement/requisition that while the vacancy is reserved for Scheduled Castes, Scheduled Tribes candidates would also be eligible for consideration in the event of non-availability of suitable Scheduled Castes candidates. This arrangement will likewise apply also in the case of vacancies reserved for Scheduled Tribes."

10. From the above, it will be clear that the exchange of carried forward Scheduled Caste point by a Scheduled Tribe candidate is clearly permissible. The learned counsel for the applicant states that the exchange of carried forward Scheduled Tribe point by a Scheduled Caste candidate is not envisaged in the Rule. When the last sentence in the above said Rule which reads as "this arrangement will likewise apply also in the case of vacancies reserved for Scheduled Tribes" was specifically brought to

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the notice of the learned counsel for the applicant, he argued that the same was superfluous and of no consequence. If this view is entertained, the carried forward Scheduled Tribe vacancy will lapse in the 3rd year and must necessarily be filled by an unreserved candidate. This would mean that the fruits of a valuable right provided in the reservations rules as per the Constitution will not be available to a reserved candidate whether he be a Scheduled Caste or a Scheduled Tribe candidate. In our view, this interpretation is not at all envisaged by rule makers. Interpretation of rules in the case of reservation should aid the reserved candidate and should not be detrimental to their interests. The rules for reservation are made to bring up the down-trodden and interpret such rules detrimental to the interests of the reserved candidates where there is a clear provision to help such candidates, will be a perverse attitude. Hence, we are not in a position to agree with the view expressed by the learned counsel for the applicant that the carried forward vacancy of Scheduled Tribe in the last year cannot be exchanged with a Scheduled Caste candidate. In this view of the matter, we see no illegality in promoting the 4th respondent, a Scheduled Caste eligible candidate who was available for promotion at the time when the DPC met on 7.2.84. We are of the opinion that considering the 4th respondent against the vacancy created by promotion of Shri Chacko which happens to be the carried forward vacancy of the Scheduled Tribe Roster Point and promoting him against that vacancy by exchange is in order.

11. The second issue brought out by the learned counsel for the applicant was examined in detail. Applicant relied on the following decisions:-

- a) 1982 (3) SLR 411--Union of India v. Jagdish Prasad.
- b) 1979 (1) SLR 122--Chairman, Cochin Port Trust and others v. MN Sukumaran Iteyar and others.
- c) 1989 (10) ATC 337--Sunder Lal v. Union of India, etc.

In all the above citations, we find that reversions were involved

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without due notice to the petitioners or without hearing them and hence, were held illegal and the orders were quashed. The facts of the present case can easily be differentiated from those cases cited above. In this OA, the applicant was not reverted and also did not incur any monetary loss.

12. In the present case, it has been clearly stated by the respondents that the decision of the DPC in recommending the name of the applicant is a mistake as a Scheduled Caste candidate was available for consideration at that time. Whether such mistakes can be corrected by the executives when it was noticed and correcting those mistakes without notice is permissible or not are the points to be scrutinised. In this connection, we would like to draw the attention to the observations made in ATR 1991 (1) CAT 483, Anil Kumar v. Superintendent of Post Offices & Others. In this case it was held as follows:-

"An administrative authority has an inherent power of correcting its own mistake unless there is some restrictions imposed by law. If due to bona fide omission or mistake the authority has taken a decision it can certainly be revised at a later stage when the mistake comes to its notice. Otherwise the authority is committing the mistake of perpetuating such mistake even after it was discovered by the authority. (para 9)

If an order passed by the administrative authority is vitiated by a mistake it will not correctly reflect the actual order or the decision taken by such authority; it must be open to correction and it will not have any sanctity to prevail over or override the correct one. Say for example a case where the actual decision taken by the authority is that a person should be appointed only on a provisional basis subject to verification of details, but by mistake, the appointment order has been issued describing it as substantive appointment. Can it be suggested that the authority cannot rectify the mistake by issuing a further order so as to bring it in accord with the real decision of the authority even without any further notice? A mistaken order invariably would not confer any legal right on the party to whom it is issued because such order will not correctly reflect the actual decision."


(para 11)

13. From the above, it will be seen that the administrative authority has an inherent power of correcting its own mistake and

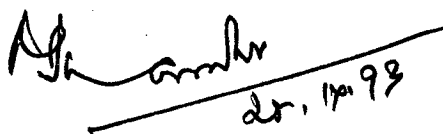
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that bonafide omission or mistake can be corrected when it is noticed. In this case, as pointed out earlier, the DPC which met in 1984 had omitted to consider the name of the 4th respondent against the exchange of vacancy reserved for Scheduled Tribe and has wrongly decided to recommend the name of the applicant who is a general category candidate. When it was brought to the notice of the respondents by Annexure R2 letter the case of 4th respondent was reviewed in 1989 and was given the deemed promotion from 7.2.1984 as he was found eligible to be promoted in all respects against the reserved vacancy in 1984 itself. Applicant has no legal right to continue against a reserved vacancy even if he is regularised as a mistake has crept in which was subsequently corrected. Further, no harm has been caused to the applicant as he was neither reverted nor monetarily put at a loss. He was promoted on ad hoc basis only as per Exhibit A1 and no order for regularising him has been issued. This fact was brought to his notice as early as in 1986 by Exhibit A3. The very fact that no regular order has been issued, he cannot claim any right even to continue much less issue of notice of intention to bring him down in rank. He had enjoyed the fruits of his fortitious promotion monetarily which compensates his loss, if any. As he was never reverted and only his due position was assigned to the 4th respondent by virtue of his promotion against a reserved post, applicant has no legal right to insist on issue of notice for bringing down his seniority below that of 4th respondent.

14. In the conspectus of facts and circumstances of the case, we see no irregularity in giving deemed promotion to the 4th respondent from an earlier date, namely 7.2.1984, and placing him in the gradation list of Assistant/Deputy Regional Directors, above that of the applicant. Exhibits A13 and A15 are in order. In this view of the matter, the OA is devoid of any merit and is liable to be dismissed. Accordingly, we do so without any order as to costs.


(R RANGARAJAN)
ADMINISTRATIVE MEMBER

28.9.1993.


(N DHARMADAN)
JUDICIAL MEMBER

LIST OF ANNEXURE:

Exhibit A1 : Copy of order dated 12.11.1982.
Exhibit A2 : Copy of representation dated 16.4.1986.
Exhibit A3 : Copy of letter dated 22.9.1986.
Exhibit A4 : Copy of order dated 27.10.1986.
Exhibit A5 : Copy of representation dated 5.8.1988.
Exhibit A6 : Copy of representation dated 8. 6.1989.
Exhibit A7 : Copy of representation dated 29.6.1989.
Exhibit A8 : Copy of representation dated 26.9.89.
Exhibit A9 : Copy of gradation list dt. 1.7.88
Exhibit A11 : Copy of order dated 7.3.89.
Exhibit A13 : Copy of office order dated 7.3.1989.
Exhibit A15 : Copy of letter dated 24.10.1991.

Annexure R1 : Copy of letter No.24368/3(13)Admn/81 dated 17.8.1989.
Annexure R2 : Copy of letter dated 26.12.1984.

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