

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
Lucknow this the 26th day of Nov. 1995.
O.A. No.287/92

A.K. Das aged about 60 years son of late Sri T.K. Das presently working as Chairman, U.P. Subordinate Services Selection Commission, Vikas Deep, Station Road, Lucknow.

Applicant.

By Advocate Shri Radhika Raman

versus

1. Union of India through the Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi.
2. State of U.P. through Secretary, Govt. of U.P. Appointment, Department, Civil Secretariat, Lucknow.

Respondents.

By Advocates: Shri V.C. Verma and Shri A.K. Chaturvedi.

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. V.K. SETH, MEMBER(ADMN.)

O R D E R

HON. MR. V.K. SETH, MEMBER(A)

By means of this O.A. the applicant has sought quashing of order dated 12.8.91 and for declaring the applicant entitled to the benefit of notional promotion in the payscale of Rs7300-7600 from 1.1.89 to 1.7.89 or 1.1.90 and for payment of arrears of salary.

2. Pleadings have been exchanged between the parties. We have carefully considered the same as also the rival contentions of the two sides made during the course of hearing of the case.

3. The applicant is an I.A.S. officer of 1964 seniority. Vide notification dated 17th November, 1988 (Annexure A-2 to the O.A.) the Uttar Pradesh

Subordinate Services Selection Board was established and the applicant was appointed as its Chairman. Another notification dated 15.11.88 (Annexure A-3) laid down the terms and conditions regarding emoluments etc. attached to the post of Chairman. In the said notification it is interalia provided that in case the person concerned in service is appointed as Chairman/ Member of the Board he will be treated to be on foreign service and will be entitled to emoluments admissible to him in the grade of his parent department.

4. Briefly stated, the applicant claims that as there were vacancies in the scale of Rs 7300-7600 in U.P. I.A.S. Cadre on 1.1.89, 1.7.89 and 1.1.90, the State Government deprived the eligible officers including him from their due promotions to the scale of Rs7300-7600 by not making selections. In support of his claim the applicant has cited rule 10 of the I.A. Cadre Rules, 1954 and the O.M of the State Government dated 25.6.84.

5. We have carefully perused the record of the case and also given our anxious thought to the submissions of learned counsel made during the course of hearing.

6. The fact regarding existence of vacancies has not been disputed by the respondents though the twosides differ on the exact number of vacancies available on various dates. That being so, the crux of the arguments of the applicant is that the respondents were bound by law to make promotions from the dates the vacancies arose. In support of his claim the applicant cites Balbir Singh vs. Union of India and others (1987(2) ATJ, 513.

On the other hand, the stand of the respondents is that mere availability of vacant posts does not confer any right on officers for promotion.

7. Let us first examine the rules and instructions cited by the applicant. The rule 10 of the I.A.S. Cadre

Rules 1954 reads as under:

"Report to the Central Government of vacant cadre posts-Cadre posts shall not be kept vacant or held in abeyance for periods exceeding six months without the approval of the Central Government. For this purpose, the State Government shall make a report to the Central Government in respect of the following matters, namely:

- a) the reasons for the proposal;
- b) the period for which the State Government proposes to keep the post vacant or hold it in abeyance.
- c) the provision, if any made for the existing incumbent of the post; and
- d) whether it is proposed to make any arrangements for the performance of the duties of the post to be kept vacant or held in abeyance, and if so, the particulars of such arrangements.

The contention of the applicant is that the respondents should have made a report to the Central Government soon after occurrence of the vacancies in case they did not wish to fill up those posts.

7. The respondents Union of India have submitted only a short counter reply not touching on this subject but inter alia mentioning that according to rule 3(2a) of the I.A.S Pay Rules, 1954 appointments to the selection grade of Rs 7300-7600 posts carrying pay above the time scale of pay in the I.A.S. is made by 'selection on merit with due regard of seniority' and that there are no guidelines issued by the Government of India on the subject. They also state that the State Government may or may not like to fill up some posts in the grade of Rs

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done by another. Approval implies knowledge and exercise of discretion after knowledge.'

7300-7600 even if the vacancies in this grade are available.

8. In his Counter Affidavit the respondent No. 2, the State Government have interalia, mentioned that the required reports were sent by the State Government on 22.1.90, 26.5.90 and 21.3.91. In the first report on 22.1.90 (Anneure B-3 to the Counter affidavit) reasons for holding in abeyance four vacant posts ie. one Comissioner, one Member, Board of Revenue and two posts have been indicated. In the second report of 26.5.90, also the reasons for holding in abeyance five posts are indicated. Some reasons have also been given in the next report.

9. During the course of hearing, it was urged by the learned counsel for the respondent No. 2 State of U.P. that no response had been received in this regard from the respondent No. 1 thereby implying that the Union of India had no objections in the matter. We are inclined to agree with this view. Further the fact that the reports were made with some delay, according to the applicant, in our opinion is not of any material significance. There is nothing in rule 10, to indicate that if the cadre posts of a particular pay scale are kept vacant, the officers likely to be adversely affected would be automatically entitled to the benefit. The learned counsel for the applicant during the course of hearing laid particular stress on the meaning of the opening sentence of the rule 10 particularly '.....without the approval of the Central Government' and for this purpose he also invited our attention to the meaning of the word 'approval' in Blacks Law Dictionary which is as under:

"Act of framing, ratifying, assenting, sanctioning or consenting to some act or thing done by another. Approval implies knowledge and exercise of discretion after knowledge.'

As already mentioned earlier ~~with~~, silence on the part of respondent No. 1, in this regard, could be taken as ~~as~~ 'consent'. Moreover, even if for the sake of argument it is assumed that respondent No. 2 did not obtain prior approval and therefore, they were blameworthy, his fact ~~per se~~ did not give rise to any right to the applicant for his promotion.

10. Coming now, to the O.M. dated 25.6.84, we do not find the same lending support to the claim of the applicant as the subject matter of the said O.M. mentions 'Nichle Sanvarg' obviously it being applicable only to subordinate services, would not be applicable to the case of the applicant who belonged to I.A.S.

11. As regards the ruling cited by the learned counsel for applicant in the case of Balbir Singh vs. Union of India (1987) 2 A.T.J. 513, the present case is distinguishable in facts and circumstances from the same. In the case of Balbir Singh (Supra) the posts of extra Assistant Directors/Assistant Engineers in class II were to be filled to the extent of 66 2/3% by promotion of graduate Engineers with three years of experience and 33 1/3% by promotion of diploma holders (Supervisors) with 10 years experience. "The main grievance of the petitioners who were diploma holders was that in December, 1977, out of 132 vacant posts, 71 posts had to be filled by the backlog with the share of diploma holders which had not been given to them and the remaining 31 vacancies were to be filled up in the ratio of 2:1 between degree and diploma holders. Unfortunately, only 33 posts were filled up by diploma holders leaving to a backlog of 38 posts and a fresh backlog of 11 posts out of 31 posts. Thus,

in 1978, there was a backlog of 49 posts to be filled by diploma holders in the grade of extra Assistant Directors/Assistant Engineers. The D.P.C. did not meet in 1979-80 and 1980, but met in march, 1981 and in the mean time the vacancies which should have been fallen to the share of diploma holders were filled on adhoc basis by degree holders. In March, 81, the same in the circumstances, was repeated." It is thus created an imbalance between the degree and the diploma holders, and it was held that the D.P.C. was obliged to meet regularly every year. Accordingly, it was ordered that the D.P.C. was to meet for preparing the panels for 1978-79 and 1980. It is noticed that in the present case no such issue of imbalance ~~arose~~ arose on account of promotions taking place from two different streams. In any case, in the present matter, there were no vacancies at the level of Rs 7300-7600 available for promotion as the respondent No. 2, the State of U.P. had already addressed the respondent No.1 i.e. the Union of India intimating the reasons for holding certain vacancies in abeyance.

12. In the light of the foregoing discussions, we do not find any merit in the claim of the applicant. The O.A. is therefore, hereby dismissed.

13. In the facts and circumstances of the case, the parties shall bear their own costs.

MEMBER(A)

Shakeel/

VICE CHAIRMAN

