

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

O.A. no. 1251/92

Lucknow this the 21st day of July, 2000.

HON. MR.D.C.VERMA, MEMBER(J)

HON. MR. A.K. MISRA, MEMBER(A)

Dr. Sushil Kumar Srivastava aged about 59 years son of late Man Mohan Lal Srivastava, resident of House of Sri Shyam Mohan Verma, 54, Rajendra nagar, Lucknow.

Applicant.

By Advocate Shri Shri Avnish Saxena.

versus

1. Union of India Department of Food, Ministry of Fod and Civil Supplies, Govt. of India, Krishi Bhawan New Delhi through its Secretary.
2. The director, National Sugar Institute, Kanpur.
3. Sri G.K. Shukla, Chief Technoligist (Advisory) National Sugar Institute, Kanpur.
4. The Secretary, Central Government, Department Science and Technology, New Delhi.
5. Union Pulic Service Commission, Ayog Bhawan, Dhaulpur House, Shahjahan Road New Delhi through its Chairman/Secretary.

Respondents.

By Advocate Shri A.K. Chaturvedi.

O R D E R

BY D.C.VERMA, MEMBER(J)

The applicant of this O.A. has claimed promotion to the post of Professor of Sugar Technology/Chief Technologist (Advisory) and has also sought relief for counting of his service between 15.1.57 to 12.1.62 with notional pay for the benefit of revised rate of pension.

2. The applicant is governed by National Sugar Institute Kanpur (Class I and class II posts) Recruitment Rules, 1964 (in short Rules of 1964).



These rules were notified under Article 309 of the Constitution of India in 1964. According to this rule, 5 posts are clubbed together. These posts are Professor of Sugar Technology, Chief Technologist (Advisory), Chief Technologist Extension and Assistant Director Survey and Information. The number of sanctioned posts jointly, is 5. These posts belong to General Central Service Group A Gazetted. These are selection posts and as per schedule attached to the rule, 50% of the vacancies are to be filled up by promotion, failing which by direct recruitment. For promotion, the feeder cadre are, Senior Technical Officer (Sugar Technology), Assistant Professor of Sugar Technology and Senior Research Officer (Gur and Khandsari) with five years regular service in the respective grade. For consideration of the applicant's claim, we are taking 30.9.89 as the date on which the aforesaid 5 posts were occupied by 4 persons, ^{appointed} through direct recruitment quota and one post on promotion basis. As per recitals made in the O.A., five posts were held by the following persons.

i. Professor J.C. Bhargava.

ii Shri M.U. Owasi

iii) J.S. Mehta

iv) Swami Nath.

v) N.C. Jain

} As direct
recruit

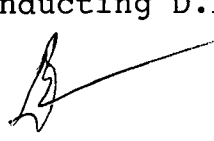
} On promotion basis.

6. On 30.9.1989, Professor J.C. Bhargava, a direct recruit, superannuated. The vacancy caused due to retirement of Professor J.C. Bhargava was filled up on promotion basis and Dr. A.N. Srivastava was promoted w.e.f. 1.10.89. The next vacancy occurred when N.C. Jain superannuated on 31.7.90. This vacancy was referred by the Department to Union Public Service Commission (in short U.P.S.C.) for filling up on direct recruitment basis. Dr. G.K. Shukla, was




appointed after selection through open advertisement by the U.P.S.C. on direct recruitment quota basis. The applicant claims that as Dr. G.K. Shukla was junior to the applicant, the applicant should have been appointed on promotion basis to fill up the post caused due to retirement of Shri N.C. Jain. Subsequently, G.S. Mehta who was holding the post on direct recruitment basis, retired on 30.9.90. The post was to be filled up on promotion basis but no D.P.C. could be held though process for consideration of the suitable officer for promotion by the Departmental promotion Committee (in short D.P.C.) was initiated, the Annual Confidential Report of the eligible officers were to be collected, but meanwhile the applicant retired from service on 30.4.91, hence the applicant could not be promoted.

7. The submission of the learned counsel for the applicant is that even after promotion of Dr. A.N. Srivastava, w.e.f. 1.10.89, on the vacancy caused due to retirement of Professor Bhargava, the next vacancy caused due to retirement of Shri N.C. Jain should also have been filled up on promotion basis and not on direct recruitment basis. Further submission is that Dr. G.K. Shukla who was selected and appointed against the vacancy caused due to retirement of N.C. Jain, was junior to the applicant. ^{As} all other posts were being held by direct recruits, the vacancy caused due to retirement of N.C. Jain who was promoted, should have been filled up on promotion basis and not on selection basis. The third ground is that on the retirement of J.S. Mehta on 30.9.90, the applicant should have been promoted w.e.f. 1.10.1990, and the applicant be not made to suffer due to administrative lapses on the part of the Department in not conducting D.P.C. on time.



8. Heard the learned counsel for the parties at great length. The submission of the learned counsel for the respondents is that as per rule, only 50% of the vacancies were to be filled up on promotion basis. If for promotion, officers were not available, the same was to be filled up by direct recruitment basis. It has been submitted that on retirement of Professor Bhargava who was a direct recruit, the vacancy was filled up by promoting Dr. A.N. Srivastava, who was senior to the applicant. The subsequent vacancy caused due to retirement of N.C. Jain was filled up by direct recruitment. This selection was held by U.P.S.C. and for this selection the applicant had not applied. Dr. G.K. Shukla, though junior to the applicant, was selected and appointed against direct recruitment quota. Thus, it has been submitted, ~~that~~ the applicant cannot claim promotion against the vacancy caused due to retirement of N.C. Jain. The applicant's case for promotion was to be considered on retirement of J.S. Mehta for which action had been initiated, but as the applicant retired meanwhile, he could not be promoted and therefore, it has been submitted that the applicant's claim has no merit.

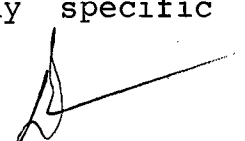
9. We have examined the rule position. ~~We are of the view that no doubt~~ On 30.9.89, the post was being held by 4 direct recruits and one promotee, ~~but~~ On retirement of Professor Bhargava on 30.9.89, the post was filled up on promotion basis by Dr. A.N. Srivastava w.e.f. 1.10.89. The rule provides 50% of the vacancies to be filled up by process of promotion. The respondents adopted a procedure by giving the first vacancy to a promotee and the second vacancy to a direct recruit. Consequently, on retirement of N.C. Jain, a promotee, vacancy was ~~to be~~ filled up by selection basis. The method of selection was applied.



The selection was made by U.P.S.C. The applicant had not applied for this post. Dr. G.K. Shukla, who was junior to the applicant, had applied and was selected and appointed on direct recruitment basis. The applicant cannot have any grudge against this appointment as the applicant had not applied for the same. Further, the selection of Dr. G.K. Shukla has not been challenged, so he cannot be examined in this case.

10. In the present case, we need not deliberate to examine the validity of the order appointing Shri G.K. Shukla on selection basis under direct recruitment method. We also need not deliberate how 4 direct recruits were occupying the post in the year 1989 when eligible persons were available for promotion. The learned counsel for the applicant has submitted that as per rule 50% of the vacancies were to be filled up on promotion basis and failing which the vacancy was to go to direct recruits. In our view, this question is also not required to be deliberated in the present case as the relief in the present case has been confined to promotion of the applicant against the vacancy caused due to retirement J.S. Mehta. The learned counsel for the applicant has restricted the relief or promotion on the vacancy w.e.f. 1.10.1990.

11. J.S. Mehta retired on 30.9.90, the vacancy occurred w.e.f. 1.10.1990. The applicant superannuated on 30.4.91. The vacancy of J.S. Mehta was to be filled up on promotion basis. The respondents have also admitted that process to fill up the vacancy on promotion basis was initiated, but before the D.P.C. could be held, the applicant superannuated on 30.4.91 and consequently, the applicant could not be appointed in the absence of any specific rule for giving



proforma promotion. The learned counsel for the applicant has, on the other hand, submitted that the non action on the part of the applicant in not initiating the process for holding D.P.C. at regular intervals should not cause harm to the applicant.

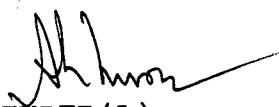
12. In their counter reply, the respondents have stated that process could not be completed as the completion of the procedure was delayed by Bihar State Sugar Corporation. It has been further stated that the delay had occurred in convening a meeting of D.P.C. as a lot of time was consumed in completion of the relevant records.

12. In our view, the reasons advanced by the respondents cannot be accepted. Apparently, it is administrative lapse on the part of the respondents in not completing the record in due time. For such administrative lapse on the part of the Department, the applicant cannot be made to suffer. If the applicant had been promoted earlier, besides getting a better status and pay, the applicant would have received higher amount of pension and other pensionary benefits. The retirement of an officer is always known from before. The date of retirement is fixed. Consequently, a D.P.C. is required to be convened at annual intervals to draw panels so that promotions against the vacancies which occurred during the course of a year, could be made from such panel. Such panels are prepared for existing as well as anticipated vacancies, but in the present case, though it was known to the respondents that the applicant would become entitled for consideration of promotion on retirement of J.S. Mehta, the Department did not take action for such an anticipated vacancy. Initiation for holding D.P.C. after the vacancy had arisen, results in

undue delay in filling up the vacancy and is bound to cause dissatisfaction, as in the present case, among those who were eligible for promotion. Had this process been undertaken in time, the applicant would have been empanelled for promotion and received the benefits. The applicant has been denied his due right because of lapse on the part of the Department. In these circumstances, the respondents are directed to convene a Review D.P.C. for the vacancy which occurred on 1.10.1990 due to retirement of J.S. Mehta on 30.9.90 in respect of the applicant and others who were eligible and within the zone of consideration for the said post. In case the applicant is empanelled, he would be given notional promotion w.e.f. 1.10.1990 till the date of his superannuation with all consequential benefits except the arrears of salary. In such a situation, the applicant's pay shall be fixed on the date of retirement for grant of retiral benefits.

13. The claim of the applicant for counting his service between 15.1.57 and 12.1.62 is not being considered in this case as the applicant has not made any representation to the Department. Such relief ~~which~~ is not a consequential to the main relief of promotion claimed by the applicant.

14. In view of the above, the O.A. is partly allowed ~~as per discussions made above~~ and the respondents are directed to convene a review D.P.C. and pass necessary orders within a period of three months from the date of communication of this order. Costs easy.


MEMBER (A)


MEMBER (J)

Lucknow; Dated: 31.7.2000

Shakeel/