

(16)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 173
T.A. No.

1987

DATE OF DECISION 22.11.1990

Conjeevarma Rajaratnam Neelakant Petitioner

Shri G. S. Walia

Advocate for the Petitioner(s)

Versus

Secretary, Ministry of Textiles, Respondent
New Delhi and others

Shri P. M. Pradhan

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P. S. Chaudhuri, Member (A)

The Hon'ble Mr. N. Dharmadan, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*

CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

(1)

O.A. 173/87

Conjeeverma Rajaratnam Neelakantan
residing at Flat No. 1320, Sector IV
C.G.S. Quarters, Antop Hill,
Koliwade, Bombay-400 037

.. Applicant

vs.

1. Secretary to the Government of India
Ministry of Textiles, Udyog Bhavan,
New Delhi

2. Textile Commissioner, Ministry of
Textiles, Govt. of India,
48 New Marine Lines, Bombay-20

3. Shri J. C. Hansdak, Director,
Office of Textile Commissioner,

4. Shri A. A. Abdul Asees, Director,
Office of Textile Commissioner

5. Shri V. K. Srivastava, Deputy
Director, Office of the Textile
Commissioner, Bombay-20

.. Respondents

CORAM:

Hon'ble Mr. P. S. Chaudhuri, Member (A)

Hon'ble Mr. N. Dharmadan, Member (J)

Shri G. S. Walia Advocate for the applicant

Shri B. M. Pradhan Advocate for the respondent

JUDGMENT

22.11.1990

(PER SHRI N. DHARMADAN, MEMBER (J))

The applicant is working as Deputy Director (Non-Technical), Department of Textiles in the office of the second respondent from 12.12.1975. He claims seniority over respondents 3, 4 & 5 and seeks to quash Appendix 'E' proceedings No. 2/52/EST-I/86 Vol. IV/1351 dated 2.4.1986, rejecting his representation at Appendix 'C' filed in this behalf.

2. The short facts relevant for the decision are as follows. XXXXXXXXXXXXXXXXXXXXXXXXXX, The applicant was originally appointed as Assistant Director Grade II

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(N.T.) in the office of the Textile Commissioner, Bombay on 11.8.1971. He was appointed as Asstt. Director Grade I w.e.f. 27.3.73. After his confirmation in that post on 6.11.1975 he was promoted and posted as ad hoc Deputy Director (NT) as per Appendix-A order dated 12.12.1975 for a period of six months and he continued in that post on ad hoc basis till Appendix-B notification dated 21.7.1981 by which his services were regularised in the cadre of Deputy Director (N T) in the office of the second respondent.

3. While the applicant was working as Deputy Director, respondents 3,4 and 5 were appointed as Deputy Director directly on the recommendation of the UPSC with effect from 7.2.1976, 1.3.1977 and 22.9.1976. These appointments, according to the applicant, have been made when the applicant was continuing as Dy. Director from 12.12.1975 in a regular retirement vacancy which existed on that day. Had the department followed the procedure laid down by the Govt. of India in Appendix-G ^{for} convening Annual regular DPC meetings without any default and considered his case in relaxation of the rules, he would have been appointed as a regular Dy. Director in 1975 itself. He lost his seniority due to the default of the second respondent. In support of this contention the learned counsel, Shri G. S. Walia, placed strong reliance on the decisions of the Supreme Court reported in Narender Chadha and others Vs. Union of India and others, AIR 1986 SC 638 and Direct Recruits Class II Engineers Officers' Association Vs. State of Maharashtra and others, SLJ 1990 (2) 40.

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4. At the time of the arguments, the learned counsel Shri P. M. Pradhan appearing on behalf of the respondents 1 & 2, raised a preliminary objection and contended that the application as framed is barred by limitation because he is seeking a direction to modify the seniority list of Deputy Directors (NT) as on 1.6.1984 so as to place him at S1. No. 2 which is barred under the provisions of section 21 of the Administrative Tribunals Act, 1985. He made this submission without advertizing to the amendment of the application. The applicant by M.P. 290/87 amended the application by incorporating additional reliefs challenging Appendix-E proceedings dated 2.4.1986 disposing of his representation against the seniority of Dy. Directors as on 1.6.1984. Considering this amendment the application is well within time. Even though the applicant had not challenged the seniority list of Dy. Directors as on 31.12.1977 published on 5.5.1978, he filed representation ^{and by} Appendix C & D though belatedly, ^{and by} kept alive his grievances. They were disposed of as per Appendix-E giving rise a fresh cause of action to the applicant to approach this Tribunal. Hence, on the facts and circumstances of this case we are of the view that this application cannot be rejected on the ground of bar of limitation raised by the learned counsel for the respondents.

5. On the merits, the main argument advanced by the applicant is that he was promoted and posted as Deputy Director on 12.12.1975 on a clear vacancy which existed on account of the promotion of one Shri V. B. Varma on 12.11.1975 and he continued to

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(14)

hold the post on ad hoc basis uninterruptedly till the regularisation on 9th June, 1981. The vacancy held by him did not arise due to fortuitous circumstances.

6. This basic fact was denied by all the respondents. In fact they have asserted that the applicant was continued as Dy. Director on ad hoc basis upto 1981 in various vacancies which arose due to the deputation/promotion/leave/retirement, etc. They have also stated that he was even sent on deputation in order to avoid his reversion from the post of Dy. Director (NT). But the applicant denied these averments. He submitted as follows in M.P. 39/90:

"From the seniority list of 1977 it could be seen

(a) S.R.No.1 Shri S.P. Padmanabhan	vacated the post w.e.f. 29.11.71
(b) S.R.No.2 Shri D. N. Dikshit	-do-
(c) S.R. No.3 Shri C. Sridharan	vacated the post w.e.f. 19.7.75
(d) S.R.No.4 Shri R. K. Kulkarni	Officiating as Director (NT) from 1.8.75. On deputation in the NCCF from 12.11.75 (Ext. I) page 22 affidavit in reply by respondent-2
(e) S.R.No.5 Shri V. B. Verma	Officiating as Director (NT) from 12.11.75
(f) S.R.No.9,10 & 11 were not at all working in the grade as they have not joined the post." They have	

7. Even if there was clear vacancy existed for accommodating the applicant permanently as a Deputy Director from 12.12.75 to 9th June, 1981, the crucial question to be considered is whether the applicant was fully qualified for appointment as a regular Dy. Director satisfying the requirements of Appendix-F,

(B)

Recruitment Rules as per which 5 years service in the grade of Assistant Director Grade-I (NT)/Asstt.

Enforcement Officer Grade-I and a recommendation by the DPC are essential for consideration. Of course, there is provision for relaxation by the Central Government which will necessarily be exercised on exceptional circumstances.

8. As indicated above the contention advanced by the applicant is that the Government ought have exercised the power of relaxation and placed his case before the DPC in the year 1975-76 so that his case could have been considered by the DPC and he would have obtained regular appointment as Dy. Director before the regular appointment of respondents 3,4 and 5 on 7.2.1976, 1.3.1977 and 22.9.1976 respectively. Admittedly power of relaxation of the rule has not been exercised by the Government in favour of the applicant. According to respondents 1 & 2 there was also no clear vacancy of Dy. Director for convening of DPC after January, 1976 till 1980. In fact the applicant did not fulfil the minimum prescribed qualifying service before 5th November 1978 and as such he cannot complain the failure if any, in the matter of convening of the DPC.

9. The case of the applicant that there were regular vacancies was strongly denied by the respondents 1 & 2. They submitted that on 12.12.1975 there were 4 regular vacancies of Dy. Directors out of which two vacancies were to be filled in by direct recruitment and selection through UPSC and remaining two vacancies were to be filled in by promotion. There were four persons including the applicant who was juniormost among them and working on a purely ad hoc capacity. The

advertisement in respect of two vacancies meant for direct recruitment were issued on 12.6.1975 and 12.2.1976. Respondents 3 & 4 were selected and appointed in those direct recruitment vacancies. As regards the posts earmarked for promoees, though the proposals for convening the DPC meetings were made in November, 1975 it was actually met on 2nd January, 1976 which suggested a panel of three names of officers who were seniors to the applicant. Out of the three persons recommended M/s. B. N. Basu and V. G. Oak were promoted as Dy. Directors (NT) on regular basis w.e.f. February, 1976. In the mean time one of the regular incumbent was due to retire on 1st March, 1976 which was to go to a direct recruit. Accordingly, the fifth respondent was selected and appointed in that post. They also submitted that since from 1976 there were considerable organisational changes resulting in reduction of posts of various categories including that of Dy. Director (NT) there was no necessity to convene any DPC. In the next DPC which met on 9.6.1981, the applicant's name was recommended along with Sri K. V. Natarajan, an officer senior to the applicant for regular appointment as Dy. Director (NT). Accordingly, the applicant was regularly appointed as per Appendix-B. In the light of these facts we can only come to the conclusion that there was no regular existing vacancy to accommodate the applicant as Dy. Director (NT) in a regular capacity from 1975 as contended by him.

10. A further important aspect to be considered is that the applicant competed along with respondents 4 & 5 for regular selection through UPSC as Dy. Director, under the direct recruitment quota and failed. Thereafter,

he approached the Tribunal for getting seniority over them by raising the present claim of seniority as a candidate in the quota of promotees. A defeated rival candidate's claim and contention is to be rejected as lacking in bonafides especially when such candidate is not fully qualified for regular appointment in the quota reserved for promotees.

11. Now we come to the decisions ^{relied on by} ~~laid down~~ by the applicant. It is well known that Narender Chadha's case is only an authority for the proposition that the ~~quota~~ quota rule of seniority cannot be given effect to only if there is a break down of quota rule or a deviation from the same which leads to gross injustice. The applicant has no case that there has been a breakdown of the quota rule nor is there any deviation from the quota rule which caused injustice to him. In fact the applicant is occupying a post in the quota of promotees. The observations in this decision are really against the applicant. Their Lordships have observed that

"But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post."

12. The applicant is not a qualified person who can be appointed regularly under the prescribed rules as Deputy Director till June, 1981. Presumably faced with the difficulty, the applicant brought to our notice the following passage:

"It should be presumed that the excess appointment by promotion had been made in relaxation of the Rules since there was power to relax the Rules similar to the power under Rule 16 in the Rules with which we are concerned here."

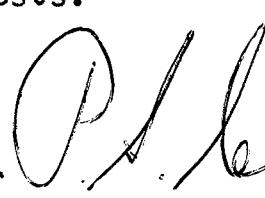
Relying on this passage he submitted that since there is power of relaxation in Appendix-F Rules, it should

be presumed that his ad hoc appointment was made in relaxation of the Rules. We see no force in this contention of the applicant. The facts in Narender Chadha's case are distinguishable. The applicants therein were not regularised for no fault of them for unduly long period of fifteen to twenty years even though they ^{were} ~~are~~ fully qualified for the same, and there was a breakdown of the quota rules. In the instant case the applicant was not qualified for regularisation from 1975 to 1978 and the Government have not in fact exercised the power of relaxation in favour of the applicant. The facts of the decision reported in SLJ 1990(2) 40 are also distinguishable on the same ground indicated above.

13. It is to be noted that the applicant is not even qualified for regular appointment as Deputy Director even at the time of his initial appointment to the post since he did not possess the requisite qualifying service. He was also not occupying a clear vacancy as stated by him. Under these circumstances, we have to accept the contention of the respondents that the applicant was not qualified for regular appointment and he has no claim of seniority over respondents 3 to 5.

14. In the result we hold that there is no merit in the Original Application. It is accordingly dismissed. There is no order as to costs.


(N. Dharmadan)
Judicial Member


(P. S. Chaudhuri)
Member (Administrative)

kmn

22-11-1990