

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

O.A.365/86

Shri N.G.B. Ankolekar,
C/o. Shri K.D. Naik,
Advocate High Court,
57F, 3rd Floor,
Bhupen Chambers,
Bombay - 400 023.

.. Applicant.

vs.

1. Union of India
through
The Secretary to the
Government of India,
Ministry of Textiles,
Udyog Bhavan,
New Delhi.
2. Development Commissioner
for Handicrafts,
Office of the Development
Commissioner (Handicrafts),
West Block No.7,
Ramkrishna Puram,
New Delhi - 110 066.
3. Director (Regional)
Office of the Development
Commissioner (Handicrafts)
Western Region,
294 - P,
Nariman Street, Fort,
BOMBAY - 400 001.

.. Respondents.

Coram: Hon'ble Member(A) Shri P. Srinivasan
Hon'ble Member(J) Shri M.B. Mujumdar.

Appearances :

1. Shri K.D. Naik
Advocate for the
applicant.
2. Shri S.R. Atre,
Advocate for the
respondents.

ORAL JUDGMENT

Date : 17/6/1988.

{ PER: P. Srinivasan, Member(A) }

The applicant joined service as an Investigator in the Office of the All India Handicrafts Board on 1-12-1961. He holds a Degree in Economics as well as a B. Com degree. He was confirmed as Investigator with effect from 11-11-1970. He was promoted to the next higher post of Handicrafts Promotion Officer (HPO) on adhoc basis with effect from 17-2-1973 and reverted

P. Srinivasan

from that post on 9-1-1976 because there was no post available for him at Bombay from that date. He was again promoted as Inspecting Officer, an ex-cadre post carrying the same scale as HPO on 12-5-1978. He was again promoted as HPO on 19-4-1979 on adhoc basis and was regularised in that post with effect from 17-9-1979. He was promoted as Assistant Director (AD) on adhoc basis in 25-2-1986, having once before been promoted on the same basis to that post and reverted to his post as HPO.

2. A certain Shri H.P. Mishra was taken on deputation in the office of the All India Handicrafts Board (now renamed as Development Commissioner for Handicrafts) in 1969. At that time, Shri Mishra was working under the Government of Orissa. Mishra was thereafter regularised as HPO on 17-9-1979 i.e. on the same date as the applicant and he was given a lower position of seniority. However, Mishra was promoted as Assistant Director (AD) on adhoc basis in 1972 and regularised in that post with effect from 1-1-1987. Thus though Shri Mishra was shown as junior to the applicant in the grade of HPO and was regularised in that post with effect from the same date as the applicant, he was given adhoc and regular promotion to the post of Assistant Director before the applicant who is even today an adhoc Assistant Director.

3. A certain G.K. Asthana who also joined as Investigator in the same department on 10-9-1971 and was therefore junior to the applicant in that grade was promoted to the post of HPO on regular basis with effect from 30-10-1970. As we have already mentioned, the applicant was regularly promoted to that post with effect from 17-9-1979. Thus Asthana became senior to the applicant in the grade of HPO and as a result he was promoted as Assistant Director in June, 1980. He has been regularised in that post from 31st May, 1984.

4. 23 direct recruits were selected by the Union Public Service Commission for the post of HPO in June, 1980. 18 of them were shown senior to the applicant in the seniority of HPOs as on 31-5-1984 (Ex.'E'). It may here be mentioned that in the same seniority list, Asthana also appears above the applicant while Mishra is placed below the applicant. The prayer in this application is that the seniority list at Ex.'E' should be quashed or modified

P. S. - 62

to give the applicant his due and proper seniority in accordance with the rules and that he be given all consequential benefits.

5. As we have earlier indicated 18 direct recruits of June, 1980 to the post of HPO have been shown senior to the applicant in the impugned seniority list at annexure 'E'. Shri K.D. Naik, learned advocate for the applicant submits that these direct recruits joined in 1980 as HPOs while the applicant was promoted as HPO on 19-4-1970. The said direct recruits could not be treated as senior to the applicant. On the principle of continuous officiation in the post, Shri Naik contended, the applicant should have been assigned a place in the seniority list above the 18 direct recruits. He relied on the decision^M of the Supreme Court in G.S. Lamba's case (AIR 1985 SC 1019), A. Janardhana's case (AIR 1983 SC 769) and Narendra Chadha's case (AIR 1986 638)

6. Shri S.R. Atre, learned advocate for the respondents, submits that recruitment to the post of HPO is from two sources, viz., by promotion and by direct recruit in the ratio of 1:1. Seniority is determined by applying the principle of rotation viz. one promotee followed by one direct recruit followed by one promotee and so on. The applicant was promoted in the quota available for promotees. The direct recruits of June, 1980 appointed in their own quota had to be adjusted in the seniority list by rotation of vacancies, alternating positions of seniority with promotees. In this process 18 direct recruits become senior to the applicant and that was perfectly legal under the rules. In the cases decided by the Supreme Court relied on by the applicant, there was a long delay of more than 10 to 15 years in filling up the vacancies of direct recruits while promotees continued to officiate in the promoted posts. It was in those circumstances that the Supreme Court held that it was shocking to the Conscience that a direct recruit who came 15 years later should go above a promotee who had been working in the same post for long years. In this case, the quota for direct recruitment was filled up within a year of promotion as will be seen from the fact that the direct recruits were taken in June, 1980 while the applicant, a promotee, was appointed in April, 1979. Some little delay in filling up the vacancies allotted to one source of recruitment is inevitable and it cannot be held that the quota rule of recruitment had collapsed in this case. That being so the "rota" rule of seniority was rightly applied and the 18 direct recruits of June 1980 rightly placed above the applicant.

P. S. - 15

7. Having considered the rival contentions carefully, we are satisfied that the applicant's grievance vis-a-vis the 18 direct recruits of 1980 has no merit. In Aiyar vs. Balasubramaniam AIR 1980 SC (452) the Supreme Court held that a gap of 3 years between recruitment from two sources ^{was} ~~were~~ reasonable. In Gopal Bhimappa's case (AIR 1987 SC 2359) decided more recently, the Court held that no ^{M such} ~~fixed~~ time limit could be fixed. In any case, direct recruitment has been made in this case within a year of the promotion of the applicant, and therefore, the quota rule of recruitment was duly followed. Therefore the application of the "rota" rule of seniority was perfectly justified in this case. We, therefore, reject the claim of the applicant vis-a-vis 18 direct recruits of June, 1980.

8. As we have already mentioned H.P. Mishra has shown as junior to the applicant in the cadre of HPO in the impugned seniority list at annexure 'E'. Therefore so far as this impugned seniority list is concerned, the applicant can have no grievance against Mishra and on this ground itself, the challenge to the seniority list so far it relates to Mishra deserves to be rejected. Shri Naik however, submitted that Mishra was promoted as Assistant Director in 1972 while the applicant ^{M who} ~~was~~ senior to him was promoted much later and contended that this Tribunal should direct the respondents to give the applicant retrospective promotion to that post from 1972. The respondents have stated in their reply that the feeder cadre for promotion to the post of Assistant Director was that of HPO. In 1972 Mishra was an HPO while the applicant was not. Therefore in 1972, the applicant was not eligible for promotion and was not considered for promotion, even on adhoc basis. We think this is an adequate answer to the contention of Shri Naik. If the applicant was not eligible for promotion in 1972, we cannot direct that he should be considered for the post in 1972. It is too late for us to consider now whether Mishra was rightly appointed as HPO in 1972 and we do not propose to go into it. Therefore, the grievance of the applicant against the promotion of Mishra in 1972 is rejected.

9. Shri Naik again submitted that Mishra was regularised as AD with effect from 1-1-1987, while the applicant has not been regularised till date, even though he was senior to Mishra. Here again, the respondents have produced before us the record of the Departmental Promotion Committee which met on 19-9-1986 for regular promotion to the post of Assistant Director. On

P. S. - the


perusal of the minutes we find that Mishra was graded by the DPC as "Very Good", while the applicant was graded "Good". This being so, the promotion of Mishra on regular basis cannot be challenged. As we have already stated the prayer in the application does not cover Mishra's regular promotion as Assistant Director from 1-1-1987. Since this point was raised during the course of arguments before us we have heard it and we reject the same for the reasons specified above.


10. The next contention of Shri Naik was that Shri G.K. Asthana who joined as Investigator in 1971, i.e. 10 years after the applicant, was promoted as HPO on 30-10-1978 before the applicant who was promoted on regular basis to that post only on 17-9-1979. In this manner, Asthana had become senior to the applicant. In the impugned seniority list, he appears at Sr. No. 34 while the applicant appears at Sr. No. 52. The promotion of Asthana on regular basis before the applicant giving him higher seniority in the list of HPO was illegal.

11. Here again, Shri Atre for the respondents submitted that when Asthana was promoted in 1978 the rules of recruitment to the post of HPO, whether by direct recruitment or by promotion, prescribed a Master's Degree as a condition of eligibility or a basic degree in Economics with a two year Diploma in Statistics. The applicant did not possess this essential qualification while Asthana did and that is why Asthana was promoted. In 1979 the educational qualifications were relaxed to a plain Degree in Economics and there upon the applicant was promoted on regular basis as HPO with effect from 17-9-1979 by a subsequent DPC. We find that this is ^{H a} satisfactory answer to the applicant's grievance. We cannot question the right of the respondents to prescribe educational qualifications for various posts and to change them from time to time so long as it is done by rules under Article 309. Thus Asthana, being eligible under the rules, was rightly promoted in 1978 and the applicant not being eligible was rightly not promoted. Therefore we are unable to ^{or sustain} sustain the applicant's grievance against the higher seniority accorded to Asthana in the impugned seniority list at Annexure 'E'.

P. S. - W

12. In the result all the contentions of the applicant having failed, this application is dismissed. However, in the circumstances of the case parties to bear their own costs.


(P. SRINIVASAN)
MEMBER(A)


(N.S. MUJUMDAR)
MEMBER(J)