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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 10/92

Date of Decision: 27. -8-97

T. S. Sivaprasakam —————— Applicant.

Mr. A. L. Kasture —————— Advocate for
Applicant.

Versus

U.O.I. & Ors. —————— Respondent(s)

Mr. B. Ranganathan
for Mr. J.P. Deodhar —————— Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B.S. Hegde, Member (J)

Hon'ble Shri. M.P. Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


MEMBER (J)

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESOT ROAD, MUMBAI 400001

O.A. No. 10/1992

DATED : THIS 27/8 DAY OF AUGUST, 1997

CORAM : Hon'ble Shri B S Hegde, Member(J)
Hon'ble Shri M R Kolhatkar, Member(A)

T.E. Sivaprakasam
Zonal Director
Fishery Survey of India
Botawala Chambers,
Sir P.M. Road,
Mumbai 400001
R/o. B-26 Hyderabad Estate
Napeansea Road
Mumbai 400036
(By Adv. Mr. A L Kasture)

..Applicant

V/s.

1. Union of India
Secretary to Ministry of
Food Processing, Industries,
Panchsheel Bhavan,
Khelgaon Marg
New Delhi 110049
2. Secretary to Ministry of
Personnel, Grievance, Pension;
Department of Personnel & Training
New Delhi 110001
3. Chairman
Union Public Service Commission
Dholpur House, Shahajahan Road
New Delhi 110011
4. Director General
Fishery Survey of India
Mumbai 400001
(By Adv. Mr. B. Ranganathan
for Mr. J.P. Deodhar, Counsel)

..Respondents

ORDER
[Per: B S Hegde, Member(J)]

1. In this O.A. the applicant prays for a direction to the respondents to consider the applicant for the promotional post of Deputy Director General (Fisheries) by holding Special D.P.C. for the vacancy that arose in

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the year 1988 and prepare the select list yearwise and grant all consequential benefits such as arrears of pay and allowances from 1988 onwards.

2. Heard Mr. A.L.Kasture, learned counsel for the applicant and Mr. B.Ranganathan for Mr. J.P. Deodhar, learned counsel for the respondents.

3. At the time of filing the O.A. the applicant was holding a Group A cadre post and was working as Zonal Director, Fishery Survey of India on regular basis with effect from 23.12.85 in the pay scale Rs.3750-5000. The next promotional post for the applicant was Deputy Director General (Fisheries) in the scale of Rs.4100-5300 and there is only one post of Deputy Director General (Fisheries). The contention of the learned Counsel for the applicant is that the applicant is the seniormost Zonal Director and is the only candidate eligible for promotion to the post of Deputy Director General as on 23.12.1988. Further as per Recruitment Rules for selection to the post of Deputy Director General (Fisheries) is required to be filled up by way of promotion of Zonal Director with three years experience, failing which by transfer on deputation and failing both by way of Direct Recruitment. Therefore, priority should have been given to the applicant as per the Recruitment Rules for promotion if persons eligible are to be promoted. The applicant fulfills the eligibility

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conditions in all respects and he should have been promoted with effect from the date when the vacancy arose in 1988. Since the applicant was not promoted he made a representation in 1990. No reply was received and hence he has filed this O.A. on 9.11.1991.

4. Though there is no impugned order, the applicant is only challenging the inaction of the respondents in not promoting him to the the post of Deputy Director General (Fisheries). The applicant retired from service in 1994. His contention is that no DPC has been convened from 1988 till 1991 as a result of which his promotion chance has been diluted thereby he could not be promoted further. Applicant states that since he has not received any adverse remarks during his career he ought to have been promoted to the post of Deputy Director General (Fisheries) as he was the senior most.

5. The respondents in their written statement have taken a stand that though the cause of action arose in 1988 for the applicant, he has made a representation in the year 1990 and filed this O.A. only in 1991 and hence it is a belated Application. Further it is contended that there is no inaction on the part of the respondent. It is true that the vacancy of Deputy Director General (Fisheries) [DDG (F)] occurred in October 1988 when the applicant was not eligible to be considered for promotion to the post.

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He became eligible only on 22.12.88. The post of DDG (F) is a selection post and has to be filled on the basis of merit-cum-seniority from amongst the Zonal Directors having minimum three years of regular service. The Ministry vide its letter dated 8.6.90 addressed to the Director General, Fishery Survey of India, called for proposal for promotion to the post of Deputy Director General (Fisheries) by considering the eligible officers from the feeder post of Zonal Director for being submitted to the D.P.C. for obtaining its recommendations. Further it is submitted that the probation period of the applicant has been cleared only on 31.5.1990 though the effect was given from 22.12.1987. Therefore it is contended that the applicant had not cleared the probation till May 1990 therefore the question of holding any DPC for considering the applicant in the DPC does not arise because he has not cleared the probation. Further it is submitted that due to shifting of the department of Fishery Survey of India from the control of Ministry of Agriculture to the Ministry of Food Processing Industries and pursuant to the OM of Department of Personnel and Training dated 10.3.89/10.4.89 which introduced the Bench Mark for those officials who are considered Class A posts. Accordingly the DPC was convened in the year 1992. Only the applicant was eligible and he was considered, but in view of DOPT circular dated 10.4.89 he could not be considered for want of Bench Mark. As stated earlier the applicant's probation declared only in 1990 with

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retrospective effect from 22.12.87. Had the DPC met immediately on occurrence of the vacancy the applicant would not have been eligible for consideration as he has not completed three years regular service. When the applicant's probation came to be declared the OM dated 10.3.89 was made effective from 1.4.89 and subsequently clarified by the DOPT vide OM dated 20.6.89 that the revised procedure as laid down in the OM dated 10.3.89 was to be followed by all the DPCs held after 1.4.89 irrespective of the date of the occurrence of vacancy.

6. In the light of the above, the question to be seen here is since the vacancy arose in October, 1988 the applicant became eligible in December, 1988 at point of time the D.P.C. should have been held. As stated earlier the applicant's probation was cleared in the year 1990. Though he was eligible to be considered since he has completed three years due to non-declaration of probation he could not be considered for further promotion. The delay in convening the DPC has been sufficiently explained. The applicant himself has made a representation only in the year 1990 though he was aware of the fact he is due for promotion in the year 1988. Immediately thereafter the respondents have taken steps to fill up the post and accordingly in our view there is no delay on the part of the respondents to fill up the post of DDG(F). Even in the DPC of 1989, which is the

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earliest point of time, the DOPT circular dated 10.3.89 would come into play. It is an admitted fact that there were no eligible candidates available when the vacancy arose.

7. Reliance placed by the applicant in Y.V. RANGAIAH AND OTHERS Vs. J. SREENIVASA RAO & OTHERS, 1983 SCC(L&S) 382 does not in any way help the applicant. In RANGAIAH's case the Apex Court has held that vacancies in the promotional posts occurring prior to the amendment have to be filled up in accordance with the unamended rules. This decision has been followed by a Division Bench of the Supreme Court in P.MAHENDRAN & ORS. Vs. STATE OF KARNATAKA & ORS., AIR 1990 SC 405, has held that if a candidate applies for a post in response to an advertisement in accordance with the recruitment rules, he acquires a right to be considered for promotion in accordance with the unamended rules unless the amended rule is retrospective in nature. That is not the scenario in this case. Therefore the plea that the Recruitment Rules prior to 1989 should be applicable to the applicant's case does not arise because he has not cleared the probation period on the date he was eligible to be considered for promotion. Therefore, in our view the case law cited by the applicant is not applicable to the facts of this case.

8. The further in support of his contention that the promotional advancement has been curtailed by the

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respondents, he relied on the decision of the COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER Vs. K.G.S. BHATT, AIR 1989 SC 1973. However, that decision is not applicable in the present case because promotional avenue is available in the applicant's department.

9. We have gone through the DPC proceedings held on 30.3.92. On perusal of the DPC proceedings we find that the applicant is graded only "GOOD". The Bench Mark required for filling up the Group A post as per revised procedure for promotion is "VERY GOOD" failing which he would not be promoted. There is nothing wrong in the DPC proceedings. The applicant contended that he should have been promoted to the post of DDG(F) as he was the seniormost. Promotion is not a matter of right. It is a well settled principle that whenever a promotion is made by Selection, it is not merely on seniority alone but is based on the the Bench Mark prescribed as well for the post. As is already stated the applicant was duly considered for promotion and was found that he did not meet the Bench Mark prescribed by the DOPT.

10. In the result, we do not find any merit in the O.A. and the same is dismissed with no order as to costs.

MR Kolhatkar
(M.R. Kolhatkar)

Member(A)

B.S. Hegde
(B.S. Hegde)
Member(J)