

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1290/93

26.4.2000
Date of Decision :

K.N.R.Pillai _____ Applicant.

Shri G.K.Masand _____ Advocate for the
Applicant.

VERSUS

Union of India & Others, _____ Respondents.

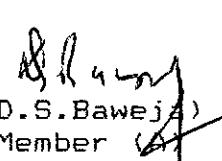
Shri R.K.Shetty _____ Advocate for the
Respondents.

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library ✗


(D.S.Baweja)
Member

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1290/93

Dated this the 26th day of April 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

K.N.R.Pillai,
Asstt. General Manager,
Canteen Stores Department,
"Adelphi" 119, M.K.Road,
Bombay-400 020.

...Applicant

By Advocate Shri G.K.Masand

V/S.

1. Union of India
through the Secretary,
Ministry of Defence,
Raksa Mantralaya,
New Delhi.

2. General Manager,
Canteen Stores Department,
Ministry of Defence,
"Adelphi", M.K.Road,
Bombay.

3. Dy.General Manager (P&A),
Canteen Stores Department,
Ministry of Defence,
"Adelphi", 119 M.K.Road,
Bombay.

...Respondents

By Advocate Shri R.K.Shetty

..2/-

(V)

O R D E R

(Per : Shri D.S.Baweja, Member (A))

Through this OA, the applicant has sought quashing of the order dated 4.11.1993 as per which his request for treating his promotion as Assistant General Manager regular for the purpose of seniority and promotion to the next grade from the date of initial promotion from 10.1.1987. *has been rejected*

2. The applicant was appointed as Manager Grade-I, a Group 'A' post on 2.12.1982 in Canteen Stores Department, Ministry of Defence. He was promoted as Assistant General Manager from 10.1.1987 as per order dated 15.12.1986 against a clear and regular vacancy. Thereafter, the applicant has been continuing as Assistant General Manager with technical breaks of one or two days every six months as per the practice followed by the Department for adhoc promotion. He was regularly promoted on 23.9.1993. As per the Recruitment Rules, Manager Grade-I is due for promotion as Assistant General Manager after completion of 5 years of service. The applicant was thus due for promotion in 1987. However, inspite of the clear vacancies, no Departmental Promotion Committee (DPC) meeting was held. DPC meeting was held only in 1993, when the applicant was promoted regularly from 23.9.1993 and not from 1.10.1987 taking into consideration his working continuously on adhoc basis for the purpose of seniority.



The applicant represented against the same on 2.11.1993. This was replied by letter dated 4.11.1993 rejecting the request of the applicant. Feeling aggrieved by the same, the present OA. has been filed on 3.12.1993.

2. The applicant has sought the following reliefs :-

- (a) To quash the impugned letter dated 4.11.1993 and to hold and declare that the applicant is regularly promoted as Assistant general Manager from 10.1.1987 when he was first promoted on adhoc basis.
- (b) As an alternative, to declare that the applicant is regularly promoted from 20.12.1987 when he become eligible for promotion to the post of Assistant General Manager after completion of 5 years of the service on the feeder grade.
- (c) To grant consequential benefits arising thereof on regular promotion from 10.1.1987 or 20.12.1987 including seniority, further promotion, pay increments, fixation of pay- and arrears of difference of pay.

(d) To consider the applicant for promotion to the post of Deputy General Manager counting his service and seniority from 10.1.1987 or 20.12.1987 as Assistant General Manager.

(3) The applicant has based his case on the following grounds :-

(a) The applicant was promoted on 10.1.1987 on adhoc basis against a clear & regular vacancy of the post of Assistant general Manager. Since this promotion was followed by regular promotion in 1993, the adhoc service has to be counted for the purpose of seniority.

(b) The respondents were squarely responsible for not holding any DPC right from 1982 onwards for the post of Deputy General Manager and since 1987 for the post of Assistant general Manager inspite of the clear vacancies in violation of the extant rules. In action on the part of the Administration cannot work to the disadvantage of the applicant.

(c) Technical breaks of one or two days every six months were to circumvent the law concerning *Counting of* adhoc promotion period followed by regular promotion for counting seniority.

4. The respondents have filed written statement. The respondents contend that the seniority of an adhoc appointee is to be reckoned from the date of regular promotion and not from the date of adhoc promotion as per the extant rules and therefore the present OA. is devoid of merit. Respondents also submit that OA. is barred by limitation as the seniority is being claimed from 10.1.1987 by filing the present OA. in December, 1993. The respondents have explained the reasons for delay in holding DPC. It is averred that in 1982, the posts of Deputy General Manager (DGM) and Regional Manager (RM) were merged. However, the Recruitment Rules were finalised in 1988 only. Therefore, promotions to the post of DGM/RM were done on adhoc basis. After finalisation of the Recruitment Rules, DPC was held by UPSC on 4.12.1989. In the meantime, one officer named Shri Dharam Pal Singh was allowed seniority counting his past service and as a result, revised proposal was sent to UPSC. However, the seniority allowed to Dharam Pal Singh was challenged in OA.NO.103/92 before the Gauhati Bench and in OA.NO. 2462/92 before the Principal Bench. Against both these OAs., stay was granted against making any promotions to the post of DGM as per the revised seniority list. Shri Dharampal Singh also filed OA.No.886/92 before this Bench. Both the OAs. 2462/92 & 103/92 were transferred to this Bench and were heard along with OA.No.886/92 and disposed of by the order dated 23.8.1993. Thereafter, DPC has been held and as per letter dated 16.2.1994 panel of 5 officers was notified for promotion from AGM to DGM.

In view of promotion to the post of DGM being on adhoc basis in view of the non finalisation of the Recruitment Rules and pending OAs., the resultant vacancies in AGM cadre were also filled up on adhoc basis. The respondents submit that the initial promotion order and the subsequent promotion orders clearly stipulated that the promotion is on adhoc basis. In the back ground of the facts averred in the written statement, the respondents contend that the applicant has no case and OA. deserves to be dismissed.

5. The applicant has not filed any rejoinder reply.

6. We have heard the arguments of Shri G.K.Masand and Shri R.K.Shetty, the learned counsel for the applicant and respondents respectively.

7. The respondents' ground of OA. being barred by limitation is not tenable. The cause of action for counting period of adhoc promotion for seniority arose when the applicant was regularised in 1993. Therefore, the present OA. filed in December,1994 after rejection of his representation on 4.11.1993 is not hit by the limitation.

8. It is undisputed fact that the applicant was promoted from 10.1.1987 as AGM as per order dated 15.12.1986 on adhoc basis initially for six months and has been continued thereafter with technical breaks of few days till he was regularised in 1993

as per order dated 20.10.1993. It is the claim of the applicant that he is entitled for counting his adhoc service for seniority from 10.1.1987 on account of (a) the promotion from 10.1.1987 was against a regular vacancy (b) breaks of a few days were to deprive the applicant the benefit of adhoc service inspite of the fact that regular vacancy was available and (c) the applicant was eligible for regular promotion as per the Recruitment Rules. The respondents on the other hand have contested the claim of the applicant stating that there was no clear vacancy of AGM due to adhoc promotions as DGM and the applicant has been regularly promoted on the availability of the regular vacancies. We have carefully considered the rival submissions and the cited judgements/orders. The applicant has submitted that as per the Recruitment Rules, Manager Grade I is entitled for promotion as AGM after completion of 5 years of service and the applicant completes five years on 10.12.1987. Thus the applicant was not due for promotion on 1.1.1987. The applicant submits that he was promoted against the clear vacancy of AGM as ~~many~~^{many} as 13 juniors to the applicant were promoted as AGM on adhoc basis after promotion of the applicant. The applicant to support this submission has relied upon the Annexure 'C' showing the occurrence of vacancies. On going through the Annexure 'C', we note that same furnishes the details of the vacancies arising in the cadre of DGM since 1982. The details in Annexure 'C' are not specifically refuted by the respondents. As brought out earlier in para 4, no DPC was held for filling the post of DGM since 1982 and all promotions to DGM Grade were on adhoc basis. In such a

situation, it is not clear as to how the applicant concludes that the resultant vacancies of AGM on account of promotion to DGM grade were on regular basis and applicant from 1.1.1987 was promoted against a regular vacancy. The applicant has not brought out any details of the vacancies arising in AGM grade on account of retirement with ⁱⁿ link up with the promotions to DGM. Therefore, in fact, Annexure 'C' controverts the stand of the applicant that he was promoted against a clear vacancy in 1987.

9. Since the respondents have submitted in the written statement that DPC for regular promotion to the post of AGM was held on 23.9.1993 and for DGM on 16.2.1994, we directed the respondents to make available the proceedings of these DPCs to ascertain the vacancy position. The same have been made available by the respondents. On going through the DPC proceedings dated 16.2.1994 for promotion to the post of DGM, it is seen that the same was held for 6 vacancies (1982, 1983, 1984 & 1987 - one each and 2 for 1990). The DPC held for the post of AGM on 23.9.1993 was for 5 vacancies in the AGM cadre (1991 - 2, 1992 - 1 and 1993 -2) due to retirement in the cadre of AGM and not the resultant on account of promotion to DGM grade. These details of vacancies emerging from the DPC proceedings substantiate the stand of the respondents. There was no clear vacancy in the cadre of AGM when the applicant was promoted on adhoc basis from 10.1.1987. The claim of the applicant therefore that he was promoted against clear vacancy is not tenable. Thus the merits of the reliefs prayed for by the applicant are to be seen in the light of this finding.

10. At this stage, we refer to the judgement of Gauhawti Bench in OA.NO.23/1994 in the case of S.V.Devdhar vs. Union of India decided as per order dated 5.6.1998 and relied upon by the respondents. The respondents have stated that the controversy in the present OA. is squarely covered by this order. We have carefully gone through this order. It is noted that the applicant in this case initially promoted on adhoc basis on 26.6.1987 is at serial No. 2 in the panel notified as per letter dated 29.10.1993 wherein the applicant is at Serial No. 1. Facts of the case, reliefs prayed for and the question of law raised are exactly the same as in the present OA. The Bench in the order dated 5.6.1998 has recorded findings that the post against which the applicant was initially promoted was a resultant vacancy due to adhoc promotion of AGM to DGM grade due to the circumstances explained by the respondents leading to inability to hold DPC for regular promotions to DGM grade. Promotion to AGM grade was also held without holding any DPC as per the Recruitment Rules. The Bench based on these findings concluded that the period of adhoc promotion till regularisation from 23.9.1993 cannot be counted for purpose of seniority. IN the present case, in para 9 above, we have recorded our findings that initial promotion of the applicant from 10.1.1987 was on adhoc basis and no regular vacancy was available at that time and thereafter the vacancy had arisen to adhoc promotion to DGM. Therefore, we are in respectful agreement with what is held in the order dated 5.6.1998 in OA.NO.23/94 and the ratio of this order applies on all fours to the present case.

11. The counsel of the applicant relied heavily on the order of Ahmedabad Bench in OA.NO.68/1987 decided as per order dated 5.4.1989 in the case of R.K. Puri arguing that the applicant's case is covered by the ratio of what is held in this order. On going through the order dated 5.4.1989, we find that the facts and circumstances obtainable in OA.No.68/1987 are distinguishable from the present OA. In this OA., the applicant was selected as AGM by the DPC held on 9.12.1982 and was placed on the panel for regular promotion notified on 28.1.1983. He was also promoted on officiating basis as per order dated 18.7.1983. However, after this, through another order it was laid down that the officiating promotion would cease after 6 months. The applicant was again promoted on adhoc basis after a break of few days and thereafter continued on adhoc basis with breaks of a few days after every six months. The Bench while noting that the applicant was found suitable by the regular DPC and the fact that after being promoted initially on officiating basis was continued for a long period, was entitled to be regularised against the vacancies arising subsequently after 8.8.1983. This is not the situation in the present case as the applicant was not subjected to selection by DPC while being promoted from 10.1.1987 on adhoc basis. Therefore, the ratio of what is held in R.K.Puri's case does not apply to the case of the applicant.

12. The applicant has also sought the support of Hon'ble Supreme Court's judgement in the case of I.K.Sukheja & Ors. and

Union of India & Ors., (1997) 6 SCC 106. After going through this judgement, we are of the view that same does not come to the rescue of the applicant on the facts and the circumstnaces of the case. In this case, while holding that the findings of the Tribunal were erroneous, their Lordships have observed that the appellants' promotions were not contrary to any statutory recruitment rules. They were duly considered by the DPC and then promotions were made according to the placement in merit list and not according to the seniority. The promotions were made against the regular vacancies. The promotions inspite of these facts were made adhoc and on temporary basis because the draft rules had not been finalised. However, Hon'ble Supreme Court held that promotion of the appellants in view of the above facts cannot be accepted to by way of stop gap arrangement. The appellants are therefore entitled to the benefit of the period of officiating service referring to the proposition 'B' in the judgement of Direct Recruit Class II Engineering Officers, 1990 SCC (L&S) 339. The situation in the present case is entirely different. No DPC was held before adhoc promotion was done. There was no regular vacancy. Adhoc promotions were made as per seniority and not on selection basis as is clear from the minutes of DPC meeting held on 23.9.1993 as two of the seniors of the applicant though promoted on adhoc basis were not found 'fit'. With these facts of the present case, what is held in the cited judgement does not apply to the case of the applicant.

13. In the result of the above deliberations, we are not able to find merit in the OA. and the same is dismissed accordingly. No order as to costs.

S.L.Jain
(S.L.JAIN)
MEMBER (J)

D.S.Baweja
(D.S.BAWEJA)
MEMBER (A)

mrj.