

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.561/94.

Friday, this the 14th day of January, 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member (A).

H.R.Sawant,
C/o. C.B.Kale,
Shree Niwas,
Kardal Saphale,
Post Umbarpada,
Tal - Palghar District,
Thane - 401 102.
(By Advocate Mr.C.B.Kale)

...Applicant.

Vs.

1. The Assistant Educational
Adviser (Tech.),
Government of India,
Ministry of Human Resource Development,
(Department of Education)
Western Regional Office,
Industrial Assurance Building,
2nd Floor, Churchgate,
Bombay - 400 020.

2. The Secretary to the Govt. of India,
Ministry of Human Resource Development,
(Department of Education),
Shastri Bhavan,
Dr.R.P.Road,
New Delhi - 110 001.
(By Advocate Mr.R.K.Shetty)

...Respondents.

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application in which the applicant is seeking a direction to respondents to promote him as UDC. The respondents have filed reply. We have heard Mr.C.B.Kale, the learned advocate for the applicant and Mr.R.K.Shetty, the learned counsel for the Respondents.

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2. The applicant was working as an LDC in the office of the first respondent. he was due for promotion as an UDC. Ignoring his claim, his junior Mr.D.R.Bhagat was posted as UDC. The applicant's grievance is that even for ad-hoc promotion, the applicant should have been preferred, he being senior to Mr.Bhagat. Then it is pleaded that the applicant is also entitled to be considered by a regular DPC for promotion on regular basis. Therefore, the applicant has filed this OA for seeking direction to respondents to promote him to the post of UDC on ad-hoc basis from the date Mr.D.R.Bhagat was promoted as UDC on ad-hoc basis and for a further direction to the respondents to hold a DPC and promote him on regular basis.

3. Respondents in their reply have taken the stand that though the applicant was senior to Mr.Bhagat, the latter was preferred for ad-hoc promotion for a short period in administrative exigencies which they have explained and which we will consider later. It is also stated that Mr.D.R.Bhagat's ad-hoc promotion was for a period of 10 months from 1.2.1993 to 30.11.1993 and he came to be reverted. That the applicant will be considered for promotion in the usual course.

4. At the time of arguments, it is now admitted that applicant has since been promoted during the pendency of the OA as UDC on regular basis w.e.f. 1.5.1995. The learned counsel for the applicant contended that when the junior Mr.Bhagat was promoted in February, 1993, the applicant should have been promoted, he being senior to Mr.Bhagat and therefore applicant should get either actual or notional benefit of promotion from the date of Mr.Bhagat's ad-hoc promotion. This has been controverted by the learned counsel for the respondents.

5. From the pleadings and the materials on record we find that Mr.Bhagat was promoted on 1.2.1993 due to administrative exigency viz. that Mr.Bhagat was well versed in handling computers and some urgent statistical work was to be complied with and therefore he was given ad-hoc promotion. It is also stated that as soon as that work was over Mr.Bhagat was reverted to the post of LDC. At any rate when the present application was filed in April, 1994 Mr.Bhagat was no longer holding the promotional post and he was LDC like the applicant.

Therefore, this is a case of Mr.Bhagat's ad-hoc promotion as a stop-gap arrangement in administrative exigency and therefore no right accrues to the applicant to seek a direction to the respondents to also promote him on ad-hoc basis for the same period. The ad-hoc promotion will not give any right, therefore the question of now considering the claim of applicant for ad-hoc promotion in 1993 will not arise at all. At least, if the ad-hoc promotion had been continued indefinitely, then probably the applicant would have a better claim to say that he should also get ad-hoc promotion. Admittedly, Mr.Bhagat had been reverted about few months prior to the date of filing of the OA. Therefore, the applicant's prayer for ad-hoc promotion during that period from February to November, 1993 cannot be granted.

6. As far as giving a direction to the respondents to fill up the vacancy by holding a regular DPC and then promote the applicant on regular basis is concerned, there is no such right conferred on any government official to seek a command to the Government to promote him. The learned counsel for the applicant

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referred to Swamy's Book on Seniority and Promotion and pointed out how the Government has framed rules for doing promotions by holding DPC meetings frequently and regularly. He also commented that in case it has not been complied with, the concerned concerned officer is responsible for inaction. It may be, that according to rules DPC will have to be held regularly and in advance before the vacancy arises. If, by chance that is not done either due to administrative reasons or inaction on the part of the competent authority, it does not give any right to the officials to seek promotion from the date the vacancy arose. The rules nowhere provides that if there is delay in holding the DPC then the official should be given retrospective promotion with all benefits from the date of vacancy. On the other hand, the Supreme Court has clearly held that no Court or Tribunal can give a direction to the Government to fill up a vacant post vide Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor & Ors. etc. (1999 (2) SLJ 287). Therefore, the applicant cannot seek a direction to respondents to hold DPC and promote him against the vacant post.

Any how, the whole exercise is academic, because within few months after filing of the OA, a DPC was held and applicant has been regularly promoted as UDC w.e.f. 1.5.1995. Hence, there is no question of granting any retrospective benefit from the date when the vacancy arose. Since there is no such provision in the Rules, no relief can be given to the applicant at this stage.

7. In the result, the application fails and is hereby dismissed particularly in view of the applicant's promotion after filing of OA. No order as to costs.


(D.S. BAWALI)
MEMEBR(A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN