

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO: 596/1997

DATE OF DECISION: 16/10/2001

V. K. Dikshit

Applicant

Shri R. C. Kotiankar

Advocate for  
Applicant.

Versus

UOI and ors.

Respondents.  
Advocate for  
Respondents.

Shri V. S. Masurkar

Coram:

Hon'ble Smt. Lakshmi Swaminathan, VC (J).  
Hon'ble Smt. Shanta Shetty, M(A).

1. To be referred to the Reporter or not?  Yes
2. Whether it needs to be circulated to other Benches of the Tribunal?  No
3. Library.  No

abp

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
VC (J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

O.A.596/1997

Mumbai this the 16th day of October, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

Hon'ble Smt. Shanta Shastry, Member(A).

V.K. Dikshit,  
Wildlife Inspector,  
Wildlife Regional Office,  
Ministry of Environment and  
Forests,  
11, Air Cargo Complex, Sahar,  
Mumbai-400 099.

... Applicant.

(By Advocate Shri R.C. Kotiankar)

Versus

1. Union of India through  
Secretary,  
Ministry of Environment & Forests,  
Paryavaran Bhavan,  
CGO Complex, Lodhi Road,  
New Delhi-110 003.
2. Director (WLP),  
Ministry of Environment and Forests,  
Paryavaran Bhavan, CGO Complex,  
Lodhi Road, New Delhi-110 003.
3. Regional Deputy Director (WLP),  
Wildlife Regional Office,  
Ministry of Environment and Forests,  
11, AIR Cargo Complex,  
Sahar, Mumbai-400 099. ... Respondents.

(By Advocate Shri V.S. Masurkar)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicant is aggrieved by inaction of the  
respondents in ~~not~~ holding DPCs for the last 10 years

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to the posts of Assistant Directors (Wildlife Preservation) (AD(WLP)), despite availability of vacancies, on the ground that the complete ACRs of the officers in the feeder category, namely, in the posts of Wildlife Inspectors (WLIs) were not available. He has prayed for quashing of one of the conditions laid down in the Recruitment Rules notified on 27.5.1987, that is, the Wildlife Regional Office Assistant Director (Wildlife Preservation) Recruitment Rules, 1987 where it has been provided that deputationists shall not be eligible for consideration for appointment by promotion. He has also asked for certain other reliefs as set out in paragraph 8 of the O.A.

2. The applicant states that he had joined the Zoological Survey of India as Museum Assistant, in the pay scale of Rs.550-900 (PR) on 30.7.1974. He joined the office of respondents on deputation on 25.5.1981 in the pay scale of Rs.1640-2900, as WLI - a Group 'B' post. He was permanently absorbed in that post by the respondents on 14.5.1986 and still continues in that post of WLI. These facts are not disputed by the respondents as noted from their reply filed on 13.11.1997.

3. The applicant's main contention is that no DPC has been held by the respondents for the last, about 10 years because of their own reasons that they did not have the complete dossiers/ACRs of the eligible officers. Shri

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R.C. Kotiankar, learned counsel for the applicant, has emphasised that even till date, the UPSC has not held the DPC for want of complete papers, including complete ACRs of the eligible officers. He has also drawn our attention to the interim order passed by the Tribunal dated 28.11.1997 wherein a direction was given to the respondents to write to the UPSC to expedite the process of promotion to the post of AD (WLP). Shri V.S. Masurkar, learned counsel for respondents, was not in a position to inform us whether the DPC papers have been completed and the ~~DPC~~<sup>DPC</sup> has been held or not, till date. This is a most unsatisfactory and unfortunate state of affairs for which only the respondents have to be blamed.

4. Having made the observations, as above, we, however, find merit in the submissions made by Shri V.S. Masurkar, learned counsel that the applicant's prayer for being given ad hoc promotion to the post of AD (WLP) from 1987 when other two senior officers got such promotion, suffers from laches and delay and is highly belated. Therefore, the claim of the applicant that the ad hoc promotions given to others in the posts of ADs (WLP) during the year 1987 are illegal, at this stage, would not appear to be either legal or tenable. However, we find that the stand taken by the respondents in their reply filed on 13.11.1997 that there is an inevitable delay in filling up vacancies by promotion is also <sup>un</sup>reasonable because the respondents are duty bound to hold the DPCs at

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regular intervals as and when the vacancies arise in accordance with the rules and instructions <sup>This is</sup> which they have not done only for want of complete papers and for other administrative reasons. They have stated that there are 3 posts of ADs (WLP) in the pay scale of Rs.2200-4000. Our attention has also been drawn to the yearwise vacancy position of AD (WLP) given by them in the reply (Annexure R-4). We note that a number of vacancies arising in the promotion quota under the aforesaid Recruitment Rules of 1987 have been filled on ad hoc basis w.e.f. January, 1992 onwards. It is also noted that for the year 1996-97, the respondents have stated that there is one vacant post in the promotion quota which admittedly has still not been filled for the same reasons mentioned above.

5. Learned counsel for the applicant agrees that the applicant is at Serial No. 3 as WLI and S/Shri B.S. Gurm and R.V. Singh are senior to him in that post who have been promoted on ad hoc basis w.e.f. 28.1.1992 and 16.3.1992, respectively. We find that the stand taken by the respondents with regard to ignoring the applicant's period of service as WLI prior to his permanent absorption, following the exercise of the option <sup>given</sup> by him w.e.f. 14.5.1986, is not in accordance with the law laid down by the Hon'ble Supreme Court in a catena of judgements and is, therefore, untenable. See the judgements of the Supreme Court in Roop Lal Vs. LG, Govt. of NCT, Delhi (2000 SCC (L&S) 213) and M. Ramachandran Vs. Govind Ballabh & Ors. (1998(2) SC SLJ 415), in which their

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Lordships have reiterated the law laid down in an earlier judgement in K. Madhavan Vs. Union of India (1987 (4) SCC 566). Their Lordships have held in these judgements that the service rendered on <sup>an</sup> equivalent post in the parent Department before absorption of a deputationist in the deputation Department will count for seniority. The respondents, therefore, shall re-fix the seniority of the applicant, taking into account the <sup>aforesaid</sup> judgements of the Supreme Court, as admittedly the applicant was on deputation from his parent Department, that is the Zoological Survey of India to the deputation Department/respondents w.e.f. 25.5.1981, as soon as possible and in any case within two months from the date of receipt of a copy of this order.

6. Having regard to the aforesaid interim order of the Tribunal dated 28.11.1997, we are also unable to agree with the reasons given by the respondents for not holding the DPC in time, in accordance with the relevant rules and instructions. The mere fact that they still do not have the ACRs of the eligible candidates is no excuse. This also includes the delayed action of the UPSC in sending back the proposal for promotion, which was sent by the respondents in December, 1993, as late as 13.3.1995. The respondents themselves have stated that after obtaining the complete records of all the WLIs, including the applicant, a fresh proposal was sent to the UPSC on 8.4.1996 which is under consideration of the UPSC but this also appears to have not yielded the <sup>desired</sup> results. In view of what has been

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stated above, while there is no doubt that the applicant has approached this Tribunal ~~very~~ belatedly, it cannot also be stated that the respondents themselves have acted in a diligent manner to hold the DPCs for promotion of eligible officers in the feeder grade of WLI to the grade of AD (WLP) <sup>the</sup> for the years in question when/vacancies have arisen. It is also relevant to note that right from January, 1992, the respondents themselves have only resorted to ad hoc promotions of two senior officers from January, 1992 onwards and none has been appointed till date on regular basis. Needless to say, it was for the respondents to hold the DPCs for the vacancies arising from time to time and not to continue persons on ad hoc basis in the promotion posts of AD (WLP) for a number of years, as they seem to have done with effect from January, 1992. Therefore, the respondents' delay is also apparent.

7. During the hearing, learned counsel for the applicant has submitted at the bar that in the circumstances of the case, he does not press the challenge to the Note below Column No.11 of the Schedule to the Recruitment Rules of 1987 regarding exclusion of deputationists from eligibility for consideration by promotion. Therefore, there will be no need to consider this issue.

8. Learned counsel for the applicant has also drawn our attention to the Notification -GSR 816(E) issued by the respondents dated 23.9.1987 as well as the order dated 13.1.1988. He has submitted that the competent authority

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has re-designated the post of AD (WLP) as Scientist SC in Wildlife Regional Offices at Calcutta, Bombay, Madras and Delhi. He has, therefore, submitted that the promotion to the post of AD (WLP) should follow the selection process for the posts of Scientist/In the circumstances, this is a point which the respondents should keep in mind while considering the applicant and other eligible persons in feeder cadre for promotion to the post of AD (WLP) as they themselves have declared and re-designated the post of AD (WLP) as Scientist SC.


9. In view of what has been stated above, we find force in the submissions made by the learned counsel for the applicant that there has been inaction on the part of the respondents in holding DPCs from time to time when the vacancies had arisen in the promotion quota. To this extent, the application/succeeds and is allowed and disposed of with the following directions:

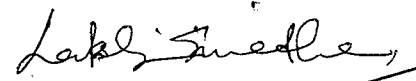
- (i) The respondents shall complete all papers for reference to the UPSC to hold DPC for promotion to the posts of AD (WLP) in the vacant posts as and when they arose or at least from the dates they have appointed any other person on ad hoc basis in the promotion quota. The DPC shall consider the case of the applicant, subject to his fulfilment of the eligibility conditions, in accordance with law, rules and instructions.
- (ii) If the applicant is found eligible for promotion to the post of AD (WLP), he shall be

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entitled to consequential benefits in accordance with law.

- (iii) The respondents shall also keep in view the observations made above and, in particular, with regard to the ~~revision~~ <sup>rev</sup> of the applicant's seniority keeping in view the aforesaid judgements of the Hon'ble Supreme Court in paragraph 5 above.
- (iv) The above action shall be taken within three months from the date of receipt of a copy of this order. No order as to costs.

  
(Smt. Shanta Shastry)  
Member(A)

  
(Smt. Lakshmi Swaminathan)  
Vice Chairman(J)

'SRD'