

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No:

592/98

Date of Decision: 28.11.02

S. K. Mago

Applicant.

Shri S. P. Saxena

Advocate for
Applicant.

Versus

Union of India & ors.

Respondent(s)

Shri R. K. Shetty

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B. N. Bahadur - Member (A)

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

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

B. N. B.

(B. N. Bahadur)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this *Thursday* the *28th* day of November, 2002

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.S.L.Jain - Member (J)

O.A.592 OF 1998

S.K.Mago,
Senior Lecturer,
National Defence Academy,
Khadakwasla, Pune - 411 023.
(By Advocate Shri S.P.Saxena) - Applicant

Versus

1. Union of India
through the Secretary,
Ministry of Defence,
DHQ, PO, New Delhi - 110 011.
2. The Director General
Directorate General of
Military Training,
Army Headquarters,
New Delhi 110 011.
3. The Registrar,
Jawaharlal Nehru University,
New Delhi.
4. The Chairman,
UPSC, Dholpur House,
New Delhi 110 011.
5. The Commandant,
NDA, Khadakwasla, Pune.
6. The Officiating Principal
NDA, Khadakwasla Pune - 411 023.
7. Shri S.C.Joshi,
Officiating Principal,
NDA, Khadakwasla, Pune 411 023.
(By Advocate Shri R.K.Shetty) - Respondents

O R D E R

By Hon'ble Mr.B.N.Bahadur, Member (A) -

The Applicant in this case comes up in challenge to the impugned order dated 25.4.1998 (Annexure-A-1). He is aggrieved in that the screening committee which met on 26.2.1998, for

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considering promotion of Senior Lecturers to the post of Lecturer Selection Grade or Reader, have not considered the Applicant's case properly. It is alleged that rules on the subject have not been followed, thereby leading to the rejection of the Applicant for promotion to Selection Grade Lecturer/Reader w.e.f. 25.8.1996, on which date he became eligible for such promotion.

2. The core facts of the case are that the applicant was appointed as Lecturer on 26.8.1981 in the NDA and was promoted Senior Lecturer on 26.6.1988. Applicant claims he became entitled for promotion as Selection Grade Lecturer//Reader w.e.f. 25.8.1996 as per UGC Scheme. He was visited upon by charge sheet on 21.1.1998, the date of the DPC for the challenged selection is 26.2.1998. We have seen the averments made in the OA, where the background of the systems in NDA and certain grounds have been taken. These grounds have been argued, amongst others, by learned counsel for the applicant, Shri S.P.Saxena. These will be discussed ahead.

3. Written Statement filed by the Respondents have first placed the facts on record and attempted to meet the averments Parawise. Replying to one of the allegations made in the OA that respondents had wilfully and deliberately not held Screening Committees in 1995, 1996 and 1997, respondents state that this is not true and that permission of the Defence Ministry had been

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sought. Senior Lecturers found eligible/suitable had been given promotion retrospectively. It is importantly mentioned that the case of the Applicant was kept in sealed cover and reasons communicated to the Applicant, since a charge sheet had already been served on the Applicant on 21/25.1.1998. Other allegations made by the Applicant are denied. The respondents also deny the allegations levelled by Applicant regarding Respondent no.7 as also allegations made regarding the ACRs. The following of sealed cover procedure is sought to be justified.

4. Arguing the case on behalf of the Applicant, Shri S.P.Saxena recalled the facts in detail. The gist of his detailed arguments is as below:-

(a) The delay in holding the Selection Committee meetings is seriously challenged and it is stated that a representation was made (this representation is dated 25.4.1998 - copy at Annexure-A-3). The charge sheet came only in January, 1998 and hence the applicant is prejudiced by the delayed holding of selection Committee/DPC. His case cannot therefore be considered as a 'sealed cover case'

(c) The Applicant was eligible in August, 1996 and since retrospective effect is given to promotions, this charge sheet, cannot affect his right for promotion. The Theory of legitimate

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(d) Date of Charge sheet - 21.1.1998
(e) Date of DPC for challenged selection - 26.2.1998

7. It is not disputed by the Respondents that as per the Scheme and indeed as averred by the Applicant, the Applicant and those similarly situated become entitled for the higher promotion as on the date they complete 8 years as Senior Lecturers. In the case of this Applicant, the date on which he becomes entitled to promotion as Senior Grade Lecturer/Reader is 25.8.1996. It is also a fact that Applicant's case has been considered under Sealed Cover Procedure.

8. It is also the point taken by the Applicant that the DPC which met on 26.2.1998 had considered the case of the Applicant along with others and it is asserted by Respondents themselves that such of the persons who were found fit for promotion to the higher grade were indeed provided the higher grade from the dates on which they had become entitled. This is more than clear in fact from Exhibit A-1 which is the impugned order where indeed the date of placement in the higher grade is different for different people depending on eligibility. Thus it transpires that had the Applicant been considered fit for promotion, he also would have been provided the benefit of higher scale from the date of entitlement i.e. date of completion of 8 years as has been Lecturer i.e. 25.8.1996.

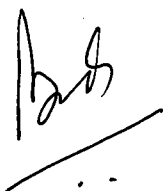
9. Now it is a well established principle that under normal circumstances, the effect of promotions is given from a date after the date of DPC and approval by competent authority



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depending on facts and circumstances of different cases. In such a situation the fact that the Applicant has been visited with a charge sheet prior to the date of holding of DPC would have justified his consideration for promotion only through Sealed Cover Procedure.

10. However here is a different situation where a certain entitlement has become due from a eligible date to various people and that in the case of Applicant eligible date is 26.6.1988. Now the non-holding of the DPC for a long period under these circumstances will have to be seen in a different light especially so when the question of vacancies was also not relevant under the system in operation. It is the case of in situ promotion which has to be provided in terms of UGC Scheme/Rules which are accepted by the Government itself. Under these peculiar circumstances, the right accrues from the date of entitlement. We are also conscious of the fact that under normal circumstances no right accrues for promotion merely because of eligibility or existence of vacancies but this is a different case where an entitlement has been violated and the delay has caused hardship to the Applicant. On the other hand the persons who were declared fit at the DPC were provided the benefit of the higher grade with retrospective effect. Under the peculiar circumstances and the fact that this system is accepted by Government, we are convinced that the charge sheet, coming as it did on 21.1.1998 i.e. some 1 1/2 years or so after eligibility to promotion will not justify the following of the Sealed Cover Procedure in this case. We have taken notice of the judgment of



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Before the Hon'ble
(C) Member, Jalgaon

this Tribunal in the matter of Daulat Muroithrao-Wuiké-Vs. The Telecom District Manager, Jalgaon and others reported in 2001(3) ATJ 80 wherein Biennial Cadre Review Scheme was subject of consideration which is similar one.

11. We are therefore convinced that the OA deserves to be allowed in terms of the orders that we propose to make. However, we must make it clear that this particular principle has been taken only with reference to the Scheme operating in the Respondents, where entitlements come after a particular periods of years of service as per the rules of the Scheme accepted by the Government. This is not a ratio for normal promotions etc.

12. Under the circumstances, this OA is allowed in terms of the following orders:-

O R D E R

The Respondents are directed to issue orders of promotion to higher grade in respect of the Applicant, with effect from the date of entitlement (25.8.1996). All arrears will be paid to him as due according to the rules. No interest will be payable. We have not considered the aspect regarding enquiry against him, which ^{may} ~~shall~~ continue as per law and rules.

There will be no order as to costs.

P.L.J.
(S.L.Jain)
Member(J)

B.N.Bahadur
(B.N.Bahadur)
Member (A)