

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 02.03.2001

OA No.536/1995

Dr. G.S.Somswat s/o late Shri H.P.Somswat, Ex-Lecturer, Rural Sociology, E.E.I., Nilokheri, Haryana and presently Deputy Director, Office of the Director for SC and ST, Ministry of Welfare, E-90 Ganesh Marg, Bapu Nagar, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Agriculture, Department of Agriculture and Cooperation (Extension) Krishi Bhawan, New Delhi.
2. The Secretary, Ministry of Welfare, Deptt. of Scheduled Caste Development (SCD), Shashtri Bhawan, New Delhi.
3. Principal, Extension Education Institute, Nilokheri, Haryana.

.. Respondents

Applicant present in person

Mr. Harant Gupta, Proxy counsel to Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr.S.F.Agarwal, Judicial Member

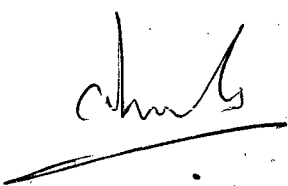
Hon'ble Mr. H.P.Newani, Administrative Member

Order

Per Hon'ble Mr.H.P.Newani, Administrative Member

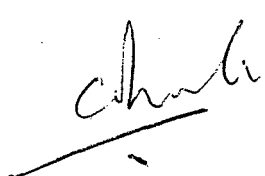
In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks the following reliefs:-

- "a) Direct the respondents to confirm the applicant with consequential service benefits from 28.5.80 on the post of Lecturer, Rural Sociology at Extension Education Institute, Nilokheri, Haryana.

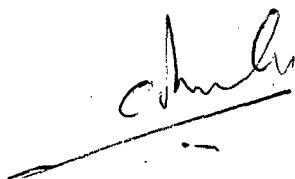


- b) Pass an order to quash the respondent No.1 Memorandum Order No.19-173/89-CA.III dated 13.09.90 and respondents to be directed not to act on that order and in case it was placed on the character roll of the applicant, the same may be deleted.
- c) Direct the respondent No.1 to give the applicant promotion in the next pay scale of Rs. 3000-4500 (Revised) after 01.06.83 and onwards or from the January, 1985 alongwith all consequential service benefits like pay fixation, pay arrears, increments etc.
- d) The respondent No.2 be directed to promote the applicant for the post of Director for Scheduled Castes and Scheduled Tribes with effect from the month of September, 1993 the completion of five years period from the selection of the applicant by the U.P.S.C. for the post of Deputy Director alongwith all consequential service benefits like pay fixation, salary, increments, pay arrears etc.
- e) The respondents be directed to pay the penal interest on the arrears of annual increments paid in the year 1989 and leave salary paid in the year 1994.
- f) Pass an order directing the respondent No.1 to fix the responsibility of omissions/commissions and unlawful activities against the applicant and the guilty should be punished.
- g) Pass an order directing the respondents to pay the applicant all the legal cost and other expenditure incurred by him."

2. The case was taken up for hearing on 31.8.2000 and 8.2.2001. The applicant was present in person and argued his case. Mr. Hemant Gupta, Advocate appeared as proxy counsel to Mr. M.Rafiq, on behalf of respondents. At the very start, the applicant informed that he is not pressing the relief mentioned in a) and b).

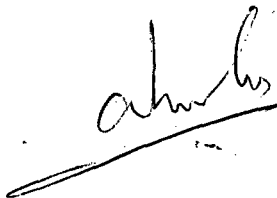


3. The facts of the case, as stated by the applicant, are that he was earlier Lecturer, Rural Sociology, E.E.I., Molikheri (Haryana) and at the time of filing of the OA was serving as Deputy Director, Office of the Director for Scheduled Castes and Scheduled Tribes, Ministry of Welfare at Jaipur. He had filed OA No. 985/87 in the Principal Bench of this Tribunal and by order dated 10.5.1989, the said OA was disposed of with directions, (i) to take a final decision on the request of the applicant for grant of special leave and communicate the same to the applicant as expeditiously as possible but in no event later than two months from the date of receipt of the order, and ii) respondents were also directed to complete the departmental enquiry (for short, DE) against the applicant and pass final orders within a period of six months from the date of communication of the order. It was also stated that the applicant is free to move this Tribunal, if he feels aggrieved by the final decision of the disciplinary authority after he has exhausted all the remedies provided under the Rules. It has been stated by the applicant that the respondents did not grant the special leave for the relevant period in terms of the directions of the Principal Bench of this Tribunal within the time allowed and, therefore, the applicant had to file another OA No. 53/92 at the Guwahati Bench which was allowed vide order dated 27.9.1993 treating the period from 22.9.1984 to 28.5.86 as 'dies-non' was quashed and direction was issue to grant special overseas study leave to the applicant for the period from 22.9.1984 to 18.5.1986 with all consequential service benefits of the said period. The respondents Nos. 1 and 3 were further directed to record the period from 19.5.1986 to 28.5.1986 as duty as Lecturer, Rural Sociology. In terms of the directions of the Guwahati Bench of this Tribunal, respondent No.1 issued an order granting Special Leave on 25.3.94, albeit after expiry of the time stipulated in the



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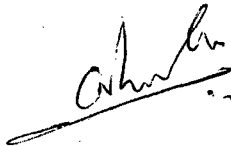
order of the Guwahati Bench of this Tribunal and consequently the benefits of arrears of salary was also paid by respondent No.3 after much delay (on 25th May, 1994, Ann.A4) and the order regarding withdrawal of the order regarding the "recordable warning" issued to him for his lapses was issued on 25.3.1994 (Ann.A3). It is also stated by the applicant that being a Scheduled Tribe candidate, he was within the zone of consideration and eligible for promotion to the post of Vice Principal in the E.E.I, Nilokheri, a post filled up by selection on promotion from the Lecturers of the Institute but the applicant was not considered and one Shri G.A.Kaleen, Lecturer was promoted from June, 1983. The said Shri Kaleen joined National Police Academy on deputation in 1988 and the post of Vice Principal fell vacant but due to disciplinary proceedings against the applicant being kept under contemplation stage for a long period, under Rule 25 of the CCS (Leave Rules), he was neither considered nor the prescribed sealed cover procedure was adopted and the respondents promoted a candidate who did not fulfil even the minimum educational qualification for the post of Vice Principal/Lecturer and thereby the applicant was illegally deprived of being promoted. It is also stated by the applicant that he was selected for various higher posts viz. Senior Research Officer, Regional Director (Senior) and Deputy Director in the year 1985, 1987 and 1988 respectively by the UPSC etc., as can be seen from 3 copies of letters of UPSC etc. at Ann.A7 and that the applicant is entitled as per CCS Rules (Ann.A8) to be relieved to take up the new post when selected by the UPSC but the respondents illegally did not relieve him. It is contended by the applicant that in view of the judgment of the Guwahati Bench of this Tribunal dated 27.9.1993, the applicant should be promoted to compensate from 1983, 1985 or 1988 in the next pay scale of Rs. 3000-4500. The representation of the applicant dated 11.5.94 and 20.8.95 (Ann.A9) in this regard were of no avail. It is also alleged by the



applicant that the respondent No.1 delayed his joining the post of Deputy Director in the Ministry of Welfare on the pretext of DE and inspite of UPSC having recommended his name on 23.8.88, he could join only on 9.4.1991 even though the DE was only regarding overstayal of leave, which should not have come in the way of his relieving. He also alleged that his promotion to the post of Director, was also delayed by the respondent No.2 (Ministry of Welfare), firstly by not considering his qualifying service w.e.f. August, 1988 when UPSC had recommended his name for the post of Director and secondly by not filling up the post of Director by the method of direct recruitment wherein he had very high chances because of his qualification etc. and even the ad-hoc promotion granted to him vide office order dated 2.1.96 could not be availed by him because of the unhelpful attitude of the National Commission for SC and ST, which wanted him to go out of Jaipur to avail of the said promotion.

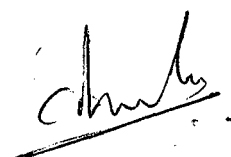
4. We have heard the applicant in person at length and the learned counsel for the respondents and have also gone through all the material on record, including the rejoinder filed by the applicant and reply to the rejoinder filed by the respondents.

5. The learned counsel for the respondents have taken certain preliminary objections. It is contended that all of the issues raised in this OA, except the one relating to promotion to the post of Director in the National Commission for SC and ST in the Ministry of Welfare, are barred by the principle of constructive res-judicata as the applicant had an opportunity of raising these issues when he filed OA No.53 of 1993 before the Guwahati Bench of this Tribunal. It is also contended that these issues are also hopelessly barred by limitation, for example, the issue regarding DFC held for promotion to the post of Vice Principal way back in



1983 and 1989 and the claim that he should be considered as having joined the post of Deputy Director from 1988 when he actually joined the post on 9.4.1991 and thus the cause of action had arisen on 9.4.1991. It is further contended that the OA suffers from multiple reliefs, unconnected with each other and also from non-joinder of necessary party viz. the officer against whom he had raised allegations in the promotion to the post of Vice Principal based on DPC meeting held in 1989. It was, therefore, argued by the learned counsel for the respondents that the OA deserves to be dismissed on all or any of these counts. However, in view of the fact that this case is more than 5 years' old and the applicant, a first generation officer from a Scheduled Tribe family has been waiting all these years for justice, we feel that it will not be appropriate to dismiss this OA on the above grounds at this stage and we have consequently proceeded to consider various issues raised in this OA on merits, except the issue relating to the promotion to the post of Vice Principal based on DPC meeting held way back in 1983 and 1989, being hopelessly barred by limitation and also because of non-impleadment of Shri P.P.Singh, a necessary party, against whom certain allegations have been raised.

6. After carefully considering the rival contentions, we have decided to take up various issues, as far as possible in a chronological order. The first issue is regarding payment of penal interest to the applicant for undue delay in paying him arrears of annual increments and leave salary. In terms of the judgment of the Guwahati Bench of this Tribunal dated 27.9.1993 in OA No. 53/93, respondent No.1 was to grant special study leave to the applicant from 22.9.84 to 18.5.86 with all consequential service benefits. It was further directed that the period from 19.5.1986 to 28.5.86 shall be recorded as on duty. Appropriate notifications on the basis of these directions were required to be issued within 30 days

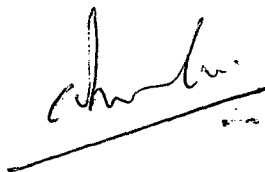


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from the date of communication of the judgment. It is stated by the respondents that the pay has already been fixed and arrears disbursed vide letter dated 25.5.1994 (Ann.F1). Thus, there was a gap of almost 9 months between the date of order of Guwahati Bench and issue of necessary letter. Taking away the allowed time of 30 days the gap was still almost 8 months. Actual payment may have taken some more time. Respondent No.1 has not indicated as to when they had received the copy of the judgment. Keeping in mind the remoteness of Guwahati, even if we keep one month for receipt of the copy of the said judgment, there still has been a delay of almost 7 months. Respondent No.1 has also not mentioned filing of any Misc. Application seeking extension of time for implementing the directions. We, therefore, hold that there has been unexplained delay in implementing the directions of the Guwahati Bench of this Tribunal and the applicant is entitled to receive interest for holding up of amount due to him.

7. It has also been stated by the applicant that the order Ann.A3 withdrawing the 'recordable warning' was not endorsed to Ministry of Welfare and since in the meantime all the service record, including ACRs has been transferred to the Ministry of Welfare, the recordable warning still exists in his service record/ACR. He has, therefore prayed that the Ministry of Welfare may be directed to delete the recordable warning which may be existing in his service records/ ACRs. We feel that this apprehension of the applicant should be looked into by the respondent No.2, and if the recordable warning is still existing in the service records/ ACRs of the applicant, that should be deleted.

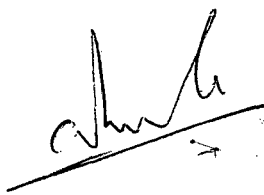
8. The next issue is regarding counting of the service of the applicant w.e.f. the date the UPSC had communicated their recommendation for selection of the applicant for the post for



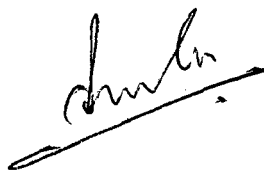
which he had applied. However, we do not find it necessary to go into the recommendations in favour of the applicant for the posts of Sr. Research Officer, Ministry of Planning and Regional Director, National Savings Organisation as these were not processed to their logical end and no relief can be considered when the applicant did not join any of these organisations. We, therefore now take up the claim of the applicant that he should be deemed to have been appointed on the post of Deputy Director under the Ministry of Welfare (respondent No.2) from 1988 i.e. when his name was recommended by the Union Public Service Commission (for short, UPSC) because the respondents had deliberately delayed his relieving orders from the post of Lecturer to spite him and he was in no way responsible for such delay. In support of this contention, the applicant cited the judgment of the Apex Court in the case of Pilla Sitaram Patrudu and ors. v. Union of India and ors., JT 1996 (4) SC 731. We find that the said letter of UPSC was issued on 23.8.88. The Ministry of Welfare, thereafter addressed an OM dated 13.9.1988 to the Ministry of Agriculture (respondent No.1) seeking information/documents regarding the medical fitness and verification of character/antecedents of the applicant. The same was replied to by Ministry of Agriculture vide OM dated 13.2.1989 confirming both. It will be observed that nearly 6 months were already consumed in obtaining this simple information. It is strange that after receipt of reply dated 13.2.1989, there is long unexplained delay. It is however mentioned by the respondents in the reply to the rejoinder that "However, consequent to the disciplinary proceedings, a recordable warning was issued on 23.8.1990. Thereafter, Ministry of Welfare issued the offer of appointment on 11.12.1990". Thus there was another delay of approximately 1 year and 10 months, in addition to 6 months delay as mentioned hereinbefore, the total delay now amounting to 2 years 4 months. The applicant was relieved on 8.4.1991, i.e. after



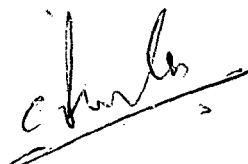
another 4 months, taking the delay to a total of 2 years and 8 months. There is no explanation to this delay except what has been extracted above, which only indicates that offer of appointment was not sent due to pending disciplinary proceedings but there is no specific contention to support any such indication. Assuming for a moment that it was so, the respondent No.1 should have mentioned the rule under which they could not relieve the applicant until the DE had concluded but this has not been. Further, in terms of MHA OM No. 60/43/64-Eatt(A) dated 24.5.1965 copy annexed by the applicant at Ann.A8, the existence of which at the relevant date has not been denied by the respondents, if the application of an officer has been forwarded to UPSC, he should be released in the event of his selection. It has been specifically added therein that "while this should be the general rule, where subsequent to the forwarding of the application but before selection by the Commission, very exceptional circumstances arise, in which it may not be possible to release the officer in the event of his selection by the Commission, the fact should be communicated immediately to the Commission as well as to the officer concerned (emphasis supplied). It should be particularly noted that cases of this type should be very rare and decision not to release the officer should be taken only when the circumstances referred to above are really exceptional". There is no statement of the respondent No.1 before us that the application of the applicant was not forwarded by them and that the twin requirements provided in this OM were complied with. In our view there is nothing exceptional in the present case and no exceptional circumstances have been referred to by the respondents subsequent to forwarding of the application and even if there were any such exceptional circumstances, both UPSC and the applicant were required to be informed, which apparently has not been done.



9. We have gone through the judgment of Hon'ble the Supreme Court of India in Pilla Sitararam Patrudu and ors. v. Union of India and ors., (supra), in which the Supreme Court, while dealing with a case regarding computation of the qualifying service for promotion from Assistant Executive Engineer to Executive Engineer, held that "since he (the appellant therein) was selected by direct recruitment, he is entitled to be appointed according to rule. His appointment was delayed for no fault of him and he came to be appointed in 1991. He is, therefore, entitled to the ranking given in the select list and appointment made accordingly". We are of the view that the ratio of this judgment does apply to the case in hand as far as the justification for fixing a notional date of appointment is concerned. In the facts and circumstance of the case, as discussed above, it is quite clear that the delay in the release of the applicant for joining the post of Deputy Director in the National Commission for ST and SC under the Ministry of Welfare was not due to any fault on his part but the delay can be attributed only to the respondents, specially respondent No.1. The recommendation of the UPSC was made on 23.8.88. We consider a period of 3 months adequate for processing the case of the applicant for release from the post of Lecturer in the E.E.I., Nilokheri (Haryana). We, therefore, hold that the applicant should be considered to have been notionally appointed on the recommended post of Deputy Director in the National Commission for SC and ST under the Ministry of Welfare w.e.f. 23.11.88 i.e. date of recommendation of UPSC plus 3 months for processing. Since the applicant had actually joined the post on 9.4.1991 and prior to that he was serving as Lecturer in the E.E.I., Nilokheri, he will not be entitled to any arrears of pay and allowances w.e.f. such notional date of joining to the date of actual joining. The period from the notional date of joining viz. 23.11.88 to the actual date of joining viz. 9.4.1991 will count for re-fixation of his pay and



his pay shall be fixed at the stage at which he would have reached had he joined the post of Deputy Director from such notional date of joining and he would be paid arrears of pay and allowances on account of such refixation of his pay from the date of actual joining till he starts getting salary as per such fixation. The notional date of joining will also be taken into account for fixation of the pension of the applicant as and when he retires on reaching the age of superannuation. His seniority will also be refixed in terms of his notional date of joining. As regards counting of his service from the date of notional joining for the purpose of qualifying service for promotion to the post of Director, we feel that this cannot be allowed for a variety of reasons. Firstly, between the notional date of joining and the actual date, the applicant was working on the post of Lecturer in Extension Education Centre, Nilokheri, perhaps located within Haryana Agriculture University, under the Ministry of Agriculture. He thereafter joined the post of Deputy Director under another Ministry. The Ministry of Welfare, ^{is} entrusted with an entirely different responsibility, that is, the social empowerment of SC and ST people. The experience gained by the applicant as a Lecturer in agriculture extension education under the Ministry of Agriculture can, in no way, be considered having any nexus with the experience another Deputy Director with Ministry of Welfare will be accumulating. It will be travesty of justice in a general sense if such two 'experiences' are equated to allow the applicant to attain an equal status with his counterparts in the Ministry of Social Welfare who had actually been accumulating the experience within the Ministry of Welfare during the said period. We, therefore, hold that the period between the notional date of joining i.e. 23.11.88 and actual date of joining i.e. 9.4.1991 shall not be counted as qualifying service for promotion to the post of Director, SC and ST in the Ministry of Welfare. This finding is in tune with the



decision of Hon'ble the Supreme Court in the case of Orissa Small Scale Industries Corpn. Ltd. and anr. v. Harsingha Charan Mohentry and ors. reported in 1999 SC (L&S) 246. In the said case the Orissa High Court had set-aside the termination of a Joint Manager and directed reinstatement with all consequential benefits. However subsequently, the DPC did not find him suitable for promotion to the post of General Manager on the ground that he had not gained actual necessary experience on the post of Joint Manager on account of his notional seniority for the period he was under termination. A Three Judges Bench of the Apex Court including Hon'ble the Chief Justice of India held that the ground on which the DPC rejected the case of the respondent therein (Joint Manager) cannot be said to be extraneous for adjudging suitability for promotion. In the present case, as discussed earlier, the applicant was serving in a entirely different organisation under a different Ministry during the period of his notional service and thus the applicant not only ^{did} not serve on the feeder post of the Deputy Director, SC/ST Welfare in the Ministry of Welfare, but had actually served on the post of Lecturer in the Education Extension Institute under the Ministry of Agriculture. We, therefore, feel that the ratio of the Three Judge Bench of the Apex Court (supra) will apply in the case in hand and even though it may be argued that the applicant's appointment on the post of Deputy Director w.e.f. 9.4.1991 was on regular basis, ~~the~~ fact that he had not accumulated the experience of the job of Deputy Director, SC/ST Welfare, will lead to the conclusion that the period between 23.11.88 and 8.4.1991 cannot count for qualifying service on the feeder post of Deputy Director, SC/ST Welfare in the Ministry of Welfare. We have also given our respectful attention to the judgment of the Apex Court in Pilla Sitaram Patrudu (supra), A.F. Baghumani v. G.C.Nath, JT 2000 (4) SC 333 and Union of India and ors. v. K.B.Fajoria, JT 2000 (4) 4 SC 213 but find these distinguishable in view of the special facts and circumstances of this case. We, therefore, come to the conclusion

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that the services rendered by the applicant from the notional date of joining i.e 9.4.88 to the actual date of joining cannot be counted as regular qualifying service for promotion to the post of Director.

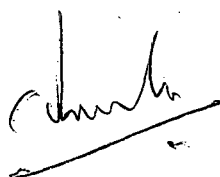
9. We can now examine the plea of the applicant for promotion to the post of Director in the National Commission for SC and ST under the Ministry of Welfare on the basis of such notional date of joining the post of Deputy Director. We have gone through the recruitment rules for the post of Director (Ann.IV). We find from column 11 of the said recruitment rules that 5 years of regular service is required for promotion of Deputy Director to that of Director. We have already held in the preceding paragraph that the period between notional date of joining on the post of Deputy Director and the actual date of joining, i.e. the period the applicant was holding the post of Lecturer in the Ministry of Agriculture cannot be considered as qualifying service for promotion and, therefore, we reiterate that the applicant can become entitled for promotion to the post of Director only after expiry of 5 years from his actual date of joining viz. 9.4.1991. This being so, we reject the contention of the applicant that he should have been considered for promotion to the post of Director in the National Commission for SC & ST after completion of 5 years service from the notional date of ^{appointment} ~~promotion~~ in 1988. We also find no force in the contention of the applicant that the respondents, after not being able to fill up the post of Director by transfer on deputation should necessarily have adopted the direct recruitment route and feel it is only a hypothetical wish of the applicant that if direct recruitment was adopted, there would have been high hopes of his being promoted.

11. In the result, the OA is partly allowed with following

[Signature]

directions:-

1. Respondent No.1 shall pay interest @ 12% per annum on the amount of arrears of increments and leave salary paid to the applicant as consequential reliefs flowing from the judgment of the Guwahati Bench of this Tribunal in OA No. 53 of 1993 from 30 days after the date of decision i.e. from 27.10.1993 to the date such payments were actually made. This direction shall be complied with within 2 months of the date of receipt of a copy of this order;
- ii) Respondent No.2 shall check whether the recordable warning, which was to be deleted in terms of order dated 25.3.1994 (Ann.A3) of respondent No.1 issued in pursuance of the judgment of the Guwahati Bench (supra), has actually been deleted from the ACR/service record and if not found to be deleted, delete the same forthwith on the strength of this order;
- iii) The applicant will be considered to have been appointed on the post of Deputy Director for SC and ST in the Commission for SC and ST, Ministry of Welfare on 23.11.1988 on notional basis. He would not be entitled to any arrears of pay and allowances for the period 23.11.88 and the actual date of joining viz. 9.4.1991 but his pay will be fixed on 9.4.1991 as if he had joined the said post on 23.11.88 and consequential benefits of such re-fixation will be paid to him within four months from the date of receipt of a copy of this order. The said period will also be counted for computing the pensionable service of the applicant. The applicant shall not, however, be entitled for counting the period between 23.11.88 and 8.4.1991 as qualifying service for the post of Deputy Director for promotion to the post of Director for SC and ST in the Ministry of Welfare.



In the circumstances, parties are left to bear their own costs.

The official record given by the respondents in terms of the order dated 31.8.2000 has been perused by us wherever necessary and the same may be returned to the Department through the learned counsel for the respondents.



(N.P.NAWANI)

Adm. Member



(S.K.AGARWAL)

Judl. Member