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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH
JABALPUR

Original Application No. 179 of 2006

Jabalpur, this the 15th day of December, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
Hon'ble Shri M.K. Gupta, Judicial Member

S.K. Vinodia

.....

Applicant

(By Advocate – Shri M.P. Singh)

VERSUS

Union of India & 12 others

.....

Respondents

(By Advocate – Shri Ashish Shrotri for respondents Nos. 2 & 3
and none for other respondents)

ORDER

By M.K. Gupta, Judicial Member –

MA No. 209 of 2006 had been filed by the applicant seeking condonation of delay in approaching this Tribunal for not giving him the relief of promotion with seniority though he belongs to Scheduled Caste category, which is a recurring cause of action.

2. In this OA applicant seeks the following relief:

“(a) that this Hon'ble Tribunal be pleased to direct the respondents to produce the entire documents and correspondences pertaining to the case,

(b) that the Hon'ble Tribunal be pleased to set aside the respondent's letter No. AO/SKV/PF/4172 dated 23.3.2005 (Annexure A-8),

(c) that this Hon'ble Tribunal be pleased to set aside the promotion of Kumari Pushpa Kosta (Now Smt. Pushpa Umate) and promote the applicant to the post of UDC wef 13.1.1994 with all consequential benefits,

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(d) that the Hon'ble Tribunal be pleased to direct the respondents to count the seniority of the applicant wef 13.1.1994 for promotion from UDC to Assistant and seniority of other UDCs be regularized accordingly,

(e) that the Hon'ble Tribunal be pleased to direct the respondents to promote the applicant to the post of Assistant wef 23.10.1998 with all consequential benefits and seniority and seniority of other Assistant be regularized accordingly,

(f) that the Hon'ble Tribunal be pleased to direct the respondents to count the seniority of Assistant of the applicant wef 23.10.1998 for further promotion to the post of Section Officer and Administrative Officer and the seniority of other Assistants be placed after the applicant,

(g) that the Hon'ble Tribunal be pleased to direct respondents to promote the applicant to the post of Section Officer on adhoc basis wef 20.2.2004 and thereafter on regular/permanent basis from the date Shri R K Gupta is absorbed permanently by the new establishment,

(h) that this Hon'ble Tribunal may be pleased to pass any other order, writ or directions which deems just and proper in the facts, grounds and circumstances of the case and also in the interest of justice."

3. The grievance of the applicant is that his request for promotion with seniority after implementing the vacancy based roster of reservation policy had been turned down by the respondent No. 2 and 3 vide impugned communication dated 23rd March, 2005. He was appointed as LDC vide memorandum dated 17.10.1987 and joined the said post on 2.11.1987. He completed the period of probation prescribed and thereafter was confirmed in the said post w.e.f. 1.11.1989 vide memorandum dated 26.6.1990. Though he was eligible for reservation benefits under the various OMs issued by the Government of India from time to time but he was denied the promotion of the first post of UDC. Numerous persons belonging to general category as well as one belonging to ST/OBC category have been shown over and above him though some of them were appointed subsequently. In a disciplinary proceedings initiated in the year 1994 punishment of withholding of one increment for two years instead of

3 years originally inflicted was made the basis for denying him promotion to the post of UDC. Though, the DPC which met on 6.12.1994 found him fit but adopted the sealed cover procedure. Secondly he was promoted as UDC w.e.f. 1.11.1996. Contrary to the reservation policy respondents promoted four officers belonging to general category to the next post of Assistant during the year 1998 and 2004, ignoring his candidature on the false plea of his involvement in a disciplinary case, whereas no such case have been pending. As a result of illegal and arbitrary action, the applicant not only lost the promotion but also the seniority too. The vacancy based roster has now been replaced vide DOP&T OM dated 2.7.1997 pursuant to judgment of Hon'ble Supreme court in R.K. Sabrawal's case. One post of section officer is vacant with effect from 20.2.2004, as the permanent incumbent proceeded on deputation and most probably not likely to join back. The said vacancy is required to be filled firstly on ad-hoc basis and later on regular or permanent basis from one of the Assistant. The applicant had been promoted as Assistant with effect from 24.5.2004 which is arbitrarily and malafide, besides violation of reservation policy. Representations made in the year 2004 followed by the reminders issued in 2005 and 2006 have yielded no positive results and therefore applicant was compelled to approach this Tribunal seeking enforcement of his right as available to scheduled caste community under the Constitution of India and OMs issued on the subject.

4. MA No. 1098 of 2006 had been filed seeking certain amendments namely that the claim of date of promotion to the post of UDC instead of 13th January, 1994 be read as 30th September, 1993 and typographical mistakes committed in paragraph 6.4 be allowed to be corrected.

5. The respondents Nos. 2 and 3 contested the claim laid by filing detailed reply. Additional affidavit was also filed by the respondents

Nos. 2 and 3. None appears for other respondents despite service and therefore we had no assistance on behalf of other respondents.

6. Vide the aforesaid reply the said respondents raised preliminary objection regarding time barred claim stating that the applicant's claim of promotion to the post of UDC w.e.f. 13.1.1994 being made in the year 2006 is hopelessly barred by time as no reasonable explanation for the inordinate delay is furnished. In any case the applicant was promoted to the post of Assistant w.e.f. 24.5.2004 which he accepted and joined without any objection and therefore at this stage he cannot be allowed to resile from the said stand. On merits, it was pointed out that a charge memorandum was issued alleging certain misconduct of defrauding and embezzling government money by submitting a false receipt from Indian Airlines on 5.1.1994. A penalty of stoppage of one increment was imposed vide order dated 7.1.1994 as the applicant accepted his guilt. The said penalty was reduced to two years by the appellate authority instead of three years. Therefore, the penalty remained under operation for a period of two years. The DPC which met on 6.12.1994 to fill up four posts of UDCs from amongst eligible LDCs on the basis of seniority cum fitness also considered the applicant and followed sealed cover procedure. After the penalty period was over and on opening of sealed cover, the applicant was promoted as UDC with effect from 1.11.1996. He accepted the said promotion and joined the post without any objection. While working as UDC, he again submitted a fraudulent claim of expenditure for his tour to New Delhi from 23.12.1998 to 30.12.1998. Disciplinary proceedings were initiated against him and as the applicant confessed the guilt, the penalty of reduction from the post of UDC to that of LDC w.e.f. 17.2.1999 was imposed. The penalty was to operate until he is found fit by the disciplinary authority to be restored to the post of UDC. The said penalty had been revoked by the disciplinary authority vide order dated 16th August, 2000. Under the rules, the next post of Assistant is

to be filled 50% by promotion from amongst the candidates having completed not less than 8 years approved services as UDC subject to fitness and recommendations made by DPC. Therefore, the applicant became eligible for promotion to the said post in November, 2004. However, he was considered by the DPC and promoted as Assistant w.e.f. 24.5.2004 in which post he is continuing as on date. The further post of Section Officer which is a non-selection post has to be filled as per the rules (Annexure A-22) i.e. (a) 20% by direct recruitment, (b) 40% by promotion limited to Assistants and Personal Assistants who have completed not less than 5 years approved service in their respective grades and pass the test (c) 40% by promotion from amongst Assistants who have rendered not less than 8 years approved service in that grade, on the basis of seniority, subject, to rejection of unfit on the recommendations of the DPC. The applicant has not passed the departmental competitive test and therefore he can be promoted only on completion of 8 years service as Assistant. As the applicant was promoted to the said post of Assistant w.e.f. 24.5.2004 he is not eligible for promotion to the next grade of Section officer. Moreover the vacancy in question is not a clear vacancy as the officer concerned holds lien on the said post. It was pointed out that 5 candidates preferred OA No. 1130 of 2005 against the decision of clubbing or declaring the post of SO (Estt/HQ) and SO (Stores) as one post, and commanding the respondents to continue to treat the aforesaid two posts as different posts and fill up the same in accordance with rules and law. The said OA was disposed of vide order dated 7.12.2005 with direction to the respondents to pass a reasoned and speaking order. It was pointed out that in pursuance to the aforesaid order of the Tribunal, respondents passed the order dated 17th March, 2006, which is not impugned in present proceedings.

7. Applicant filed the rejoinder, reiterating the contention raised as in the Original Application.


8. We have heard learned counsel for the parties and perused the pleadings and materials placed on record carefully.

9. The question which has arisen for consideration by this Tribunal could be broadly divided into two namely whether the applicant is entitled to condonation of delay and whether the applicant is entitled and eligible for retrospective promotion in the grade of UDC, Assistant and consequent further promotion in the grade of Section Officer. The facts as noticed herein above remains undisputed, that major penalty proceedings were initiated against the applicant in the year 1994 and lawful penalty had been imposed upon him. It is only on conclusion of the said penalty, the applicant could be promoted as UDC on 1.11.1996. It also remains undisputed that the applicant was promoted as Assistant w.e.f. 24th May, 2004. The applicant had accepted the aforesaid orders of promotion without challenging the same before the Tribunal or any other competent court of law. The fact remains that the post of Section Officer has to be filled by 3 different modes and we are concerned only with the promotional aspect i.e. 40% by promotion from amongst the Assistants having not less than 8 years regular service. The only ground urged in the MA No. 209/2006 seeking condonation of delay is that the applicant was entitled to promotion and the said cause of action is of continuing in nature. We are unable to accept such contention for the reason that it is not only the post of UDC but also the post of Assistant to which he has been promoted in the years 1996 and 2004 respectively and the said promotions were accepted without any demur. The applicant having accepted the said promotions without raising any objection at this belated stage cannot be allowed to resile. Even if we take a lenient view and condone the delay in approaching this Tribunal, on merits we do not find any justification in granting the relief of promotion to the post of Section Officer on ad-hoc basis, particularly when the applicant is ineligible for the said post. It is not the case of the applicant that he is the senior most in the feeder cadre. Once such are

the admitted facts, we do not find any merit and justification in the contentions raised by the applicant. The applicant had sought to project that he is claiming only seniority from a retrospective date and not the actual promotion. We are unable to accept ~~to~~ such a contention as the seniority is dependent upon promotion. The seniority and promotion in other words are not separable ^{but} ~~and are~~ inseparable. There is no justification and reasons to agree with his request that he is entitled to retrospective regularization and seniority. Finding no merits in the claim laid down the OA is dismissed. No costs.

10. Registry is directed to supply the copy of memo of parties to the concerned parties while issuing the certified copies of this order.


(M.K. Gupta)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

"SA"

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
पतिलिपि जारी जिला:-
(1) सचिव, राज्य सरकार का एग्रीगेशन, जबलपुर
(2) आवेदन सं/पि सं/सु.....के काउंसल
(3) प्रत्यक्षी श्री/श्रीमती/श्री.....के काउंसल
(4) वंशपाल, वेदपाल, जबलपुर नगरपालिका
सूचना एवं आवश्यक कार्यकारी हेतु
उप रजिस्ट्रार

M.P. Singh
Aphish Shrestha
M. Chaurasia
Dhurya Kant-Dyker
R.K. Verma

Issued
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