

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.884/03

Jabalpur, this the 10th day of March, 2005

Ashok Kumar Dixit
S/o Ram Lal Dixit
Conservation Asstt. Gr.I
Archeological Survey of India
12, HIG, Padmadhar Colony
Dekha, Rewa
Applicant

(By advocate Shri V.Tripathi on behalf of Shri S.Paul)

Versus

1. Union of India through
Its Secretary
Ministry of Tourism and Culture
New Delhi.
2. The Director General
Archeological Survey of India
Janpath, New Delhi.
3. The Director (Administration)
Archeological Survey of India
Janpath, New Delhi.
4. Shri G.Sarvanam
Sr.Conservation Asstt.
O/o Superintending Archeologist
Archeological Survey of India
Fort-Saint George
Chennai.
5. Shri O.P.Mathur
Sr.Conservation Asstt.
O/o Superintending Archeologist
Archeological Survey of India
Rani Mahal
Jhansi.
Respondents.

(By advocate None)



ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following main reliefs:

- (i) Set aside the order dated 7.12.99 and direct the respondents to consider and promote the applicant as Sr.Conservation Assistant from the date his junior was promoted.
- (ii) To direct the respondents to provide all consequential benefits to the applicant as if he is holding the post of Sr.Conservation Assistant with seniority, arrears of pay and other benefits from the date his juniors were promoted.

2. The brief facts of the case are that the applicant is working on the post of Conservation Assistant Gr.I, Bhopal Circle, Bhopal. The next promotional post of Conservation Assistant Gr.I is Sr.Conservation Assistant. The department circulated a gradation list on 4.3.97 of Conservation Assistant Gr.I as on 30.9.96 (Annexure A2). The applicant's name finds place at Sl.No.17 whereas the private respondents are below him at Sl.No.18 & 19 respectively. Hence the applicant is senior to the private respondents. Vide impugned order dated 7th December 1999 (Annexure A3), the private respondents who were juniors to the applicant were promoted. Feeling aggrieved, the applicant preferred representations which could not fetch any result. Therefore, he filed OA No.66/2000 before the Tribunal and vide order dated 15.3.2000, the said OA was disposed of directing the respondents to decide the representation of the applicant (Annexure A4). Accordingly, the applicant submitted a representation dated 27.4.2000 (Annexure A5), followed by several reminders. However, his claim has not been decided so far. Hence this OA is filed.

3. Heard the learned counsel for the applicant. None is present for the respondents. Hence the provision of Rule 16 of CAT (Procedure) Rules, 1987 is invoked.



4. It is argued on behalf of the applicant that the private respondents were apparently junior to the applicant, as is shown in the seniority list as on 30.9.96 (Annexure A2). In this list, the name of the applicant is at Sl.No.17 while the names of private respondents 4 & 5 are at Sl.No.18 & 19 respectively. However, vide impugned order dated 7th December 1999 (Annexure A3), both the aforesaid private respondents are ordered to be promoted, ignoring the due claim of the applicant. The applicant had filed an OA No.66/2000 which was decided by the Tribunal directing the respondents to consider the representation of applicant but no result was conveyed to the applicant. As per rule, the criteria for promotion of Senior Conservator Assistant which is a non-selection post, is seniority cum fitness. The applicant could not be promoted by the DPC held on 3.7.97 because the DPC had adopted the criteria of selection cum seniority, which was wrong and contrary to rules. Apart from this, the decision to keep the result of the DPC in sealed cover was incorrect because no departmental enquiry was pending or contemplated against the applicant in the year 1997 or prior to 1997. He further argued that the applicant was not communicated any adverse CR or downgrading in the ACR prior to the year 1997. If adverse CR or downgrading of CR has not been communicated to the concerned employee, such CR should not be taken into account by the DPC while considering the case for promotion. Therefore, the applicant could not have been deprived of promotion on the basis of uncommunicated CR. Hence the impugned orders are liable to be set aside and quashed and the applicant is legally entitled for the reliefs claimed.

5. We have perused the application for taking additional documents on record, moved on the behalf of the respondents. In the application, it is mentioned that the respondents are filing a copy of the comparative chart of the ACRs of the candidates who were considered by the DPC. The applicant earned below the average ACRs for the years 1994-95 to 1995-96 and average ACRs for the period 98-99 and on the basis of the said ACRs it appears that in comparison to the candidates who have been

given promotion, the ACR of the applicant is much below in merit. A copy of the DPC proceeding with regard to the meeting held on 31.8.1999 is also marked as Annexure R3. The representation of the applicant has been duly considered by the competent authority and rejected vide order dated 15.5.2002.

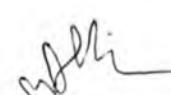
6. We have also perused the counter reply filed on behalf of the respondents. In the counter reply, it is mentioned that in his entire service tenure, the applicant's work was never found satisfactory. He was subjected to a departmental enquiry and a departmental proceedings is still pending against him. The applicant was well aware of these facts. Due to the pendency of such enquiry, the applicant could not be promoted in 1997 and 1999. Hence the respondents have not committed any irregularity in passing the impugned orders. The OA is liable to be dismissed.

7. After hearing the learned counsel for the applicant and carefully perusing the records, we find that the first DPC was held on 3.7.97 and the second was on 31.8.99. We have perused Annexure R-1 which is regarding the ACR of the applicant and of the private respondents 4&5. The applicant has specifically mentioned in his additional rejoinder that no adverse CR was communicated to him up to the year 1999 and for the first time he was served an adverse CR on 24.10.2000 and this was communicated much after the meeting of DPCs held in 1997 and 1999. The argument advanced on behalf of the applicant that if adverse CR or downgrading of CR has not been communicated to the concerned employee, such CR should not be taken into account by the DPC while considering the case for promotion, seems to be perfectly legal. The applicant has further mentioned in his additional rejoinder that no departmental enquiry was pending against him at the time of the first DPC held in 1997 and also on the date on which the second DPC was held in 1999 and that he has never been penalized for any allegation based upon

the charge sheet given to him prior to the meeting of the both DPCs. We have perused the proceedings of both the DPCs. The applicant was not found fit for promotion by the DPC held on 3.7.97 on the ground that a disciplinary proceeding was pending against the applicant. We have perused the letter dated 4th July, 1995 which supports the contention of the respondents that at the time of the aforesaid DPC meeting, a departmental enquiry proceeding was pending against the applicant. Hence it was mentioned that sealed cover procedure was adopted. We have also perused the minutes of the meeting of the DPC held on 31.8.99 in which it is held that as per the existing Recruitment Rules, the post of Senior Conservation Assistant is filled up 100% by promotion from Conservation Assistant Grade-I with 3 years' regular service in the grade. As per the new post based reservation roster register, out of 6 vacant posts, one post each goes to SC and ST quota and remaining 4 posts goes to the share of unreserved category of candidates. The post of Senior Conservation Assistant is non-selection post and is filled up on selection cum seniority basis. In the list prepared by the DPC, the name of the applicant is shown at Sl.No.7 while there were only 6 posts including 2 posts under reservation category. The private respondents No.4 & 5 – G.Saravanam and O.P.Mathur – are shown in this list at Sl.No.8 & 9 i.e. below the applicant.

8. After perusal of the proceedings of the both the DPCs held on 3.7.97 and 31.8.99, we are of the considered opinion that the applicant is not legally entitled for the reliefs claimed. Hence the OA has no merit and accordingly the same is dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P.Singh)
Vice Chairman