

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Transfer Application No. 2 of 2003

Jabalpur, this the 15th day of September, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Shri Ramesh Khobragade, S/o.
Shri Govind Rao, aged about 54
years, resident of Type-II, B/6,
Vanika Colony, Kotra Sultanabad,
Bhopal (MP).

... Applicant

(By Advocate - Shri S.P. Rai on behalf of Smt. S. Menon)

V e r s u s

1. Indian Institute of Forest Management, Nehru Nagar, Kotra Sultanabad, Bhopal (MP).
 2. The Director, Indian Institute of Forest Management, Nehru Nagar, Kotra Sultanabad, Bhopal (MP).
 3. Shri N. Gopakumar, Adult, Assistant (Administration), Indian Institute of Forest Management, Nehru Nagar, Kotra Sultanabad, Bhopal (MP).
 4. Shri R.S. Senghar, Assistant (Accounts Section), Indian Institute of Forest Management, Nehru Nagar, Kotra Sultanabad, Bhopal (MP).
- ... Respondents

(By Advocate - None)

O R D E R

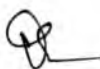
By Madan Mohan, Judicial Member -

None is present for the respondents. Since it is an old case of 2003, we proceed to dispose of this Transfer Application by invoking the provisions of Rule 16 of CAT (Procedure) Rules, 1987. Heard the learned counsel for the applicant and perused the records carefully.

2. By filing this Transfer Application the applicant has claimed the following main relief :

"(ii) to quash the order dated 8/9-11-2000 Annexure P-8 and order dated 8-12-2000 Annexure P-9 whereby the respondents Nos. 3 & 4 have come to be promoted to the higher grade and post of Assistant,

And/or



Direct the respondents No. 1 & 2 to consider the petitioner for promotion to the higher grade of Assistant in the scale of Rs. 4000-100-6000/- from a date earlier than the promotion effected in favour of respondents No. 3 & 4 respectively and grant him all the ancillary and consequential service benefits!

3. The brief facts of the case are that the applicant as per the recommendations of the DPC came to be promoted as Junior Assistant initially on adhoc basis by respondent No. 2 vide order dated 29.4/5.1992. Subsequently, vide order dated 12.1.1994 the applicant was informed that he is deemed to be promoted as Junior Assistant in the pay scale of Rs. 950-1500/- ^{In} the seniority list that came to be published by the authorities concerned, the name of the applicant is reflected at S. No. 55, indicating therein that he has been functioning on the post of Junior Assistant since 4.5.1992 while respondent No. 3's name appears at S. No. 59, and that of the respondent No. 4 at S. No. 58 and both of them is shown to be functioning on the post of Junior Assistant w.e.f. 3.11.1992 & 4.12.1992 respectively. In this seniority list the name of respondents Nos. 3 & 4 are shown below to the applicant. The applicant belongs to a Scheduled Caste category. The respondents vide letter dated 29.8.2000 informed the applicant that his performance for the year 1999-2000 had been assessed and an over all grading of Average was communicated. He submitted a representation against it. According to the recommendations of the DPC the respondents issued the order dated 8/9-11-2000, whereby amongst other officials respondent No. 3 came to be promoted as Assistant to the scale of Rs. 4000-6000/-. The applicant is only challenging the promotion of respondent No. 3 in so far as the order dated 8/9-11-2000 is concerned as all those incumbents whose names have been reflected under serial No. 1 to 7



are seniors to the applicant. Thereafter vide order of 8.12.2000 the respondents promoted respondent No. 4 from the post of Junior Assistant to the post of Assistant in the scale of Rs. 4000-6000/-. This order is also under challenge as respondent No. 4 is junior to the applicant. As per Annexure P-3 the faculty members are required to be promoted to an higher grade on completion of 5 years service in that grade. It was not only mandatory but rather obligatory upon the authorities concerned to have considered the applicant for promotion and appointment to the higher grade of Assistant despite the fact that there were vacancies to the said post. The applicant submitted a representation against the memorandum dated 29.8.2000, but it has not yet been considered nor any communication is made to the applicant against it. The service record of the applicant good. He has been never communicated about any adverse remarks/CR other than Annexure P-5 which is still under consideration of the respondents. The applicant being senior than respondents Nos. 3 & 4 and as he has never been communicated any adverse CR other than mentioned above should have been considered for promotion to the post of Assistant from the date his juniors have been promoted. The whole action of the respondents is illegal, improper, unjustified and cannot stand the scrutiny of law.

4. The learned counsel for the applicant argued that the applicant belongs to a scheduled caste category. Our attention is drawn towards Annexure P-4, which is said to be a seniority list and in which the name of the applicant is at serial No. 55, while that of respondent No. 3 and 4 is 59 and 58 respectively. Hence, the applicant is apparently senior to the respondents Nos. 3 & 4.



No adverse CR was ever communicated to the applicant other than Annexure P-5, which is still under consideration of the respondents. He also argued about Annexure P-5 i.e. a letter dated 29th August, 2000 in which the over all grading of the applicant is assessed as Average for the year 1999-2000. The applicant submitted his representation against the said letter but his representation is not yet decided by the respondents. This action of the respondents is apparently in violation of the rules and law. The applicant is highly prejudiced with the action of the respondents, while he was legally entitled for the reliefs claimed. His claim is ignored by the respondents ^{arbitrarily and} without giving any justifiable grounds.

5. After hearing the learned counsel for the applicant and on careful perusal of the pleadings and records, we find that the respondents have mentioned in their reply that the respondents Nos. 3 and 4 were promoted on the basis of recommendations of the DPC. The applicant was initially appointed on the post of Chowkidar on daily wage basis and was subsequently given the regular appointment on the said post vide order dated 14.8.1986. Thereafter the applicant was given adhoc promotion on the post of Junior Assistant because the applicant was not having the prescribed qualification of having passed the typewriting examination. Consequent upon passing the typing examination held on 5.2.1993, the applicant was declared as deemed to be promoted vide order dated 12.1.1994. His appointment on the post of Junior Assistant on regular basis is to be reckoned from 5.2.1993. The gradation list relied on by the applicant is not at all the gradation list of the respondents institute. The applicant was communicated his average performance vide



communication dated 29.8.2000, so that he could improve his way of functioning, but instead, he has submitted a representation against such communication by treating it as an adverse one. However, considering the said ^{of} representation/the applicant, the average confidential report has been expunged and instead the applicant has been awarded good category performance vide order dated 20.3.2001. The persons appointed prior to the applicant in the cadre of Junior Asstt., who have completed 8 years regular service in the cadre were considered for next promotion to the post of Asstt. in the order of their seniority and while making such promotion, the reservations rules/roster have also been adhered to. No persons junior to the applicant either in the category of scheduled caste or in the general category has been promoted as Assistant. We have perused Annexure R-5 which is the seniority list of Junior Assistants (Rs. 3050-4590/-) as on 1.7.2000. In this the name of respondent No. 3 and respondent No. 4 are at Sl. Nos. 5 & 6 respectively. The name of the applicant is placed at Sl. No. 7. The date of regularisation of respondents Nos. 3, 4 and the applicant are 3.11.1992, 4.12.1992 and 5.2.1993 respectively. We also perused Annexure P-8 dated 8.11.2000 and Annexure P-9 dated 8.12.2000. Both these letters show that the names of the respondents Nos. 3 & 4 were considered by the DPC as they were regularised before the applicant as the applicant was initially appointed as Chowkidar on daily wages. The average CR of the applicant for the year 1999-2000 has been expunged and instead the applicant has been awarded Good category performance vide order dated 20.3.2001. We find that the respondents have not committed any irregularity or illegality while passing the impugned orders and there is no violation of any rules.



(M.P. Singh)
Vice Chairman

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

પરિણામ અર્થે વિદ્યુત :-

- (1) राशिपत्र, तबल प्रमाणपत्र वर एवम् अन्य, जवळपुर
(2) आदेशादी/पत्रिकादी/..... को काउंसल Smt. Sichenon HC 23/7
(3) प्रत्यक्षी/पत्रिकादी/..... को काउंसल Shri Hemant Shrivastava
(4) न्यायाधी, तबल, जवळपुर जवळपुर
सूचना एवं आवश्यक कार्यवाही हेतु
१/११/२०२०
रमेश राजिंदर

Issued
On 20-9-09
BS