

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
(CAMP OFFICE AT INDORE)

Original Application No. 334/2001

Indore, this the 20th day of April, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Member (J)

Yashwantkumar Jain s/o Hira Lal Jain
Aged 48 years, Occupation - Service,
R/o 241-A, Janta Colony, Main Sanjeet Road,
Mandsaur.

...Applicant

(By Advocate: Shri V.N.Palsikar)

-versus-

Union of India through

1. Secretary,
Ministry of Finance,
Dept. of Revenue, North Block,
New Delhi.
2. The Narcotics Commissioner of India,
19, the Mal Murar Road,
Gwalior-6.
3. The Dy. Narcotics Commissioner,
Narcotics House Rajaswa Colony,
Neemuch.
4. Shri Mohd. Rafi, Inspector
through Deputy Narcotics Commissioner,
Neemuch.

...Respondents.

(By Advocate: Smt. S.R.Waghmare)

O R D E R

By Madan Mohan, Member (J):

By filing the present Original Application, the applicant has sought the following main reliefs:

- ii) That the promotion order dated 28.1.2000 so as it relates to the respondent no. 5 be quashed.
- ii) That the respondents be directed to consider ~~the~~ and promote the applicant to the post of Inspector from the date when his juniors were promoted.
- iii) That the respondents be directed to give all consequential benefits (including monetary) to the applicant

2. The brief facts of the case are that the applicant was initially appointed to the post of L.D.C. and thereafter was promoted as U.D.C. vide order dated 19.12.1990 giving notional seniority w.e.f. 27.2.1987. He passed the UDC examination in the year 1975 and after passing the said examination the respondents have granted one advance increment to the applicant. The applicant has also passed the examination meant for Inspector in November, 1994. The respondents had published a seniority list from time to time. In the year 1995 the respondents had published a seniority list showing the position of UDC in the department. In the said seniority list the name of the applicant was at sl. no. 73 while the name of Barkhoram was shown at sl. no. 79 and Smt. Margret Erccs at serial no. 82 while the respondent no. 5 (presently respondent no. 4 as earlier respondent no. 4 has been deleted) was at serial no. 76. According to the rules, a person who has completed five years service as a UDC and has not completed 45 years of age is eligible for promotion to the post of Inspector. The applicant submits that he has completed five years of service on 26.2.1992 and thus was fully eligible for promotion to the post of Inspector. However, with a view to deprive the applicant from his rightful claim of the promotion, he was communicated with CRs for the year 1991-92 vide order dated 5.8.1992. The applicant immediately submitted his representation to respondent no. 2 on 13.8.1992, which was rejected by the respondents. Being aggrieved by the said order dated 28.2.1994, the applicant preferred an appeal which was also rejected by the respondents on 9.8.1995.

2.1 The respondent no. 1 vide letter dated 12.12.1997 informed the respondent no. 2 that it was not possible to re-open the case of the applicant at this stage. The respondent no. 1 vide its order dated 1.9.1998 has directed the respondent no. 2 that the case of the applicant be considered alongwith the other candidates for promotion to the post of Inspector in review D.P.C. In the review D.P.C. the name of the applicant was also included in the said list. The review D.P.C.s were held on 2.9.1998, and 17.10.1998 for the years 1991-92, 1992-93, 1993-94, 1994-95, 1995-96 and

1996-97 and number of persons who were juniors to the applicant were considered for promotion in the D.P.C. The applicant immediately made a representation to the respondent no. 1 on 6.12.1998 and the same was rejected by the respondent no. 1 vide order dated 11.1.1999 by a non-speaking order. The applicant also served a notice for demand of justice on respondents through his lawyer. In reply to the said notice, the respondents had stated that the applicant will be considered for promotion when his turn comes. They further stated that the ACRs of the applicant for the years 1995-96 and 1996-97 were not upto the mark so he could not be promoted in the said D.P.C.

2.2 The applicant submits that the entire action of respondents in not considering and promoting the applicant to the post of Inspector although he is fully eligible for the same is ultra-vires and contrary to the rules. After being aggrieved by the inaction of the respondents in the matter of promotion of the applicant to the post of Inspector, the applicant has filed the present O.A. for seeking the aforesaid relief:

3. Heard the learned counsel for both the parties.

4. It is argued on behalf of the applicant that by this O.A. he is not challenging any order of the respondents but he has filed this O.A. to challenge the inaction of the respondents in not considering the case of the applicant for promotion to the post of Inspector from the date from which his juniors were promoted.

Though the review DPCs were held on 2.9.1998 and 17.10.1998 for the years from 1991-92 to 1996-97 considering a number of juniors employees ignoring the claim of the applicant, the applicant made a representation to respondent no. 1 on 6.12.1998 which was rejected. He further argued that the applicant served a notice to the respondents against which they replied that the applicant could not



be promoted because his ACRs for the year 1995-96 and 1996-97 were not upto the mark. But the fact is that with an intention to deprive the applicant from promotion to the post of Inspector, the reporting officer with malafide intention communicated the/remarks to the applicant in 1991-92. It is further argued that the applicant requested the respondent no. 1 for reconsidering the entire matter of the applicant as it appears that the said adverse remarks have been written with prejudice and bias mind. But the said request of the applicant was not considered by the respondents.

5. In reply, the learned counsel for the respondents argued that due to adverse remarks in the ACRs of the applicant, he could not be considered for promotion. Our attention has been drawn towards letter dated 7/8.1.1998 (R/1) by which the adverse remarks for the year 1991-92 was not expunged by the concerned authority.

6. We have given careful consideration to the rival contentions of the parties and perused the DPC proceedings and ACRs produced by the respondents and find that the applicant has not been able to obtain 'Good' remarks for continuously five years which is the minimum requirement for considering the case for promotion to the post of Inspector. We also find that the arguments of the respondents that the adverse remarks of the applicant for the year 1991-92 was not expunged is fully supported by the documentary proof.

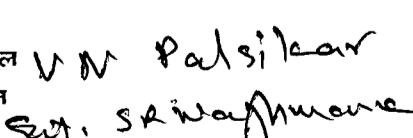
7. In view of the above discussion, the O.A. fails and the same is accordingly dismissed. No costs.

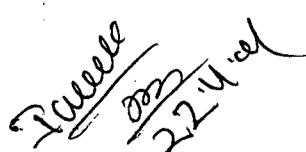

(Madan Mohan)
Member (J)

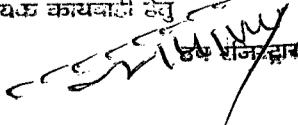

(M.P. Singh)
Vice Chairman

/na/

कृतांकन सं. ओ/व्या.....जा. सं. दि.....
प्रतिलिपि द्वारा दिया गया, जलालपुर
(1) संपित्त, वा. विवरण, जलालपुर
(2) अधिकारी, वा. विवरण, जलालपुर काउंसल
(3) प्रत्यक्षी वी, वा. विवरण, जलालपुर काउंसल
(4) ग्रंथालय, दे. 22.2.1998, जलालपुर काउंसल
संस्कार एवं अकारयक्त कार्यवाही केरु


V.N. Palsikar
Smt. Srinivasmone


Smt. Srinivasmone
22/4/98


B.N. Shinde