

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 29th day of June, 2005

ORIGINAL APPLICATION No.266/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR.G.R.PATWARDHAN, MEMBER (ADMINISTRATIVE)

Dr. G.S.Somawat s/o late Shri K.R.Somawat, aged 53
years, Director, Office of the National Commission for
Scheduled Tribes, Zonal Office, Jaipur and resident
of C-62, Balnagar, Kartarpura, Jaipur.

.. Applicant

Versus

1. Through the Secretary to the
Government of India,
Ministry of Social Justice and
Empowerment
(Joint Cadre Controlling Authority)
Scheduled Castes Development Division
A-wing, 6th Floor,
Shastri Bhawan,
New Delhi

... Respondent

(By Advocate:

ORDER

Per Hon'ble Mr. M.L.Chauhan

The applicant has filed this Original Application
thereby praying for the following reliefs:

- i) That the respondent may be directed to hold the review Departmental
Promotion Committee to consider the applicant for regular promotion

- to the post of Director w.e.f. 2.1.1996 or April, 1996 instead of 24.1.1997 and also to provide all the consequential benefits arose and accrued to the applicant.
- ii) Any other order or orders as are deemed fit and proper in the interest of justice and the facts and circumstance of the case may kindly be passed in favour of the applicant.

2. Briefly stated, facts of the case are that the applicant who is substantive holder of the post of Deputy Director in the office of Director for Scheduled Castes and Schedules Tribes and presently working as Director, Office of the National Commission for Schedules Castes has filed this OA against the impugned order dated 15.4.2005 (Ann.A1) which order has been passed in compliance of the direction issued by this Tribunal in OA No.562/2003 decided on 5.1.2005. At the outset, it may be stated that this Tribunal vide order dated 5.1.2005 passed in OA No.562/2003 has directed the respondents to decide representation dated 5.11.2003, page 19 and 20, to the extent whether the amendment in the recruitment and promotion rules to the post of Director (Joint Cadre) should be carried out in the light of the instructions issued by the DOPT vide OM Annexure A4 and A5, but the competent authority dealing with the aforesaid point has also recorded findings that the period between 23.11.88 and 8.4.1991 cannot be treated as qualifying service for the post of Deputy Director for promotion to the post of Director pursuant to the decision rendered by this Tribunal in earlier OA No.536/1995 decided on 2nd March, 2001. It may be stated at this

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stage that in earlier OA No.536/1995 decided on 2.3.2001 one of the prayer made by the applicant, as can be seen from the copy of the judgment which has been annexed with this OA as Ann.A2, was that respondent No.2 be directed to promote the applicant for the post of Director for Schedules 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 along with all consequential benefits like pay fixation, salary, pay arrears etc. As can be seen from narration of the facts as stated in the aforesaid judgment, the case of the applicant was that he was recommended for the post of Deputy Director in the National Commission for SC and ST under the Ministry of Welfare by the U.P.S.C. on 23.8.88 but he was not allowed to join the said post by the respondents and in fact he actually joined the post of 9.4.91. The stand taken by the respondents was that offer of appointment was not sent to the applicant due to pending disciplinary proceedings and as such he has to be treated as Deputy Director w.e.f. 9.4.1991 when he actually joined the post and prior to that he was serving as Lecturer, E.E.I., Nilokheri. This Tribunal after examining the matter exhaustively 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 will count for refixation of his pay and his

pay shall be fixed at the stage had he joined the post of Deputy Director on 23.11.88 and he would be paid pay and arrears from the date of actual joining. It was further held that notional date of joining will also be taken into account for fixation of pension of the applicant as and when he retires on reaching the age of superannuation and his seniority will also be refixed in terms of notional date of joining. As regards counting of his service from the date of his notional joining for the purpose of qualifying service for promotion to the post of Director, this Tribunal in the earlier OA had categorically held that the said period cannot be allowed as qualifying service for promotion to the post of Director for variety of reasons mentioned therein and held that the period between 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. For this purpose, the Tribunal has placed reliance on the decision of the Apex court in the case of Orissa Small Scale Industries Corpn. Ltd. and Anr. Vs. Narsingha Charan Mohanty and ors., 1999 SCC (L&S) 246. This decision has attained finality. Thus, the prayer of the applicant that respondents be directed to promote the applicant on the post of Director, Scheduled Caste and Scheduled Tribe w.e.f. September, 1993, completion of five years period from the

selection of the applicant by the U.P.S.C. for the post of Deputy Director, was declined. Now in the garb of order dated 15th April, 2005 (Ann.A1), the applicant has filed this OA thereby praying that respondents may be directed to hold review DPC to consider him for regular promotion to the post of Director w.e.f. 2.1.1996 or April 1996 instead of 24.1.1997.

3. We have considered the submissions of the applicant who was present in person. We are of the firm view that the present OA is wholly misconceived and deserve dismissal in limine. As already stated above, it may be stated that one of the prayer of the applicant in OA No.536/95 was that he should be promoted to the post of Director w.e.f. Sept. 1993 as he had completed 5 years of qualifying service as Deputy Director from the selection of the applicant by the UPSC (23.8.88). This Tribunal has categorically held in the earlier OA that period w.e.f. 23.11.88 till 9.4.1991 shall not be counted as qualifying service to the post of Director, SC and ST in the Ministry of Welfare. It may also be stated here that during the pendency of this OA, the applicant was given ad-hoc promotion vide order dated 2.1.1996 and regular promotion w.e.f. 24.1.1997 when the case of the applicant was recommended by the regular DPC vide office order dated 17th March, 1997. As already stated above, OA No.536/95 was decided on 2.3.2001. It was

permissible for the applicant to file amended OA thereby challenging the order whereby the applicant was given promotion to the post of Director w.e.f. 24.1.1997 vide order dated 17th March, 1997. The applicant has not chosen to avail this remedy by making amendment in the OA or to file substantive OA thereby challenging the order dated 17th March, 1997 whereby the applicant was given promotion as Director w.e.f. 24.1.1997 and he was placed on probation for a period of two years. Since the applicant has not challenged validity of the order whereby he was given regular promotion w.e.f. 24.1.1997, as such validity of this order cannot be gone into. Even in this OA, the applicant has not prayed for quashing the order dated 17th March, 1997 whereby he was given promotion as Director w.e.f. forenoon of 24th ~~January~~, 1997. Thus, no relief can be granted to the applicant from prior date so long as the validity of the order dated 17th March, 1997 is not challenged and the said order is not quashed. That apart, this Tribunal in OA No.536/95 had categorically held that the period between the notional date of joining i.e. 23.11.88 and actual date of joining i.e. 9.4.91 shall not be counted as qualifying service for the post of Director, SC and ST. The judgment was rendered on 2.3.2001. The applicant has accepted the findings given by this Tribunal in OA No.536/95. In case the applicant was of the view that on the basis of decision rendered by

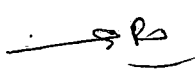
this Tribunal in OA No.536/95 on 2.3.2001 he is entitled to promotion to the post of Director w.e.f. 2.1.96 or April, 1996 instead of 24.1.1997, he should have agitated the matter within the statutory period prescribed under Section 21 of the Administrative Tribunals Act. The applicant has filed this OA after a lapse of about 8 years when he was promoted w.e.f. 24.1.1997 vide order dated 17th March, 1997 and almost 4 years after the decision rendered in earlier OA No.536/95 without any application for condonation of delay. In the garb of the order dated 15th April, 2005 which was passed pursuant to the judgment rendered by this Tribunal in OA No.536/2003 and which was confined only to consider the case of the applicant for amendment in the recruitment and promotion rules to the post of Director in the light of DOPT instructions issued vide OM Ann.A4 and A5, the applicant cannot agitate this issue at this stage. The applicant has also not given any explanation as to why he has not resorted to the remedy at the relevant time. On this count also, the applicant is not entitled to any relief. Besides it, the applicant is also estopped to seek the relief as prayed for in this OA on the principle of constructive res-judicata. It was permissible for the applicant to raise alternative prayer to the effect that he has actually joined as Deputy Director on 9.4.1991 and has completed 5 years of qualifying service in April, 1996, as such, he be

promoted as Director w.e.f. April, 1996 instead of 24.1.1997. As already stated above, the applicant has neither challenged his promotion order w.e.f. 24.1.1997 nor he has set up an alternative case for granting him promotion at least w.e.f. April, 1996 instead of September, 1993 as prayed in OA No. 536/95. On this count also, the applicant is not entitled to any relief.

4. Additionally, the prayer of the applicant that respondents be directed to hold review DPC to consider case of the applicant for regular promotion to the post of Director w.e.f. April, 1996 or 2.1.96 instead of 24.1.1997 cannot be accepted even on merit. The applicant was promoted as Director on ad-hoc basis w.e.f. 2.1.96 when admittedly he has not completed 5 years of service as Deputy Director, which was the eligibility criteria for promotion to the post of Director. This Tribunal in OA No. 536/95 has held that qualifying service for promotion to the post of Director should be counted from the date when the applicant had joined the post on 9.4.1991. Thus, the promotion of the applicant to the post of Director w.e.f. 2.1.1996 even on ad-hoc basis was de-hors the rules and as such void-ab-initio as he has not put in 5 years of requisite service on the post of Deputy Director. Thus, the prayer of the applicant that respondents be directed to hold review DPC and grant

regular promotion to the post of Director w.e.f. 2.1.1996 cannot be accepted. Similarly, the applicant is not entitled to regular promotion w.e.f. April, 1996 when he has just completed 5 years of service. It is not the case of the applicant that when he became eligible for the post of Director in April, 1996 and till his case for regular promotion was considered by the DPC on 24.1.1997 any DPC was held. When the applicant became eligible, the DPC held on 24.1.1997 considered his case and he was given regular promotion. Prior to that the applicant was continuing as Director on ad-hoc basis by virtue of the order passed on 2.1.96 which order was void-ab-initio. It cannot be said that the respondents took unreasonable time to hold the DPC after the applicant became eligible for promotion to the post of Director in April, 1996.

5. Thus, viewing the matter from any angle, we are of the view that the applicant is not entitled to any relief. Accordingly, the OA is dismissed at admission stage with no order as to costs.


(G.R. PATWARDHAN)

Member (Adm)


(M.L. CHAUDHARY)

Member (Judl)