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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI-5.

D.A. NO. 58 of 1994
T.A. NO.

DATE OF DECISION 16.12.1997

Shri Nepal Shah

(PETITIONER(S))

Mr B.K. Sharma

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India and others

RESPONDENT (S)

Mr A.K. Choudhury, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.58 of 1994

Date of decision: This the 16th day of December 1997

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Nepal Shah,
Technical-6 (Farm Manager),
Indian Council of Agricultural Research Complex,
Barapani, Meghalaya.Applicant

By Advocate Mr B.K. Sharma.

-versus-

1. The Union of India, represented by
The Secretary to the Government of India,
Ministry of Agriculture, New Delhi.
2. The Indian Council of Agricultural Research,
represented by the Director General,
Krishi Bhawan, New Delhi.
3. The Director,
ICAR Research Complex for NEH Region,
Barapani, Meghalaya.Respondents

By Advocate Mr A.K. Choudhury, Addl. C.G.S.C.

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O R D E R

BARUAH.J. (V.C.)

The applicant has filed this application challenging the Annexure 1 order dated 21.9.1989 issued under the signature of the Under Secretary to the Government of India. In para 2 of the said order it has been mentioned that the competent authority did not approve the recommendation of the Selection Committee for promotion of the applicant as the applicant did not fulfil the

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pre-requisite conditions laid down in Annexure 2 circular dated 2.5.1989. We quote para 2 of Annexure 1 order.

"I am further to say that the competent authority has not approved the recommendation of the Selection Committee to the grant of merit promotion from grade T-6 to the next higher grade T-7 in respect of the following officers as they do not fulfil the pre-requisite conditions with regard to their gradation of CCR as laid down and circulated vide ICAR letter No.7(18)/85-PER. III dated 2.5.1989.

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2. Sh. Nepal Shah

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2. By Annexure 2 circular dated 2.5.1989, the Deputy Secretary(L), Indian Council of Agricultural Research, New Delhi, gave the criterion for promotion. As per the said criterion, in order to get promotion up to the grade T-5 an employee should possess consistently three 'good' reports and 'very good' for T-6 and above. This criteria was introduced by the Deputy Secretary(L)'s letter under No.7(18)/85-PER.II dated 2.5.1989.

3. The facts for the purpose of disposal of this application are:

The applicant, at the material time, was working as T-6 in the Indian Council of Agricultural Research (ICAR for short). His next promotion was to the grade of T-7. At that point of time the criteria for promotion was that the authority shall make assessment for five years of the applicant in grade T-6. The applicant's promotion became due in 1986. However, it was deferred and the DPC sat on 3.5.1988 and at that time the applicant

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was found suitable and had the necessary qualification for promotion to T-7 grade. Accordingly, the DPC made the recommendation. However, in spite of the recommendation of the DPC, the authority did not promote him. Being aggrieved, the applicant submitted Annexure-4 representation dated 8.8.1990. However, the applicant came to know about the Annexure-2 circular only in the later part of 1992. Thereafter, the applicant submitted Annexure 5 representation dated 23.4.1993. However, his representation was not considered. Hence the present application.

4. We have heard Mr B.K. Sharma, learned counsel for the applicant and Mr A.K. Choudhury, learned Addl. C.G.S.C. The main contention of Mr Sharma is that the applicant was selected by the DPC in the year 1988. At that time he was found to be qualified for promotion and accordingly his name was recommended for promotion. Therefore, the authority should have promoted him to T-7 grade immediately after the recommendation. However, the authority remained silent and later on, after Annexure 2 circular was circulated, Annexure 1 letter dated 21.9.1989 was written to the 3rd respondent- The Director, ICAR, informing him that on the basis of Annexure 2 circular dated 2.5.1989 the requirements for promotion was changed. Mr Sharma submits that the Annexure 2 circular was issued long after the selection and recommendation were made by the Selection Committee. Therefore, on the basis of

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the subsequent letter the applicant's promotion could not be denied. Mr A.K. Choudhury, on the other hand supports the impugned order. He submits that in view of the criterion subsequently adopted the applicant could not be promoted and there was nothing wrong in it.

5. On the basis of the submissions of the learned counsel for the parties, it is now to be seen whether the applicant's promotion could be denied by adopting certain criterion as per Annexure 2 circular issued subsequent to the applicant's selection. It is an established principle of law that any provision of Acts, Rules or Government Instructions are normally prospective. However, such can be made retrospective by making express provisions. In the present case, the Annexure 2 circular does not show that the authority while issuing the instructions intended to give retrospective effect. Mr Sharma draws our attention to Annexure D letter dated 8.9.1994 to the rejoinder by which the respondents had indicated that the Annexure 2 circular dated 2.5.1989 was not applicable to the persons selected earlier to the issuance of the same. We quote the relevant portion of the said Annexure D letter.

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.....Dr S.N. Goswami, Technical Officer(T-6) was not considered for assessment promotion from T-6 to T-7 with the contention "that the criteria of having at least three Very Good reports consistently as laid down in the Council's circular No.7(18)/85-Per.II dated 2nd May'89(copy enclosed) has not been fulfilled by Dr S.N. Goswami. In this connection, I would like to say that Dr Goswami had joined the post of T-6 on 18/11/82(F.N.). Thereby it appears that his assessment period should be considered from 1.1.83 to 1.1.88 for the purpose of five yearly assessment. If it is so, the contention of three Very goods for assessment from the Grade of T-6 to T-7 as laid down in the Council's circular dated 2nd May'89 referred to above is not applicable....."

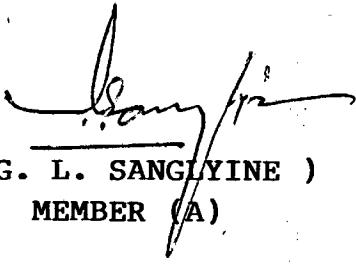
This letter was written by the Administrative Officer to the Secretary, ICAR, in connection with the promotion of one Dr S.N. Goswami from T-6 to T-7, who was also similarly not promoted for non-fulfilment of the criterion adopted by Annexure-2 circular. However, Dr Goswami was later on promoted by Annexure-E order dated 18.10.1995 to the rejoinder, issued by the Under Secretary(E-IV), ICAR, New Delhi.

6. Considering all the above we find that the present case is similar to that case and accordingly we are of the view that the criteria adopted by Annexure-2 circular dated 2.5.1989 was not applicable in the case of the applicant. He ought to have been promoted immediately after the selection was made, which was unfortunately not done. No reasons were shown for not promoting him immediately. We, therefore, direct the respondents to give promotion to the applicant from

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the due date.

7. The application is accordingly disposed of. However, in the facts and circumstances of the case we make no order as to costs.


(G. L. SANGLIYINE)

MEMBER (A)


(D. N. BARUAH)

VICE-CHAIRMAN

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