

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

ORIGINAL APPLICATION No. 170/00463/2017

TODAY, THIS THE 08TH DAY OF APRIL, 2019

**HON'BLE SHRI JUSTICE L. NARASIMHA REDDY, CHAIRMAN
HON'BLE SHRI C.V. SANKAR, ADMINISTRATIVE MEMBER**

S.Nanjundaswamy,
S/o Late Siddaih,
Aged about 62 years
Retired as Section Officer,
O.o: The Regional Institute of Education,
Mysore.
Residing at Door No.471, 3rd Cross,
8th Main, H. Block
Ramakrishna Nagar,
Mysore-570 022.Applicant

(By Advocate Shri.Izzhar Ahmed)

Vs.

1. Director,
National Council for Educational
Research & Training (NCERT)
Sri Arvindo Marge,
New Delhi – 110 016.
2. Secretary
National Council for Educational
Research & Training (NCERT)
Sri Arvindo Marge,
New Delhi – 110 016.
3. Union of India
Through the Secretary,
Ministry of Human Resource Department
“C” Wing, ShastriBhavan,
New Delhi – 110 001.

....Respondents

(By Shri.Dilip Kumar, Senior Panel Counsel)

ORDER**JUSTICE L. NARASIMHA REDDY, CHAIRMAN**

The applicant joined the NCERT in 2004 as a Section Officer. Promotion from that post is to the post of Administrative Officer (Group-A) on completion of 7 years of service in the feeder cadre. The applicant contends that a DPC was conducted on 29.10.2013 for recommending candidates for promotion against 3 anticipated vacancies and 4 regular vacancies and that there is a clear vacancy on account of reversion of one Administrative Officer, by name Shri M.P. Ram, and despite that, his case was not considered. He further submits that he belongs to SC category and though five vacancies of Administrative Officer are earmarked for SC and many vacancies were available in the unreserved category by 29.10.2013, his case was not considered at all. It is also his case that in the subsequent years, the DPC was not held and on 30.04.2015 he retired from service. He submits that the respondents issued a notification in the year 2014 to fill this very post and there again, his case was not considered.

2. The applicant submitted a representation on 25.11.2016 ventilating his grievance. The respondents replied on 17.03.2017 stating that the DPC which met on 29.10.2013 considered the case of several candidates for 3 anticipated vacancies of Under Secretary/Administrative Officer and thereafter a policy decision was taken not to undertake any promotion, in view of the uncertainty as

regards the method of implementation of reservation in promotion, and accordingly it was decided to take recourse to deputation. The applicant has filed this OA challenging the said reply. He submits that the respondents have not taken into account the O.Ms dated 12.10.1998 and 14.11.2014 issued by the DoPT which provide for consideration of the case of retired employees also. He prayed for consideration of his case for notional promotion to the post of Administrative Officer (Group-A) against the vacancies reserved for SC and to refix his pay with all consequential benefits.

3. Respondents filed a detailed reply. According to them, none of the juniors to the applicant in the post of Section Officer were promoted to the post of Administrative Officer / Under Secretary while he was in service. It is also stated that the DPC considered the cases for promotion to the post of Administrative Officer / Under Secretary in the year 2013 wherein the persons who got promotions are all seniors to the applicant. They contended that the vacancies subsequent to 2013 were not considered for promotion, since the method of appointing the Administrative Officer through deputation was resorted to on account of lack of clarity in the law, pertaining to enforcement of reservation in promotion in favour of SC candidates. They submit that the impugned order was issued in view of his claim and that the OMs relied upon by the applicant would become relevant only if any

Section Officer, junior to him was promoted to the post of Administrative Officer while he was in service.

4. Heard the arguments of Shrilzzhar Ahmed, learned counsel for the applicant and ShriDilip Kumar, learned counsel for the respondents.

There is no dispute that the applicant has completed 7 years of regular service in the post of Section Officer. He became eligible for being considered for promotion to the post of Administrative Officer. It is also not denied that he belongs to SC community. The DPC met once in the year 2012 and thereafter on 29.10.2013 for considering the case of eligible candidates. As many as 7 candidates were considered and all of them, undisputedly were senior to the applicant. The circumstances under which the DPC was not convened in the subsequent year are mentioned in the impugned letter dated 17.03.2017. It reads as under:

“..... In the meantime, Director NCERT vide Note No. PS(D)/6-117/2013-14 dated 1.5.2014 directed to hold all DPC till finalization of all Reservation Roster of Non-Academic posts. Accordingly, Reservation Roster for the post of Under Secretary was re-casted/finalized on 25.08.2014, but objections were received from various channels to apply the rule of squeezing in the reservation roster for the post of Under Secretary, as according to percentage prescribed for reservation to the SC category persons in the cadre of Under Secretary, having 14 posts, may consist of 2 persons belonging to SC category..”

This is fortified from the fact that the respondents issued an advertisement on 07.11.2014 inviting applications for

appointment of Under Secretary/Administrative Officer, on deputation on foreign service terms. It is not clear as to whether any persons were appointed as a sequel to this advertisement.

5. In the impugned letter dated 17.03.2017 itself, it is mentioned that a Revised Reservation Roster for the post of Under Secretary / Administrative Officer was finalized on 31.08.2015 and the DPC to consider eligible candidates was convened only in December, 2015. Unfortunately the applicant retired much prior to the said date, i.e. 30.04.2015.

6. Notwithstanding the fact that the applicant retired from the post of Section Officer in the year 2015, we would have certainly granted the relief to him if any person junior to him in the post of Section Officer was promoted to the post of Administrative Officer before 30.04.2015. Despite our repeated queries in this regard, learned counsel for the applicant is not able to state anything in this behalf, much less to place the material.

7. The two O.Ms dated 12.10.1998 and 14.11.2014 relied upon by the applicant became relevant if only the DPC met while the employee was in service, but his case was not considered, and by the time the results of the DPC are known or implemented, the employee retired. This is not the case here. Not a single

person, junior to the applicant was considered either in the general promotion or in the reserved category.

8. In the circumstances mentioned above, we find no merit in the O.A and is dismissed accordingly. No costs.

(C.V. Sankar)
Administrative Member

(Justice L. Narasimha Reddy)
Chairman