

- 1 -

17/02/2018

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CIRCUIT AT CALCUTTA**

O.A.NO. 351/00241/2018

IN THE MATTER OF:

An application under section 19 of the Central
Administrative Tribunal Act, 1985.

-And-

IN THE MATTER OF:

Shri R.Chandra Mohan S/o Late A.V.Radhakrishnan
retired from the post of Special Resident Commissioner,
Andaman & Nicobar Administration, DP-7, Sector-V,
Salt Lake, Kolkatta-700091, Residing at UD 060402,
UDITA,1050/1, Survey Park, Kolkatta-70075.

.....Applicant

-Versus-

1. Union of India service through Secretary, Ministry of
Home Affairs, North Block, New Delhi-110001.
2. The Lt. Governor, Andaman & Nicobar Islands, Raj
Niwas, Port Blair-744101
3. The Chief Secretary, Andaman & Nicobar
Administration, Secretariat Building, Port Blair-744101
4. The Secretary (Tourism), Andaman & Nicobar
Administration, Secretariat Building, Port Blair-744101



5. The Director (Tourism), Directorate of Tourism,

Andaman & Nicobar Administration, Secretariat

Building, Port Blair-744101

...Respondents

22

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/351/241/2019

Date of Order: 12.03.2019

Coram: Hon'ble Mr. A.K Patnaik, Judicial Member

R. Chandra Mohan -vs- M/o Home Affairs

For the Applicant(s): Mr. B. Bhushan, Counsel

For the Respondent(s): Mr. R. Halder, Counsel

Mr. P.K. Das, Counsel

ORDER (ORAL)

A.K Patnaik, Member (J):

Heard Mr. B.Bhushan, Ld. Counsel for the applicant, and Mr. R.Halder as well as Mr. P.K.Das, Ld. Counsel appearing for the Official Respondents, in extenso.

2. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 with the following prayers.

"A) An order do issue directing the respondent authority to regularize the service of the applicant from the date i.e 15.05.1991 as he has been discharging the duties and responsibilities of Deputy Resident Commissioner as done in the case of his junior Shri Kuldeep Singh Thakur.

OR

B) An order do issue directing the respondent authorities to regularize the service of the applicant in the post of Deputy Resident Commissioner from the date of vacancy i.e 27.01.1994 as done in the case of Vinod Kumar V.K.

C) An order be passed directing the respondent to grant benefits arising consequent upon grant of prayer (A)

D) Any such order or orders be passed and or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.

E) Cost and incidentals to this application."

3. The case of the applicant, in nutshell, as submitted by Ld. Counsel is that he was initially appointed as Tourist Guide, Publicity Assistant and promoted to the

[Signature]

post of Public Relation Officer (PRO) on 17.6.1988 on adhoc basis and was posted to Delhi. Respondent authorities re-designated as PRO's posted at Calcutta, Madras and Delhi as Deputy Resident Commissioner (DRC) w.e.f. 15.5.1991 and, since then, the applicant was discharging the higher nature of duties and responsibilities attached to the post of DRC till his regular appointment on 14.8.97 in the post of DRC. The respondent authority created 1 post of Tourist Information Officer in 1987, 02 posts of DRC on 27.01.1994 and 01 post of DRC and 01 post of TIO in 1995 and the recruitment rules framed for the post of TIO & DRC were notified only on 08.01.1997. Ld. Counsel submitted that for that failure on the part of the respondent authorities, the right of the applicant for promotion cannot be defeated and it is also a settled proposition of law that it is not obligatory under the proviso to Article 309 to make rules of recruitment etc. before a service is constituted or a post is created or filled. The authorities have granted promotion to one of his junior to the post of DRC from the date on which vacancy arose. He further submitted that in the facts and circumstances and the manner in which the case of applicant's junior were dealt with, the applicant legitimately expects his promotion to the post of DRC w.e.f. 15.5.1991 on the grounds of parity.

4. At the outset, Ld. Counsel for the applicant fairly submitted that although the applicant has preferred representation under Annexure-A/13 dated 11.05.2018 before Respondent No. 3, till date no reply has been communicated to him. He further submitted that the grievance of the applicant may be more or less redressed if his representation is considered by Respondent No. 3 within a specific time frame.

5. Ld. Counsel for the Official Respondents, vehemently opposed the submission of the Ld. Counsel for the applicant and submitted that the O.A. deserves to be dismissed in limine.

WAL

6. Having heard Ld. Counsel for both the parties and after considering their submissions, without going into the merit of the matter, I dispose of this O.A. by directing Respondent No. 3 to consider the representation of the applicant under Annexure-A/13, if the same has been filed and is still pending for consideration, and pass a reasoned and speaking order as per rules and regulations within a period of six weeks from the date of receipt of copy of this order. I make it clear that if after such consideration the case of the applicant is found to be genuine and he is otherwise eligible then expeditious steps be taken within a further period of six weeks to grant him the benefit of promotion. If in the meantime the said representation has already been disposed of then the result thereof be communicated to the applicant within a period of two weeks.

7. With the aforesaid observation and direction, this O.A. stands disposed of. No costs.

8. As prayed for by the Ld. Counsel for the applicant, copy of this order, along with paperbook be transmitted to Respondent No. 3 for which, he undertakes to deposit the cost with the Registry within a week.

9. Copies of this order be handed over to the Ld. Counsel for the parties.

(A.K.Patnaik)
Member(J)