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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.260/2003

This the 25th day of August, 2003

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

Rajiv Kumar Sarin,
Assistant Director,
Aviation Research Centre,
R/O 103, Promise apartments,
Near F-Block Market, Vikaspuri,
New Delhi.

... Applicant

(By Ms. Arati Mahajan, Advocate)

-versus-

1. Director General (Security),
Cabinet Secretariat,
Bikaner House Annexe,
New Delhi.
2. Special Secretary (SR),
Cabinet Secretariat,
Bikaner House Annexe,
New Delhi.
3. Secretary,
Department of Personnel & Training,
North Block, New Delhi.
4. Special Secretary,
Aviation Research Centre,
East Block-V, R.K.Puram,
New Delhi.
5. Shri S.V.Amarnath,
Deputy Director (Admn.),
Aviation Research Centre,
East Block-V, R.K.Puram,
New Delhi.

... Respondents

(By Shri R.N.Singh, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

This application has been made against Cabinet Secretariat order dated 25.10.2002 (Annexure R-1) whereby Government have extended the deputation period of Shri S.V.Amarnath, respondent No.5 as Deputy Director in

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Aviation Research Centre (ARC) for a period from 13.4.2003 to 31.3.2004, i.e., till the date of his superannuation. Applicant has claimed that respondent No.5 had been granted extension in deputation despite completion of full term of his deputation and ignoring the fact that applicant had already become due for promotion as Deputy Director on 19.8.2002. Applicant's representations against extension of deputation tenure of respondent No.5 and for convening DPC meeting for considering applicant's case for promotion to the post of Deputy Director upon completion of initial deputation tenure of respondent No.5 on 13.4.2003 were not responded positively. Respondent No.5, as Deputy Director (A), informed applicant in respect of his representation dated 20.8.2002 vide memo dated 26.9.2002 (Annexure A-1) that the applicant's case for promotion would be given due consideration at the appropriate time. Applicant has sought the following reliefs :

- "i) Quash the Memo No. A-20011/35/75-Estt. (ARC) dated 26.9.02, rejecting the representation of the applicant.
- ii) Quash the order No.4/1/19/99.DO-II-938 dated 25.10.2002 granting extension of deputation term in favour of the incumbent Deputy Director, ARC Hqrs, i.e. respondent No.5 herein.
- iii) Direct the department to hold the DPC for considering promotion of the applicant against vacancy of DD, ARC, so caused on repatriation of the incumbent DD(A) - Respondent No.5 herein, to his parent cadre on 13.4.2003.
- iv) Grant cost of this application to the applicant for having caused financial loss by not taking requisite action in time to convene the DPC and also by not making decisions as per rules/guidelines already available with the office which has forced the applicant to take legal recourse.

- v) Grant any other relief as may be deemed fit and proper under circumstances of the case."

2. The learned counsel of applicant stated that applicant is the seniormost Assistant Director in ARC and is eligible for promotion as Deputy Director as per old as well as new recruitment rules. The learned counsel further relied on Annexure A-6 dated 14.12.1998 contending that no extension after completion of full tenure of deputation should be allowed even on the ground of continuity of work as completion of the prescribed tenure is a foreseeable eventuality and action to groom another officer for doing important items of work requiring continuity can be taken. The learned counsel stated that there are four posts of Deputy Director in the ARC. Three of these are occupied by officers on promotion and the remaining one post is occupied by respondent No.5 on deputation basis which has been extended for further one year from 13.4.2003. The learned counsel of applicant has relied upon the following judgments :

- (1) **State of Punjab & Ors. v. Dr. R.N.Bhatnagar & Anr.**, AIR 1999 SC 647; and
- (2) Order dated 18.9.2001 in OA No.726/2000 (CAT, Principal Bench) in **V.K.Naithani v. Union of India & Ors.**

3. Next, the learned counsel contended that respondents have violated the procedure prescribed by the DOP&T vide their OM dated 8.9.1998 by which Government have prescribed a model calendar for DPCs and issued instructions on related matters. The learned counsel

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stated that in terms of this circular respondents should have held DPC meeting for considering the case of applicant for promotion in January, 2003 as he had become eligible for consideration for promotion to the post of Deputy Director in August, 2002.

4. On the other hand, respondents have stoutly denied the contentions made on behalf of applicant. First of all, the learned counsel stated that applicant has sought multiple reliefs and as such, the application is not maintainable. He further stated that although applicant had become eligible for consideration for promotion to the post of Deputy Director in August, 2002, it is not mandatory that applicant has developed any vested interest in promotion. According to the learned counsel, new recruitment rules notified on 17.10.2002 (annexure A-8) are applicable for filling up the post of Deputy Director. Out of four posts of Deputy Director earmarked for ARC, three are held by the departmental officers on promotion and only one by deputationist (respondent No.5). As the last vacancy had been filled by promotion, therefore, any vacancy which would fall vacant after October, 2002 would be filled by deputation in terms of the new rules. Respondents have granted extension of deputation period for one year, i.e., till 31.3.2004 to respondent No.5 in public interest with the approval of the Secretary of the Department and sanction of nodal Ministry. The learned counsel contended that respondents have not violated any rules or instructions in not considering applicant for promotion to the post of

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Deputy Director and in granting extension of deputation period in favour of respondent No.5.

5. We have also perused the record relating to extension of the term of deputation of respondent No.5 in the post of Deputy Director.

6. Admittedly, applicant became eligible for consideration for promotion to the post of Deputy Director in August, 2002. Under the earlier rules, i.e., Aviation Research Centre/Special Frontier Force (Executive) Service Rules, 1999, the post of Deputy Director could be filled by "Promotion failing which by deputation" from the cadre of Assistant Directors. These rules were superseded by Aviation Research Centre (Senior Executive) Service Rules, 2002 vide notification dated 17.10.2002 (Annexure A-8). Under these rules the post of Deputy Director has to be filled 50% by promotion failing which by deputation, and 50% by deputation. According to respondents as out of four posts of Deputy Director in ARC, three are already held by departmental officers and only one by deputationist, and the last vacancy in the grade of Deputy Director having been filled by promotion, the post of Deputy Director held on deputation by respondent No.5 could be continued with the deputationist and the next vacancy which would fall vacant after October, 2002 would again be filled by deputation in terms of the provisions of the recruitment rules. The ratio in the case of **Dr. R.N.Bhatnagar** (supra) is applicable to the facts of the present case. This judgment has been followed in the case of **V.K.Naithani**

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(supra) by a co-ordinate Bench of this Tribunal. The post-based roster introduced from 2.7.1997 in pursuance of the judgment of the Hon'ble Supreme Court in the case of **R.K.Sabharwal & Ors. v. State of Punjab & Ors.**, AIR 1995 SC 1371 is required to be maintained for purpose of giving reservation to the SC/ST community. In the case of vacancies to be filled between promotees and deputationists a vacancy-based roster is required to be maintained as held in the case of **Dr. R.N.Bhatnagar**. While both sides have agreed that the new recruitment rules issued in 2002 are applicable to the present case, posts of Deputy Director will have to be filled up on the basis of vacancies and not on post basis. In this view of the matter, it is immaterial that the last vacancy in the grade of Deputy Director was filled by promotion. The question is that the post occupied by respondent No.5 on deputation was to fall vacant on expiry of three years' term on 13.4.2003. Applicant had become eligible for consideration for promotion on that post in August, 2002. The question is whether respondents were under an obligation to consider applicant for promotion on the post of Deputy Director which was to fall vacant on 13.4.2003 and if he was not considered for that post, whether deputation period of respondent No.5 could be extended for a further term of one year from 13.4.2003.

7. Vide Annexure A-6 dated 14.12.1998 DOP&T had issued instructions that extension should not be allowed after completion of full tenure on the ground of continuity of work as repatriation of an officer on completion of the prescribed tenure is a foreseeable

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eventuality and officers in the department should be groomed to take over the responsibility from the deputationist. However, these instructions are not applicable to the present case as they relate to Central Staffing Scheme. The present post is not covered under Central Staffing Scheme. Procedure prescribed vide Annexure A-5 dated 8.9.1998 is certainly applicable to the facts of the present case. As per these instructions which prescribe a model calendar for holding of DPCs, in the present case which is a non-ACC case, the DPC should have been held for considering promotion to the post of Deputy Director in January, 2003 and applicant had become eligible for consideration in August, 2002. Respondents did not hold the DPC in January, 2003 and proceeded to grant extension in the deputation term of respondent No.5 for a period of one year from 13.4.2003. We have perused the records produced by respondents in respect of extension of term of deputation of respondent No.5. It has been stated therein, "...the post of Deputy Director (Executive) in ARC can be filled by any of the methods i.e. either by promotion or deputation. As on date, no incumbent Assistant Director (Executive) in ARC has become eligible for being considered for promotion to the post of Deputy Director (Executive) in ARC..." and "considering the genuine request of Shri Amarnath and requirement of the department, it is proposed to extend his deputation term in ARC upto 31.03.2004". In view of the proficiency of respondent No.5 the extension of his deputation term upto 31.3.2004 (the date of his superannuation) was approved at the level of Special Secretary, ARC. This approval was granted on 14.6.2002

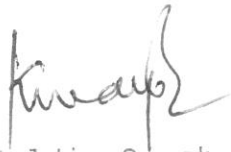
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and the impugned orders were issued on 25.10.2002. It has been noted in the records that applicant was to become eligible on 24.8.2002. Certainly, if he had been cleared for promotion to the post of Deputy Director after he became eligible on 24.8.2002, he would have been available to function as Deputy Director on the expiry of deputation term of respondent No.5, i.e., on 13.4.2003. However, respondents proceeded to consider the case of granting extension to respondent No.5 nine months in advance of expiry of deputation term of respondent No.5 and did not hold the DPC for considering applicant for promotion to the post of Deputy Director in January, 2003. The records do not establish any exceptional circumstances or public interest for extending the deputation term of respondent No.5 w.e.f. 13.4.2003 and for not holding DPC for considering promotion of applicant in January, 2003. Respondents have certainly violated the recruitment rules. Under the established law, they should have followed the vacancy-based roster between the promotees and deputationists and considered applicant for promotion to the post of Deputy Director in January, 2003 and not granted further extension in the deputation term of respondent No.5.

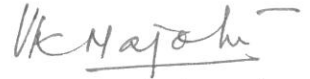
8. In the totality of the facts and circumstances of this case, memo dated 26.9.2002 rejecting the representation of applicant and order dated 25.10.2002 granting extension of deputation term in favour of respondent No.5 till 31.3.2004 are quashed and set aside. Respondents are further directed to hold the DPC for

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considering promotion of applicant against vacancy of Deputy Director, ARC within a period of one month from the date of communication of these orders. No costs.



(Kuldip Singh)
Member (J)



(V. K. Majotra)
Member (A)

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