

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.342/2003

New Delhi this the 17th day of November, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S. A. SINGH, MEMBER (A)

S.C. Ray,
S/o late Shri S.N. Ray,
Aged 54 years,
R/o F-17/12, Sector-8,
Rohini, Delhi-110085. -Applicant

(By Senior Counsel Shri A.T.M. Rama Ranjan, Senior
Counsel with Shri K.L. Shastri, Counsel)

-Versus-

1. Union of India through,
the Secretary,
Ministry of Consumer Affairs,
Food & Public Distribution,
Department of Food &
Public Distribution,]
Krishi Bhawan,
New Delhi.
2. Shri S.B. Biswas,
Director (SDF),
Department of Food &
Public Distribution,
Krishi Bhawan, New Delhi.
3. Sh. R.P. Singhal,
Chief Director (Sugar),
Directorate of Sugar,
Krishi Bhawan, New Delhi.
4. Sh. A.K. Srivastava,
the then Under Secretary,
Directorate of Sugar,
Krishi Bhawan, New Delhi
Now working as
Under Secretary,
Deptt. of Food & Public Distribution,
Krishi Bhawan,
New Delhi. -Respondents

(By Advocate Shri N.K. Aggarwal)

O R D E R (ORAL)

Mr. Shanker Raju, Hon'ble Member (J):

Through this OA applicant has sought the
following reliefs:

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- (i) to consider and promote the applicant in the said post of Director (ST) on a regular basis.
- (ii) to immediately process, if required, the case for amendment of the Recruitments Rules of the post of Director (ST) and
- (iii) to treat the period from 10.9.96 till date, during which the applicant has worked as Director (ST) on ad hoc basis continuously and satisfactorily, as part of regular service as Director (ST).
- (iv) to pass orders to regularize the applicant as Director (ST) from the date of initial ad hoc appointment i.e. 10.9.96 with consequential benefits.
- (iv A) Suitable action may also be taken against the erring respondents who have intentionally and with a malafide intention tried to play mischief with the judicial system and to spoil the career of the applicant.
- (v) Any other relief, which this Hon'ble Tribunal deems fit, may also be awarded in favour of the applicant.
- (vi) Costs of this O.A. may also be awarded to the applicant."

2. Applicant was promoted as Deputy Director (ST) on 22.5.97. The recruitment rules for the post of Chief Director (Sugar) were framed and as per Rules 10 years of combined service, out of which two years' regular service as Director for a Deputy Director was the essential eligibility to be considered for promotion as Chief Director. The method of recruitment was through promotion, failing which transfer on deputation and failing both by direct recruitment. The regular post of Director ST was lying vacant since

1992. On 6.8.96 Government of India abolished one post of Director (ST) in the Directorate of Sugar on the basis of SIU report. Applicant was appointed on ad hoc basis as Director (ST) with a stipulation that this would not accord him seniority. Applicant had continued till 9.9.2003 and thereafter on abolition of lone post of Director (ST) applicant was reverted to the post of Deputy Director w.e.f. 10.6.2003. As the file was misplaced amendment in recruitment rules which has become imperative to consider applicant for the post of Director (ST) on regular basis in the light of DoPT advice it was decided to adopt composite method. The reversion was assailed in OA-1525/2003 by applicant and by an order dated 17.11.2003 the same has been upheld and against which RA_17/2004 preferred was also rejected on 6.2.2004.

3. Learned Senior Counsel Shri A.T.M. Ram Ranjan alongwith Shri K.L. Shastri vehemently contended that one cannot be left without an avenue of promotion. Now applicant for want of any post of Director cannot be promoted either as a Director or Chief Director as even as per the composite method as he has to fulfil the eligibility criteria meant in the composite method of recruitment and in that event having not worked on the analogous post applicant would be left without a promotional avenue, which according to the learned counsel is violative of his

fundamental right as he has a right to be considered for promotion to remove stagnation.

4. On the other hand, Shri N.K. Aggarwal, learned counsel for respondents contended that as a policy decision lone post of Director (ST) was abolished and this cannot be assailed in a judicial review. It is further contended that having failed to attain the eligibility criteria under the rules for the post of Chief Director as applicant had not worked for two years on regular basis as Director he is ineligible to be considered for the post of Chief Director. It is also contended that the ad hoc service rendered as Director cannot be counted towards eligibility and for this reliance has been placed on a decision of two-Judge Bench of the Apex Court in **State of Punjab v. Ishar Singh and Ors.**, AIR 2002 SC 2422. Learned counsel further relied upon OM dated 24.1.2003, issued by the Government of India, Ministry of Consumer Affairs, where on de-controlling of Sugar and prospects of Directorate being closed as the Sugar Industry has been de-licensed w.e.f. 11.9.98. The post of Director (ST) which has been lying vacant since 9.9.98 having remained vacant for more than one year has been abolished. However, learned counsel contends that in composite method of recruitment applicant would also be afforded an opportunity to be considered for the post.

5. In nut shell what has been highlighted is that as per the Ministry of Consumer, Food and Public

Distribution recommendations on de-control of Sugar Directorate would no longer be necessary and the Directorate would have to be wound up and the staff be adjusted. Respondents have also relied upon the decision of the two-Judge Bench of the Apex Court in **Tech. Executive (Anti Pollution) Welfare Association v. Commissioner of Welfare Association**, JT 1997 (4) SC 172 to contend that this Tribunal is precluded from making any direction to lay down policy or create promotional avenues.

6. We have carefully considered the rival contentions of the parties and perused the material on record. It is trite law that mere chances of promotion one has no indefeasible right but it is equally settled that one has a fundamental right to be considered for promotion.

7. As regards reversion of applicant and counting the ad hoc service as regular service as Director (ST), once the Tribunal has upheld the reversion, we cannot sit as an appellate authority and do not intend to disagree with the same, as such the issue having attained finality cannot be raked up in the above OA.

8. As regards policy decision and promotional avenues, a three-Judge Bench of the Apex Court in **V. Jagannadha Rao & Ors. v. State of A.P. & Ors.**, (2001) 10 SCC 401 observed as under:

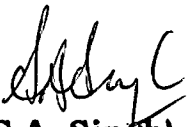
“Notwithstanding our aforesaid conclusion, it would be in the interest of the administration to have a channel of promotion for every service, so as to avoid

stagnation at a particular level, subject however to the condition that the incumbents of a service are otherwise qualified to shoulder the responsibilities of the higher promotional post. The appropriate authority of the Government, therefore, should bear this in mind and consider the feasibility and desirability of continuing the supernumerary posts already created in the Boilers and Factories Department on a permanent basis, so that the employees from the lower echelon in the said department have a promotional channel or to make suitable promotional avenue at least up to some level, so that there would not be any discontentment amongst the employees in the department concerned."

9. In the above conspectus as the lone post of Director (ST) stood abolished applicant being a Deputy Director having no avenue to perform functions on regular basis on the post of Director (ST) is ineligible to lay his claim for promotion the post of Chief Director. In view of the composite method as well which would bring at par applicant with the direct recruits and transfree on deputation the condition precedent for eligibility is holding of analogous pay scale and post of Director to which applicant is not eligible as well. Accordingly, even after composite method applicant would not be eligible to be considered for promotion as Chief Director.

10. Though earlier there was a proposal to amend the recruitment rules but due to the fact that file was misplaced same was stalled. As regards contingent event of closing down of Sugar Directorate and decontrolling policy the same has not arisen and hence cannot be taken note of by this Court. We have to

decide the issue in the circumstances prevailing at present. Accordingly, Directorate of Sugar is still in existence. A government servant by his hard work earns promotion and it is a reward for efficient working. Creation of promotional avenue has resulted in framing of Assured Career Progression Scheme, which, unfortunately is not applicable in the case of applicant. Though the decision in **Technical Executive Welfare Association** (supra) precludes this Court from directing creation of promotional avenues but in the light of the subsequent decision by larger coram in **V. Jagannadha Rao** (supra) which overrules the previous one it is laid down that it is in the interest of the administration to have a channel of promotion to avoid stagnation, as it is not disputed that applicant is eligible in all other respects, we dispose of this OA with a direction to the respondents to re-examine the entire matter and take a decision with regard to channel and avenue of promotion to applicant to avoid stagnation. The respondents shall devise their own ways and means to process the above directions, within a period of three months from the date of receipt of a copy of this order. No costs.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

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