

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.607/2003

This the 29th day of August, 2003

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

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Gianeshwar Sawhney S/O Govind Ram,
R/O 8/17 Single Storey, Ramesh Nagar,
New Delhi-110015.

... Applicant

(By Shri Surinder Singh, Advocate)

-versus-

1. Union of India through
Defence Secretary,
Ministry of Defence,
South Block, Central Sectt.,
New Delhi-110001.

2. Joint Secretary & CAO,
Ministry of Defence,
C-II Hutments,
New Delhi.

... Respondents

(By Shri S. Mohd. Arif, Advocate)

O R D E R (ORAL)

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

Applicant retired from the post of Principal Private Secretary (PPS) (scale Rs.10000-15200) on 31.3.2003. Five upgraded posts of Senior PPS were available for filling up from the level of PPS in January, 2000. Applicant was eligible for consideration for promotion on the post of Senior PPS in terms of Ministry of Defence, Armed Forces Headquarters Stenographers Service (Senior Principal Private Secretary) Rules, 2001 (for short the 2001 rules) notified on 19.4.2001 (Annexure A-5). He had completed the requisite 13 years combined regular service in the grade of Private Secretary (PS) and PPS out of which

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minimum three years in grade of PPS as on 1.4.2002 as required under the rules, but respondents denied applicant's claim for consideration for promotion for vacancies during the period 2002-03.

2. On the other hand, the learned counsel of respondents contended that for vacancies for the post of Senior PPS during 2002-03, applicant was not eligible as on 1.1.2002. He became eligible on rendering three years' service as PPS only on 1.4.2002 and not on 1.1.2002. He was considered and included in the select list for the post of Senior PPS at Sl. No.1 vide Annexure A-14 colly. dated 21.3.2003 but as this select list was to come into effect w.e.f. 1.7.2003 under the rules and as applicant had retired on 31.3.2003 itself, he could not be granted promotion.

3. The learned counsel of respondents relied on DGP&T OM dated 17.9.1998 (Annexure A-10) contending that the crucial date for determining the eligibility of officers for promotion in supersession of the existing instructions as on as on 19.7.1989 in case of financial year-based vacancy year would fall on January 1 immediately preceding such vacancy year and in the case of calendar year-based vacancy year, the first day of the vacancy year, i.e., January 1 itself would be taken as the crucial date. For the panel year 2002-03, the crucial date for the purpose of eligibility would be January 1, 2002. He submitted that applicant was not eligible on 1.1.2002 for vacancies during 2002-03 as he had not put in three years on the post of PPS.



4. We have gone through the DOP&T instructions dated 17.9.1998 (Annexure A-10) carefully. It has been stated in these instructions, "These instructions shall be applicable to all services/posts. The Recruitment/Service Rules may, therefore, be amended accordingly. All Ministries/Departments are requested to bring these instructions to the notice of all concerned, including Attached/Subordinate Offices, for guidance and compliance." It means that these instructions were to apply only on amendment of the recruitment rules. Admittedly, the related rules have not been amended so far. As such, the unamended 2001 rules shall apply to the present case, as executive instructions (Annexure A-10) shall not override the provisions of the statutory 2001 rules. Rule 4 reads as follows :

"Method of Recruitment and eligibility.

- (1) Recruitment to the posts of Senior Principal Private Secretary shall be made by promotion through selection by merit of officers who have rendered five years of approved service in Principal Private Secretary Grade (pay scale Rs.1000-15200).

Note : However, if Principal Private Secretaries possessing the requisite qualifying service are not available for consideration for promotion, Principal Private Secretaries who have successfully completed the period of probation and have rendered 13 years combined regular service in the grade of Private Secretary (Rs.6500-200-10500) and Principal Private Secretary (Rs.10000-15200) out of which minimum three years in the grade of Principal Private Secretary shall be eligible for consideration for promotion."

As PPS who had rendered five years of approved service were not available, the provision contained in the note quoted above would apply to the present case. This provision makes such PPS eligible for promotion to the

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post of Senior PPS who had rendered 13 years combined regular service as PS and PPS out of which minimum three years in grade of PPS. The term "approved service" has been defined in rule 2(c) as follows :

"(c) "approved service" in respect of an officer recruited to the grade means the period or periods of regular service rendered in the grade, including period or periods of absence during which he would have held a post on regular basis in the grade but for his being on leave or otherwise not being available to hold such post, for the first day of July of the panel year for which the promotion was made."

In terms of the provisions quoted above, the crucial date of reckoning for eligibility for vacancies during 2002-03 would be 1.4.2002. Applicant had certainly put in apart from 13 years as PS, 3 years service as PPS. As such he became eligible for consideration for promotion to the post of Senior PPS for vacancies during 2002-03. However, applicant was not considered for promotion for vacancies during 2002-03. He was considered for vacancies during 2003-04 but as he had retired on 31.3.2003, he could not avail of the promotion. If respondents had considered the candidature of applicant for vacancies in 2002-03 in terms of the rules and not in terms of DOP&T circular dated 17.9.1998, applicant would certainly have been considered for ad hoc promotion to the post of Senior PPS during 2002-03.

5. Having regard to the reasons stated above, applicant is held eligible for consideration for ad hoc promotion to the post of Senior PPS during 2002-03 like his other colleagues in terms of the rules discussed



above. Resultantly, the OA succeeds and the respondents are directed to hold a review meeting for promotion to the post of Senior PPS in the scale of Rs.12000-16500 for vacancies falling during the period 2002-03 and consider applicant for promotion and in the event he is selected, he shall be granted consequential benefits.

6. The OA is allowed in the above terms. No costs.

S. Raju

(Shanker Raju)
Member (J)

/as/

V. K. Majotra

(V. K. Majotra)
Member (A)