

CENTRAL ADMINISTRATIVE TRIBUNAL. PRINCIPAL BENCH

OA No.1576/2003

New Delhi, this the 14th day of August, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Dr. S.S. Tak
C-5A, 99A, Janakpuri
New Delhi

.. Applicant

(Shri Yogesh Sharma, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Steel
South Block, New Delhi
2. Under Secretary
Ministry of Steel
South Block, New Delhi

.. Respondents

(Shri R.N. Singh, Advocate)

ORDER

Shri S.K. Naik

The applicant Dr. S.S.Tak has filed this OA against the order dated 19.6.2003 passed by the Ministry of Steel reverting him from the post of Deputy Industrial Adviser (DIA) to the post of Assistant Industrial Adviser (AIA) with effect from 17.6.2003.

2. The facts of the case are that Dr.Tak originally was appointed in the Directorate General of Technical Development (DGTD) as Assistant Development Officer (Chemical) during the year 1990. Subsequently, DGTD, which formed part of the Ministry of Industry at the time of his appointment was wound up by a decision of the Government. As a result thereof, applicant alongwith other technical officers were transferred to the Ministry

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of Steel alongwith the posts during the year 1994. The team of Technical officers so transferred included one Shri B. Bose who was holding the senior position of Development Officer. Shri Bose superannuated in November, 1997. Applicant thereafter represented for being promoted to the position of Development Officer which Shri Bose was holding, being the senior most AIA.

3. Respondent-department, however, vide order dated 7.9.98, promoted the applicant to the post of Deputy Industrial Adviser (equivalent to the post of Development Officer) on ad-hoc basis on 4.9.1998. Even though, initially the said ad-hoc promotion was for a period of six months, orders to continue the ad hoc appointment from time to time were issued until the impugned order of reversion was passed. Aggrieved thereupon, applicant Dr. Tak has filed this OA seeking its quashing as also for directing the respondents to consider his case for regular promotion to the post of DIA, with consequential benefits.

4. Learned counsel for the applicant has stated that the post of Development Officer which is equivalent to the post of DIA in the Ministry of Steel was available since DEO 1997 on the retirement of Shri Bose and as per the DoPT guidelines, department ought to have held DPC to fill up the post on regular basis. This, however, was not done despite representations submitted by the applicant and the post was filled up belatedly only on

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ad-hoc basis. Applicant is continuously holding this post since his ad hoc appointment on 4.9.1998. According to the counsel, applicant's abrupt and unilateral reversion without assigning any reason and without issuing any show cause notice therfore is totally illegal, arbitrary and against the Rules.

5. The counsel has claimed that the applicant is the senior most eligible person and fulfils all the conditions as per R/Rules for promotion to the post of Development Officer and therefore there are no reasons and justification for the Department to revert him after a period of five years from holding the post on ad-hoc basis. On the contrary he has stated that applicant ought to have been regularised on the post which Shri Bose had held on regular basis prior to his superannuation. He has also pleaded that even if R/Rules were yet to be framed by the new Ministry, applicant is entitled to the promotion on regular basis on the strength of the old and existing R/Rules of the erstwhile DGTD.

6. The counsel has also referred to the decision of this Tribunal in the case of S.N.Singh Vs. UOI & Ors. in OA No.2433/2000 decided on 19.3.2001, in which in an identical matter, it has quashed the impugned order of the department vide which respondents surrendered the post of Development Officer resulting in the applicant in that case being deprived of chance of promotion. After

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holding the post on ad hoc basis for over a period of four years, the applicant is entitled to atleast a show cause notice which has also not been resorted to in the instant case. The counsel, therefore, vehemently argued that order of reversion passed by the respondents is totally illegal, arbitrary and against the rules as well as the Government of India's instructions.

7. The counsel for the respondents, on the other hand, defended the action and impugned order passed by the respondents and has argued that promoting an employee for appointment on ad-hoc basis is within the prorogative of the Government and therefore is resorted to meet the overall administrative exigencies. So long as such appointments are made on the basis of such criteria to meet such exigencies, it cannot be said that continuation of such appointment for some reasonable period would vest any enforceable right to the holder of the post. In the case of the applicant, the counsel has argued that, he was working as AIA and was promoted to the post of DIA on ad-hoc basis against a regular vacancy w.e.f. 4.9.98. According to the counsel, regular vacancy in the post of DIA was available temporarily because, an employee who held the post on regular basis proceeded on deputation. It was against the deputation vacancy that the applicant had been promoted on ad-hoc basis and when the regular incumbent reverted to the department from the foreign employer, he had to naturally occupy the regular post resulting in the reversion of the ad-hoc appointee, the

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applicant in the instant case. As per Government instructions, ad-hoc promotions are to be made based on the seniority and in the instant case if the applicant was given the benefit of ad-hoc promotion being the senior most AIA, he should have no grouse. The question of his claim to be promoted on regular basis therefore does not arise atleast until any vacancy is accrued. It is only thereafter that the question of holding any DPC will arise. The counsel has further gone on to argue that apart from the fact that the applicant came on transfer from the office of DGTD along with the post and subsequently appointed on ad-hoc basis in a regular vacancy of DIA, there have been subsequent changes in the cadre necessitating his shifting to another vacancy. However, in the wake of continuing liberalisation of the iron and steel sector, Malik Committee was set up by the Government to ascertain the role and functions of certain organisations such as DCI&S which had a direct bearing on the continuance of technical cadre. The Committee recommended the abolition of certain posts. This was further followed by the report of the Expenditure Reforms Commission which in July, 2001 recommended winding up of DCI&S as well. As a result and as a consequence of these developments and because of the reversion of the incumbent from deputation to his regular post, respondents had no option but to pass the impugned order reverting the applicant to his permanent regular post which is fully within the power of the authority of the respondents.

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8. With regard to the case of **S.N.Singh Vs. UOI** cited by applicant's counsel, it has been rebutted on the ground that the same will not lend any support to the case of the applicant since the facts and circumstances of that case are totally different. In that case, it was the surrendering of the post which led to deprivation of the applicant for promotion, whereas in the instant case it is reversion of the regular incumbent from deputation which has resulted in applicant's reversion to his regular permanent post to yield place to the regular incumbent in the higher post.

9. Since the ad-hoc promotion and appointment was made due to exigencies of service and the promotion order specifically stated that appointment of the applicant was purely on ad-hoc basis and would not confer any right to him to continue indefinitely in the promoted grade or claim either seniority in the grade or eligible for promotion to the next higher grade etc., the question of any show cause notice did not arise.

10. The counsel has, therefore, argued that there being no merit, the application deserves to be dismissed.

11. We have very carefully considered the arguments advanced by the learned counsel for the parties as also perused the records of the case.

12. We find that the grievance of the applicant arises primarily as a result of the Government's decision as a

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matter of policy to wind up the Directorate General of Technical Development (DGTD) where the applicant was appointed and serving till he along with his colleagues serving in the Technical Team were transferred to the Ministry of Steel. It is seen that this Technical Team was not integrated into any other existing Technical Cadre of Ministry of Steel. The facts of the case also indicate that while the applicant was initially promoted against the vacancy of Shri Bose, the subsequent developments to restructure the cadre has resulted in some posts being abolished. The respondent department in order, however, to continue the applicant in the post of Dy. Industrial Adviser in an ad hoc basis adjusted him against the vacancy caused by the deputation of a regular Dy. Industrial Adviser who unfortunately for the applicant has since reverted from his deputation post with the foreign employer. A perusal of the seniority list available at Annexure II clearly indicates that the applicant Dr. S.S. Tak was appointed as Dy. Industrial Adviser on ad hoc basis. It also reflects that Shri S.K. Mazumdar one of the Dy. Industrial Advisers being on deputation against which the applicant had been subsequently adjusted. It is an established principle in administration that promotion in an ad hoc capacity even if it be against regular post does not confer any right. In the instant case the applicant was promoted purely on ad hoc capacity and as has been pointed by the respondent department against the vacancy of a regular incumbent who was away on deputation. If the deputationist has

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reverted, the applicant necessarily had to revert to his substantive post and he is now to wait for the next vacancy to arise when he can take his turn to be promoted being the seniormost as per rules. In this view of the matter we find no merit in the application and the same is dismissed. No order as to costs.

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~~Naik~~
(S.K. Naik)
Member(A)


(V.S. Aggarwal)
Chairman

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