

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2687 OF 2003

New Delhi, this the 22nd day of July, 2004

HON'BLE SHRI V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Shri V.K. Uniyal,
Assistant Director,
S.S.B. Headquarters,
R.K. Puram,
New Delhi.

.....Applicant

(By Advocate : Shri V.S.R. Krishna)

Versus

Union of India

Through

1. The Secretary,
Ministry of Home Affairs,
Government of India,
North Block
New Delhi.
2. The Director General,
S.S.B. Headquarters,
R.K. Puram,
New Delhi.

.....Respondents

(By Advocate : Shri B.S. Jain)

O R D E R

SHRI SHANKER RAJU, MEMBER (J):

Applicant in this OA has sought for a direction to the respondents, in view of the recommendation of the Screening Committee meeting held on 21.5.2003, for considering him for promotion to the post of Deputy Director (Cipher-Computer) with all consequential benefits.

2. At the outset, the applicant's learned counsel stated that the applicant on the basis of the DPC held in 2004 has been empanelled as Joint Director

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(Cipher-Computer) and has assumed the charge of the said post.

3. The applicant is a directly recruited Assistant Director (Cipher-Computer) working in Special Service Bureau (SSB). The Recruitment Rules for the cadre of SSB were framed for Cipher-Computer cadre in 1977 and lastly, revised in 1996. As per the Recruitment Rules, the post of Deputy Director (Cipher-Computer) is a selection post. The departmental officers in the grade of Assistant Director with 12 years service in the grade are in feeder cadre for promotion to that post. The Departmental Promotion Committee consists of Pr. Director as a Chairman, Director, Special Service Bureau and Joint Director/Divisional Organiser as Members.

4. By letter dated 7.2.2003, applications have been invited from the eligible candidates for filling up the post of Deputy Director (Cipher-Computer). As the applicant had eight years of service in the year 1999, his case was not considered for promotion to the post of Deputy Director (Cipher-Computer) despite fulfilling all the eligibility criteria, OA No.244/2001 filed by the applicant was dismissed for non-availability of vacancy. The Screening Committee held on 21.5.2003 considering all eligible candidates for promotion to the post of Deputy Director (Cipher-Computer) had

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recommended the name of the applicant for promotion to the said post. As no orders to this effect has been issued, the present OA has been filed by the applicant seeking the aforesaid relief.

5. The learned counsel of the applicant Shri V.S.R. Krishna alleges malafide by contending that despite recommendation of the case of the applicant for promotion to the post of Deputy Director (Cipher - Computer), he was not given promotion which is clear violation of Articles 14 and 16 of the Constitution of India. The entire plot has been made to deny the said promotion to the applicant and to fit in their own persons.

6. It is stated by Shri Krishna that the applicant is eligible in all respect as per the recruitment rules invoked at the time of the vacancy had fallen vacant. As the applicant is discharging all the duties of the said post, therefore, he is eligible to be considered for promotion to the said post.

7. In the counter reply filed by the respondents, they have vehemently opposed the contentions as raised by the applicant in the OA. Shri B.S. Jain, learned counsel of the respondents stated that on transfer of the administrative control of SSB from Cabinet Secretariat to Ministry of Home Affairs (MHA), the role of the Force has undergone a

sea change. The Force is a Border Guarding Force at par with other CPMFS. Old equation and comparisons are not applicable. As the Recruitment Rules for the post of Deputy Director (Cipher-Computer) have not been notified in the Gazette of India and, therefore, the same are not statutory rules. These are only administrative instructions. Moreover, it is stated that the Screening Committee for DIG level post should be chaired by Special Secretary, MHA and not by DG, SSB as the pay scales of Deputy Director and DG are identical. Accordingly, the meeting held on 23.5.2003 has not been materialised and no name has been recommended for promotion to the said post.

8. Shri Jain, learned counsel of the respondents, further states that mere invitation of applications from eligible candidates cannot confer a right of promotion upon the applicant. The Govt. has a right either to fill up or not to fill up vacancy on restructure. The advice of MHA clearly stipulates that unless Recruitment Rules are finalised, no promotion can be taken place.

9. In the rejoinder, the applicant has vehemently opposed the contentions of the respondents as raised in their counter reply and reiterated the pleas raised in the OA. He has annexed plethora of documents to show that the claim of the applicant was not considered, as the cadre in SSB was not dying cadre at all.

10. Learned counsel of the respondents has also brought DPC record for our perusal.

11. On careful consideration of the rival contentions of the parties and on perusal of the records, we may at the outset enumerate the proposition derived from the settled law. A Govt. servant has a fundamental right to be considered for promotion but against the *Chances* of promotion one has no right. One has also no indefeasible right to be appointed on promotion despite being empanelled and recommended by the DPC. It is within the domain of the Government whether they want to appoint or not to appoint the concerned person. If such non-appointment is justified on reasonable grounds, one has no right to challenge the same. Even if one is empanelled has no right for appointment. The Apex Court in the case of Dwarka Pradesh and others v. Union of India, 2004 (1) ATJ 591 in so far as right to promotion is concerned has observed as under:-

"24. Articles 14 & 16 of the Constitution of India cannot be pressed into service to describe the fixation of lower quota for POs as discriminatory. It is well established in law that the right to be considered for promotion on fair and equal basis without discrimination may be claimed as a legal and a fundamental right under Articles 14 & 16 of the Constitution but chances of promotion as such cannot be claimed as a right (see Ramchandra Shankar Deodhar v. State of Maharashtra AIR 1974 SC 259). The decision relied on behalf of the appellants in the case of All India Federation of Central Excise v. UOI 1997 (1) SCC 520 is of little assistance to the appellant's case. In that case, this Court has considered the proposals made by the department for re-fixation of quota to redress the grievance of the petitioners to some extent. In the other case between the same parties in All India Federation of Central Excise v.



UOI 199 (3) SCC 384, the Court could not be persuaded to issue any direction for alteration of the quota fixed. None of the two decision is therefore is helpful in supporting the contention advanced on behalf of the appellants."

12. In the case of Government of Andhra Pradesh and others Vs. A.P. Jaiswal and others, 2001 (1) SCC 748, the Apex Court has clearly ruled that one has no right to be appointed. Only right is of consideration. The above proposition that one has no right even figuring in panel to be appointed has been reiterated in the case of Oriental Insurance Co. Ltd. Vs. T.S. Sastry, 2004 (1) SCSLJ 366 and also in the case of Bihar State Electricity Board Vs. Suresh Prasad and others, 2004 (1) SCSLJ 477.

13. In so far as vacancy is concerned, the Apex Court in the case of Union of India Vs. M. Jangammayya, AIR 1977 SC 757 ruled that no employee has a right to get the vacancy filled up and the Govt. has a right to get the vacancy unfilled.

14. In the light of the aforesaid legal proposition and the records produced, it shows that the applicant's case was considered and found fit by the Screening Committee held on 21.5.2003 but the matter has been referred to the cadre controlling authority, i.e., MHA, which has decided not to fill up the post of Deputy Director (Cipher-Computer) until the Recruitment Rules on the advise of Department of Personnel and Training is notified. Accordingly, we find that the applicant despite being empanelled has no indefeasible right for appointment. The Screening



Committee was not constituted after restructure and merger of SSB under MHA as per rules. On the defective DPC, one has no right to be appointed. We do not see any malafide or arbitrariness in the action of the respondents. As soon as the Recruitment Rules are notified, the law shall take its own course.

15. In the result, for the foregoing paragraphs, we do not find any merit in the present OA and the same is accordingly dismissed. No costs.


(SHANKER RAJU)
MEMBER (J)


(V.K. MAJOTRA)
VICE CHAIRMAN (A)

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