

(8)

Central Administrative Tribunal
Principal Bench

O.A. No. 71 of 2003

New Delhi, dated this the 5th September, 2003.

HON'BLE MR. SHANKER RAJU, JUDICIAL MEMBER
HON'BLE MR. R.K.UPADHYAYA,ADMINISTRATIVE MEMBER

R.S.Rakesh,
Retired Asstt.Education Officer,
Central Hindi Directorate
and resident of 431-A,
Farid Puri, West Patel Nagar,
New Delhi-110008

....Applicant.
(By Advocate: Shri S.C.Luthra)

Versus

1. The Union of India,
through
the Secretary,
Ministry of Human Resources Development,
(Department of Secondary & Higher
Education),
Shastri Bhawan,
New Delhi-110001

2. Director,
Central Hindi Directorate,
Western Wing No.7,
R.K.Puram,
New Delhi-110066

....Respondents.
(By Advocate:Shri A.K.Bhardwaj and Sh.M.K.Bhardwaj)

ORDER(ORAL)

Shri R.K.Upadhyaya,Administrative Member

This is an application under section 19 of the Administrative Tribunals Act,1985 seeking a direction to the respondents to promote the applicant to the post of Assistant Director (Language) from the date of recommendation of the DPC with all consequential benefits.

2. It is stated by the applicant that he belongs to SC community and was promoted as Assistant Education Officer (AEO for short) on 13.11.86. He was eligible for the next higher post of Education

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Officer (Language) on completion of five years' service on 12.11.91. It is further claimed that there were no vacancies, therefore, he could not be promoted. But in 1995, two vacancies arose, one for General Category and the other for SC candidate. On account of failure of respondents, no DPC was held. However, the DPC was ultimately convened on 13.3.97 which approved the panels for the years 1995 and 1996.

3. The applicant states that before the DPC could be held, one Shri D.S. Tripathi, AEO, who was junior to him filed OA No.1630/96 in this Tribunal. This Tribunal by order dated 5.8.96 admitted the case and directed the respondents to convene the DPC but the recommendation of the DPC was not implemented without the permission of the Tribunal. Accordingly, the DPC was held on 13.3.97. Its results were declared but the recommendations were not implemented in view of the interim order dated 5.8.96 (Annexure-A3) of this Tribunal. The applicant also states that the applicant in OA No.1630/96 Shri D.S.Tripathi superannuated on 31.5.98. Therefore, he withdrew his application on 6.12.99 and the respondents promoted one Shri N.K.Mishra and Smt.Hem Lata vide Office Order dated 8.2.2002 (Annexure-A1).The applicant further states that he made representation on 6.8.2001. Since no favourable decision was communicated, he filed OA No.340/2002 which was disposed of by order dated 8.2.2002 directing the respondents to dispose of the representation dated 6.8.2001 of the applicant. The

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respondents vide impugned order dated 8.10.2002 rejected the representation of the applicant. Therefore, this OA has been filed.

4. The claim of the applicant is that he was entitled for notional promotion when the vacancy arose in 1978 and in any case when the DPC was held in 1985. Learned counsel of the applicant has placed reliance on the observations of Nirmal Chander Bhattacharya Vs. UOI & Ors. (1991 (1) SLR 763).

5. At the time of hearing, the learned counsel confined his argument that the applicant should be allowed the benefit of notional promotional from 17.3.97 when the DPC was held. According to learned counsel, the respondents did not take any steps to get the stay order dated 5.8.96 of the Tribunal vacated till the OA filed by Shri D.S.Tripathi was withdrawn and the promotions were made in February, 2001. The applicant having already retired on 31.7.97, he should be given benefit of notional promotion at least from 17.3.97, the date of DPC till 31.7.97 when he retired. Consequential benefits of enhanced retiral dues are also claimed.

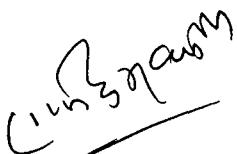
6. The respondents have opposed the claim of the applicant. According to the reply filed by the respondents, it is stated that the DPC proceedings had been finalised in the year 2002 whereas the applicant had retired in 1997. A Govt. employee has only a right of consideration for promotion. A retired Govt. employee cannot claim any promotion. The consolidated instruction regarding the date from

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which the promotion is made provides that the date of Commission's letter forwarding fair copies of the minutes duly signed by the Chairman of the DPC or the date of actual promotion of the officers, whichever is later, should be reckoned as the date of regular promotion of the officer. According to the learned counsel of the respondents, there was stay on promotion. Therefore, even if the respondents wanted to promote the applicant during the period from March, 1997 to July, 1997, they could not have promoted the applicant. Attention was also invited by the learned counsel to the advice of Department of Personnel & Training wherein it has been stated that the promotion can only be prospective. The benefit of promotion cannot be given during the stay order in the case of Shri D.S.Tripathi (OA No.822/1996). That stay was vacated only by order of final disposal of the OA on 6.12.99.

7. Learned counsel of the respondents has also contested the OA by stating that the relief claimed cannot be allowed on other preliminary grounds also. Firstly, the cause of action, if any, arose in March, 1997 and the applicant should have contested the same immediately thereafter. Therefore, the claims now made are barred by delay and latches. Secondly, the applicant had earlier filed OA No.340/2002. Therefore, the present OA is also barred by the principle of res-judicata.

8. We have heard learned counsel of both the parties and have perused the materials available on record.



9. The admitted fact is that the applicant retired on superannuation on 31.7.97. The promotion order in pursuance to the DPC held in March, 1997 by which the juniors of the applicant have been promoted was issued only on 2/8.10.2002. In our opinion, the present application filed on 7.1.2003 cannot be rejected on preliminary grounds of delay and latches. The applicant could have assailed the promotion of his juniors only when the orders of their promotion were issued on 2/8.10.2002. The contention of the learned counsel of the respondents that the OA is also hit by the principle of res-judicata is not accepted as the relief claimed in this OA was not adjudicated by this Tribunal by order dated 8.2.2002 in OA No.340/2002. By that order, the Tribunal directed the respondents only to dispose of the representation of the applicant. However, the applicant cannot be given promotion in view of his superannuation on 31.7.97. Even the notional/proforma promotion cannot be given to the applicant as there was valid stay order during the period from the finalisation of DPC's minutes in March, 1997 till superannuation of the applicant i.e. 31.7.97.

10. In view of these facts and reasons, the present OA is dismissed without any order as to costs.

R.K.Upadhyaya

(R.K.Upadhyaya)
Member (A)

S.Raju

(Shanker Raju)
Member (J)