

Central Administrative Tribunal
Principal Bench

O.A.No.133/2003

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri R.K. Upadhyaya, Member (A)

New Delhi, this the 4th day of September, 2003

Sh. S.N. Singh
Development Officer (Engineering)
Department of Mines
Room No.552 'C', Udyog Bhavan
New Delhi - 110 011. Applicant

(Applicant in person)

Vs.

Union of India through
Secretary
Department of Mines,
Ministry of Coal & Mines
Shastri Bhavan
New Delhi. Respondent

(By Advocate: Sh. R.P. Aggarwal)

O R D E R (Oral)

By Shri Shanker Raju, Member (J):

Applicant impugns respondent's order dated 14.2.2002 appointing him to the post of Development Officer on ad hoc basis till recruitment rules are finalised. He has sought quashment of the above with direction to promote him from 1.10.2000 on regular basis with all consequential benefits.

2. Being aggrieved by a decision of the respondent to abolish the post of Development Officer (Engineering) in the Ministry of Mines w.e.f. 1.10.2000 depriving the applicant of a chance to get promotion, OA 2443/2000 filed by him, was disposed of on 19.3.2001 with the following directions:

"6. The OA, in the above circumstances succeeds and is allowed. The impugned order No. 18 (6)/2000-Estt dated 18.10.2000 surrendering the post of Development Officer in the Secretariat of the Ministry of Mines is quashed and set

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(a)

aside, as the same does not follow from the recommendations of the 5th Pay Commission relating to the Ministry of Industrial Development and the respondents are directed to consider the case of the applicant for promotion to that post, if he is eligible and suitable, in accordance with the rules and regulations within three months from the date of receipt of a copy of this order."

3. By an order dated 12.2.2002, respondent has appointed the applicant to the post of Development Officer on ad hoc basis till finalisation of recruitment rules with stipulation that the same would not confer any right for regular promotion.

4. Applicant, who is appearing in person contends that as per the directions issued by this Court in OA 2443/2000 on quashment of the order abolishing the post the right of the applicant to be considered as agreed to him for promotion as Development Officer w.e.f. 18.10.2000. Accordingly, ad hoc promotion given is in contravention of the order passed.

5. By referring to an order passed on 24.6.2003 by the Government of India, Ministry of Chemicals and Fertilizers, it is stated that one Shri A.K. Aggarwal, Assistant Director has been promoted with consequential benefits from retrospective effect. This, according to the applicant, is a discrimination meted out to him which is violative of Articles 14 and 16 of the Constitution of India.

6. On the other hand, Shri R.P. Aggarwal, learned counsel for respondent, stated that in view of the wound up of Directorate General of Technical



Development (hereinafter called as 'DGTD') was w.e.f. 31.3.1994, Technical Officers, i.e., Assistant Development Officers/Additional Industrial Advisers were transferred to different Ministries/Departments along with posts with a direction that their further promotion and other service benefits would be controlled by the concerned Department.

7. One Industrial Adviser, one Additional Industrial Adviser, two Development Officers and two ADOs were earmarked to be given to Department of Mines and the same were taken on 31.3.1994. As due to reduction of 10% of the posts created between 1992-1999 two posts of the Development Officers were abolished w.e.f. 1.10.2000 vide order dated 18.10.2000.

8. Shri R.P. Aggarwal states that in view of the directions of this Court supra the abolition of posts being set-aside respondents reviving the post on 12.2.2002. As the recruitment rules for Technical Officers have not been framed and in view of limited scope of Ministry to utilise the skill of ADOs, it was decided to promote applicant on ad hoc basis w.e.f. 7.2.2002 in consultation with DoPT and UPSC.

9. Rebutting the contentions of the applicant, it is stated that as per the guide-lines on DPC on promotion vide OM dated 10.4.1989 Para 6.4.4 prescribes prospective promotion even in cases where the vacancies relate to the earlier year(s).

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10. Relying upon the following decisions of the Apex Court, it is stated that no person has right to be promoted from the date of occurrence of vacancy:

- a) Union of India vs. M.Jangammayya, AIR 1977 SC 757.
- b) Union of India v. K.K.Vadera & Others, 1989 (Suppl.2) SCC 625.
- c) Baij Nath Sharma v. Hon'ble Rajasthan High Court, 1998 SCC (L&S) 1754.

11. It is further contended that the Tribunal has not directed to consider the case of the applicant for promotion from the date of abolition of posts in retrospective but the consideration has been in accordance with rules and regulations.

12. We have carefully considered the rival contentions of the parties. It is not disputed that decision of the respondent to abolish the post has been quashed and the post was revived as no directions have been issued by the Tribunal regarding consideration of the applicant from the date i.e. 18.10.2000, the consideration cannot be anterior to the constitution of DPC as to assess the applicant.

13. In view of the decisions of the Apex Court supra and in the light of the provisions contained in para 6.4.4 of the OM ibid promotion is to be accorded only prospectively even if the vacancy relates to the yester years.

14. In so far as the promotion of the applicant on ad hoc basis is concerned, in absence of any recruitment rules and also for want of model

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recruitment rules till finalisation of the recruitment rules promotion of the applicant on ad hoc basis is valid and in accordance with law.

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

Rao

(R.K.Upadhyaya)
Member (A)

S. Raju

(Shanker Raju)
Member (J)

/rao/