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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00571 of 2016

Friday, this the 29th day of November, 2019

CORAM

Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

C.George Varghese,
Aged 63 years,
S/o C.V.Varghese,
Rtd Deputy Director (Handicrafts Marketing
and service Extension Centre, Ministry of Textiles,
Government of India, Trivandrum,
residing at "Jai Villa", T.C.4/2350,
East Pattam, Trivandrum 695 034.

... Applicant

(By Advocate Mr. Shafik M.A.)

Versus

1. The Union of India,
represented by the Secretary,
Ministry of Textiles,
Udyog Bhavan,
New Delhi 110 011.
2. The Director (Estt),
Department of Personnel & Training,
Ministry of Personnel, Public Grievances
and Pensions,
New Delhi 110 001.
3. The Development Commissioner (Handicrafts),
West Block, 7 R.K.Puram,
New Delhi – 110 066.

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4. Union Public Service Commission,
Represented by its Secretary,
Dholpur House,
Shahjahan Marg,
New Delhi – 110 001.

..... Respondents

(By Sr.CGSC, Mr.Thomas Mathew Nellimoottil for Respondents)

This application having been heard on 27th November, 2019, the
Tribunal on 29th November, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.571/2016 is filed by Shri C.George Varghese, retired Deputy
Director (Handicrafts) against the refusal of the 3rd Respondent to promote
him as Regional Director. The reliefs sought in the OA are as follows:

- (i) To call for the records relating to Annexures A1 to A10 and to declare that the applicant is entitled to be promoted as Regional Director, as proposed in Annexure A6 proposal from the feeder cadre atleast with effect from 17.7.2012.
- (ii) To declare the respondents to convene a DPC to consider the proposal in Annexure a6 immediately and to promote the applicant if he qualifies with effect from 17.7.2012 with all consequential benefits including arrears of salary with 18% interest.
- (iii) To pass appropriate orders or directions which may be deem to be fit and proper in the facts of the case.

AND

- (iv) To award costs of and incidental to the application

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2. The applicant had joined the department in 1980 as Handicrafts Promotion Officer and was promoted as Assistant Director (Handicrafts) in 1983. He was promoted as Deputy Director (Handicrafts) on 22.10.2007 on adhoc basis and was made regular as per orders dated 30.07.2008 (Annexure A2). The next post in the hierarchy to which he could aspire for is the post of Regional Director and as per the Recruitment Rules in force, Deputy Directors with 5 years service is eligible for promotion as Regional Director. A copy of the Recruitment Rules is at Annexure A3. It is submitted that since there were no Deputy Directors with requisite 5 years qualifying service to be promoted as Regional Directors and also considering the fact that there were several vacancies in the higher post, remaining unfilled for some time, the 3rd Respondent had submitted a proposal to DOP&T seeking relaxation in the qualifying period of service of Deputy Director so that they could be considered for promotion to the post of Regional Director. The applicant has obtained details through RTI that DOP&T in response to the proposal agreed to give relaxation upto one year, which meant that those officers who completed 4 years in the grade of Deputy Director (Handicrafts) would be eligible for promotion to the post of Regional Director. This was conveyed through DOP&T note dated 19.01.2012 (Annexure A4).

3. The Directorate of Handicrafts again took up the case with DOP&T in response to a question whether the officials with 4 years service as Deputy

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Director could be considered for promotion with effect from 17.07.2012 and this was answered in the affirmative by DOP&T (Annexure A6). However, when the 3rd Respondent sent a proposal to UPSC to conduct a DPC for 2 vacancies of Regional Director as per the communication dated 04.09.2012 (Annexure A7), it appears that a Section Officer of UPSC had opined that as the applicant is retiring on 30.11.2012, he could not be promoted and his turn would only come in 2013-14. In view of this refusal, the Respondent-3 again sought relaxation of 2 years, as per Annexure A8 note, but no permission was accorded by DOP&T. Also the representation filed by the applicant met with the same fate.

4. As grounds, it is argued that the 3rd Respondent, who has been taking up the case of the applicant cannot now turnaround and reject the same. The entire issue has been decided at the level of an incompetent functionary, who is a Section Officer in UPSC as is clear from the noting made on the proposal sent from the Directorate of Handicrafts. The applicant had a long and illustrious career and was looking forward to a promotion at the fag end of his career, which has now been refused. It is not known why it was necessary for the respondent to consult UPSC, as the consultation is necessary only if the post is to be filled by transfer on deputation. The proposal being for promotion of feeder cadre officials, UPSC had no role to play.

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5. The respondents have filed a reply statement in which contentions raised in the OA had been disputed. It is stated that the Respondent-3, who was the Head of Office of the applicant, had taken up his case for relaxation, reducing the residency period from 5 to 4 years for being promoted as Regional Director. The same was agreed to by the DOP&T. However, as it was seen that the applicant would require more than one year relaxation, he having to retire on 30.11.2012. Further efforts were made by Respondent-3 to get the entire shortfall, which was to the tune of one year and seven months waived. When the case was referred to UPSC, the Commission made the observation as follows:

“DOP&T has accorded relaxation in service for one year as on 1-1-2013 i.e., the vacancy year 2013-2014 out of 5 years service required as per RRs. Since Shri Varghese will be retiring on 30-11-2012, he is not eligible for consideration for promotion for the vacancy year 2013-14. Office of the D.C. (H) may be requested to review the proposal accordingly.”

The DOP&T as per their note dated 05.10.2012 recounted that the applicant has been posted as Deputy Director (Handicrafts) on 17.07.2008 and as on 01.01.2012, he would have only completed 3 years and 5 months service in the grade of Deputy Director (Handicrafts) against the requirement of 5 years. A copy of the DOP&T note dated 05.10.2012 is at Annexure R(b).

6. The note of the Section Officer of the UPSC cannot be called unwarranted, being a case which requires DPC approval. UPSC had to be necessarily in the picture. While it is true that the respondents did

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everything in his power to facilitate the relaxation, it was not granted in view of the rule position and also owing to the fact that the relaxation of one year was not sufficient for the officer to be eligible for the promotion.

7. The applicant has filed rejoinder reiterating the contentions raised in the OA. The authority of the UPSC to express the views that it did is once again questioned therein.

8. Heard Shri Shafik M.A., learned Counsel for the applicant and Shri Thomas Mathew Nellimoottil, Sr.CGSC on behalf of the respondents. All pleadings both documentary and oral were examined.

9. The issue in question is the eligibility of the applicant to be promoted to the position of Regional Director (Handicrafts). As per the Recruitment Rules, copy of which is at Annexure A3, the post is to be filled up by promotion, failing which by transfer on deputation, and the eligibility of an employee for promotion is as follows:

“Deputy Direct (Design), Deputy Director (Regional Design and Technical Development Centre), Deputy Director (Textiles), Deputy Director (Handicrafts), Deputy Director (Technology), Dy. Director (Administration & Coordination), Deputy Director (Budget & Accounts) and Deputy Director (Development Centre for Musical Instruments) with 5 years regular Service in the respective grade.

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10. Thus essentially the residency period of service required at the level of Deputy Director for being eligible for promotion to the post of Regional Director is 5 years. The department took up the applicant's case for relaxation of the 5 years period and succeeded in getting it reduced to 4 years in the grade as on 17.07.2012, which meant that the applicant, who ordinarily would have become eligible on 17.07.2013, would become eligible for consideration on 17.07.2012. In order to effect a promotion in line with the relaxation given, the applicant had to be in service on 01.01.2013. Having retired on 30.11.2012, he was clearly out of the zone of consideration. The one year relaxation applied in his case was not sufficient for him to earn the promotion and he would have required one year and seven months to qualify as on 01.01.2012. The UPSC, when the case was referred, recorded this position unambiguously and cannot be faulted for the same.

11. On the basis of the facts before us, we adjudge the OA lacks in merit and is liable to be dismissed. We accordingly proceed to do so. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00571/2016

- 1.** Annexure A1 - True copy of the Order No. 60054/OA.A-1031-2013/CGV/2013-14/230 dated 17.05.2016 issued by the R.D.(SR) for 3rd Respondent.
 - 2.** Annexure A2 - True copy of the Order No.A-12025/1/2006-Admn.1/862 dated 30.07.2008 issued by the 3rd Respondent
 - 3.** Annexure A3 - True copy of the Recruitment Rules for the post of Regional Director.
 - 4.** Annexure A4 - True copy of the Note Dy.No.102746/CR/11 dated 19.1.2012 of the 1st Respondent.
 - 5.** Annexure A5 - True copy of the UO Note No.12025/3/2011-Ad.I/26 dated 20.04.2012 of the Asst. Director (Admn) of the 3rd Respondent.
 - 6.** Annexure A6 - True copy of the DOP&T Note Dy.No.35652/12/CR dated 10.5.2012 of the 1st Respondent.
 - 7.** Annexure A7 - True copy of Letter No. A-12025/3/2011.Admn.I dated 4.9.2012 issued by the Sr.Asst. Director (Admn.I) of the 3rd Respondent.
 - 8.** Annexure A8 - True copy of the U.O.Note dated 17.9.2012 and the Note issued by the DOPT as per Dy.no.64467/CR/R dated 9.10.2012.
 - 9.** Annexure A9 - True copy of the Representation dated 12.10.2012 before the 3rd Respondent.
 - 10.** Annexure A10 - True copy of the order dated 7.4.2016 of this Hon'ble Tribunal in Original Application No.1031/2013.
 - 11.** Annexure R(a) – True copy of Recruitment Rules.
 - 12.** Annexure R(b) - True copy of DOP&T Note dated 5.10.2012.
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