

Central Administrative Tribunal, Principal Bench

Original Application No. 350 of 2001

New Delhi this the day of 26th February, 2002

Hon'ble Mr. S.R. Adige, Vice Chairman(A)
Hon'ble Mr. Kuldip Singh, Member (J)

Shri Y.P. Devgun
S/o Shri K.L. Devgan
R/o A-368 Moti Bagh-I,
New Delhi-110 021.

Working as Assistant
Ministry of Urban Development
and Poverty Alleviation,
Nirman Bhawan,
New Delhi-110 011.

- Applicant

(By Advocate - Shri M.K. Gupta)

Versus

1. Union of India
Through its Secretary,
Ministry of Urban Development &
Poverty Alleviation,
Nirman Bhawan,
New Delhi-110 011.
2. Directorate of Estates,
through its Director,
Ministry of Urban Development &
Poverty Alleviation,
Nirman Bhawan,
New Delhi-110 011.
3. Shri Krishan Singh
Assistant Director of Estates (Lit.)
Directorate of Estates,
Ministry of Urban Development &
Poverty Alleviation,
Nirman Bhawan,
New Delhi-110 011.

- Respondents

(By Advocate - Shri N.K. Aggarwal, Counsel)

Shri Harvir Singh, counsel for Shri
K.C. Mittal, Counsel)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant has challenged the appointment
of respondent No.3 to the post of Assistant Director
of Estates (Litigation) and prayed for quashing of the
order dated 11.9.2000 as well as order dated 18.9.2000

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vide which the respondent No.3 had been appointed as such.

2. The facts alleged in brief are that the respondents vide circular dated 28.7.1999 invited applications from suitable officers for appointment to the post in question by transfer on deputation basis in the pay scale of Rs.6500-10500.

3. Eligibility conditions prescribed in the circular are as under:-

(a) Officer holding posts in the scale of pay of Rs.6500-10500 and above and working in Central Government Departments, possessing a degree of law with two years experience in dealing with litigation matters:

or

(b) Officer holding posts in the scale of pay of Rs.5500-9000 and above and working in Central Government Departments, possessing a degree of law with three years experience in dealing with litigation matters; and

(c) Officer holding posts in the scale of pay of Rs.4500-7000 and above and working in Central Government Departments, possessing a degree in law with five years experience in dealing with litigation matters".

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(3)

4. Applicant also applied for the same. One Shri G.C. Srivastava who had also worked on the said post on deputation for a period of 5 years was re-selected and applicant's name was kept at Sl.No.2 of the panel but since Sh.Srivastava had already worked for a period of 5 years, he could not be appointed so department instead of appointing the applicant, being on panel at Sl.No.2, re-circulated the post vide circular dated 28.3.2000. In response to that, various candidates including the applicant applied. The DPC considered all the 10 candidates including applicant as well as respondent No.3. It is alleged that again the DPC selected an ineligible person, i.e., respondent No.3.

5. It is pointed out that respondent No.3 has no experience in litigation matters nor did he have three years experience in the said scale of pay so he should not have been appointed. It is further submitted that respondent No.3 had joined as Assistant only on 1.9.97 so on the date when the applications were invited, he did not have 3 years experience in the scale of Rs.5500-9000, as required vide circular.

6. It is also submitted that respondents No.3 does not fulfil the qualifications so he could not have been appointed.

7. The next grievance of the applicant is that a 'fair consideration' has not been afforded to him as his CRs for the last 5 years had not been assessed by



the DPC and it assessed 4 CRs and without any reasons and justification, the DPC had failed to collect the requisite 5 CRs of the applicant before holding of the DPC. The DPC even did not send any reminder to the officer for completion of the requisite CRS. Thus the only grievance of the applicant is that he has not been afforded fair consideration for this post.

(19)

8. We have heard the learned counsel for the parties and gone through the records of the case.

9. The learned counsel appearing for the applicant submitted that fair consideration for the selection is a fundamental right of the applicant and since the applicant was working in the same Ministry even in the same building, so his 5 CRs could have been collected by the DPC and only after assessing 5 CRs of the applicant, the DPC should have made their recommendations. The DPC has not done so only in a mala fide, unfair and unjust manner so the recommendations made by the DPC are illegal and are liable to be quashed.

10. The counsel for the applicant has also relied upon a judgment reported in JT 2000 (Supp.1) SC 346 entitled as Badrinath Vs. Government of Tamil Nadu and Others wherein it has been held as under:-

"58(1) Under Article 16 of the Constitution, right to be 'considered' for promotion is a fundamental right. It is not the mere 'consideration' for promotion that is important but the consideration must be 'fair' according to established principles governing service jurisprudence".

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11. Elaborating on the concept of fair consideration, the learned counsel for the applicant pointed out that had the 5 CRs of the applicant been considered then probably the DPC could not have recommended the respondent No.3 for appointment despite the fact that his CRs were available in the same office, which shows mala fides on the part of the respondents and as such the applicant has been deprived a fair consideration for selection.

12. The counsel for the applicant also referred to another judgment reported in 2001(5) SCC page 654 entitled as Tandon Brother VS. State of West Bengal and Others:-

" B. Administrative Law - Judicial review - Where Government action runs counter to good faith, is not supported by reason and law, held, it cannot but be described as mala fide - Equity, good conscience and justice require that judicial power be used to set aside such action".

13. Relying upon this, the learned counsel for the applicant submitted that the action of the respondents is not in good taste rather the proceedings of the DPC reflected that it has been made in bad taste so the same are liable to be quashed.

14. In reply to this, the learned counsel appearing for the respondents submitted that the applicant had been granted fair consideration for the purpose of selection to the post in question and

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despite the fact that 5 CRs of the applicant were not available, still the DPC taking a sympathetic view considered the case of the applicant with the CRs which were available. In order to show that the last ACR was not available, the counsel for the respondents pointed out that it was the applicant who himself was at fault since he has not submitted his self appraisal to the reporting officer so the reporting officer could not record his ACR in time before the DPC was held, but still the DPC had considered the case of the applicant for the purpose of selection to the post in question.

15. As regards ineligibility of the respondent No.3 is concerned, the counsel for the respondents pointed out that the respondent No.3 had been empanelled as Assistant w.e.f. 1994 and not from 1997 so he is presumed to be working in the Assistant's grade since he was enlisted in the year 1994 and not from the actual date when he was given charge of the post of Assistant and thus the respondent No.3 fulfilled all the requirements.

16. The counsel for the respondents has also placed before us the records vide which all the 10 candidates were considered by the DPC and submitted that the noting recorded by the DPC show that a fair consideration has been given to the applicant.

17. Counsel appearing for respondent No.3 also

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adopted the same arguments and submitted that the respondent No.3 being an eligible candidate has been considered.

18. We have perused the records of the DPC submitted by the department.

19. From the perusal of the minutes recorded by the selection committee, we find that out of 10 candidates, 6 candidates were found out of the field of consideration and 4 candidates were considered. Out of 4, one candidate was again found to be out of consideration because his ACRs were not available. And despite the fact that one ACR of the applicant was also not available, still he was considered. And for the reasons recorded by the DPC, the respondent No.3 was selected and the applicant was kept in panel. From the proceedings recorded it cannot be said that the applicant has not been afforded a fair consideration as claimed by him and as far as the judgments relied upon by the applicant is concerned, in the case of Badrinath (Supra) the applicant's previous adverse remarks were taken note of, rather than the positive achievements of the applicant in that case so in that circumstances the Hon'ble Apex Court court observed that the adverse remarks which were taken into consideration and that too for a period which was prior to the earlier promotion of the candidate, the court had come to the conclusion that the consideration was not fair. But here in this case

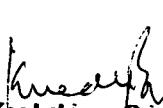
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the only positive achievements of the applicant was taken into consideration when his ACRs containing 'outstanding' reports were considered. However, the DPC has its own reasoning for selecting respondent No.3 at S.No.1 and that reasoning cannot be a subject matter of judicial review before this Tribunal. The manner in which the DPC had considered all those 3 candidates including the applicant rules out denial of a fair consideration to the applicant.

(B)

20. Similarly the judgment in the case of Tandon (Supra) calls upon the administrative authorities to assign reasons for their orders. A perusal of the minutes of the DPC show that even the reasons are also available for selection of respondent No.3, so we find that none of the judgments help the case of the applicant in any way.

21. In view of the above we find that the OA is devoid of any merit and the same is dismissed. No costs.


(Kuldip Singh)
Member(J)


(S.R. Adige)
Vice Chairman(A)

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