

to be noted

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
New Delhi

(22)

O.A. No. 189/99 with O.A. No. 316/99

New Delhi, this 15th day of the November, 2000

Hon'ble Mr. Justice Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mr. Govindan S. Tamai Member (A)

O.A. No. 189/1999

Shri Rajiv Kumar Anand,
S/o Shri V.D. Anand,
R/o L-1, 151-B, DDA Flat,
Kalkaji, New Delhi-19.

(By Advocate: Shri Arun Kumar, Proxy Counsel
for Sh. R.V. Sinha and Shri R.N. Singh)

Versus

1. The Officer Incharge,
Institute of Cytology & Preventive Oncology,
Maulana Azad Medical College Campus,
New Delhi.
2. Director General,
Indian Council of Medical Research,
Ansari Nagar,
New Delhi.
3. Govt. of India,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi
(Through: Secretary)

... Respondents

(By Advocate: Shri V.K. Rao)

O.A. No. 316/1999

1. Pradeep Kumar Mathur,
S/o Shri V.D. Mathur,
R/o Bharat Apartments,
Plot No.S-26, Flat No.S-3,
Shalimar Garden,
Sahibabad, (U.P.)
2. I.P. Jagga,
S/o Shri Desh Raj Jagga,
R/o House NO. 357,
Parmanand Colony, Delhi-110009.

... Applicants

(By Advocate: Shri A.K. Behera)

Versus

Through the Union of India

1. The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.

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2. The Director General,
Indian Council of Medical Research,
Ansari Nagar, New Delhi-110029.
3. Office-in-charge of Cytology
and Preventive Oncology (ICMRO)
Maulana Azad Medical College Campus,
Baghdur Shah Zafar Marg,
New Delhi-110002.
4. Shri Rajiv Kumar Anand,
S/o Shri V.M. Anand,
R/o L-1/151-B, DDA Flats,
Kalkaji, New Delhi-110019.

... Respondents

(By Advocate : Shri V.K. Rao)

ORDER (oral)

Govindan S. Tampi:

OA No. 189/1999 filed by Shri Rajiv Kumar Anand and OA No. 316/1999 filed by Shri Pradeep Kumar Mathur and Shri I.P. Jagga challenge the same issue,— though from opposite angles — selection process for the post of Section Officer in the Institute of Cytology and Preventive Oncology, (ICPO), a unit of Indian Council for Medical Research (ICMR). They have been heard together and are accordingly being disposed by this combined order.

2. Shri Rajiv Kumar Anand, applicant in OA 189/99, joined ICPO as direct recruit Assistant on 14.8.1986 and is working there since then. In terms of relevant recruitment rules, the next promotion for an Assistant is to the post of Section Officer, on completion of eight (8) years of regular service as Assistant. In the year, 1997, when a vacancy in the grade of Section Officer arose in ICPO, he had become eligible for consideration for promotion to the same. A Departmental Promotion Committee (DPC), comprising

Officer In-charge, Deputy Director and Assistant Director all of ICPO, ^{WAS} which held on 10.11.1998, considered his case among others and approved him for promotion and appointed him as Section Officer on 11.11.1998, placing him on probation for a period of two years. However, within 5 days i.e. on 16.11.1998, another order was issued reverting him as Assistant and keeping in abeyance the earlier promotion order dated 11.11.1998. He has challenged, this order of reversion.

3. On the other hand, Pradeep Kumar Mathur and I.P. Jagga, also direct recruit Assistants in ICPO, who have joined the Institute in on 21.3.1984 and 3.9.1985 respectively and thus are senior to Rajiv Kumar Anand challenge the latter's promotion. According to them, the proceedings of the DPC of 10.11.1988 were vitiated, as DPC did not have any representative from ICMR, or any outside organisation as was the usual practice and the procedure adopted by the institute on earlier occasions, and were also characterised by favouritism. They point out that on an earlier occasion, by a properly constituted DPC, in 1991, Jagga was selected and appointed as Section Officer on ad-hoc basis, wherein he has continued till 1995. In the circumstances, Anand's promotion overlooking their claims was incorrect and against the rules, more so as the promotion to the grade of Section Officer was only based on seniority-cum-fitness and there could not have been any scope for out-of-turn promotion as has been granted to Anand. This promotion had given rise to complaints in the organisation,

including those from the Employees Union as well. Their representation against the promotion has been disposed of by a memorandum dated 12.11.1998 to the effect that the DPC has been held in terms of the instructions and guidelines issued by DOPT. Hence this OA No. 316/99.

4. In reply to Anand's application the respondents submit that the selection made on 10.11.1998 has been held in abeyance, following complaints and enquiry ordered by DG, ICMR and to ensure that justice is done to all the candidates concerned including the applicant and there was no reason for him to be agitated. Respondents, further state that the application by Mathur and Jagga is misconceived, especially as the selection held, though correctly, has been held in abeyance and not given effect to.

5. Heard the counsel for the applicant and respondents. Shri R.N. Singh, appeared for the applicant in OA 189/99 and Shri A.K. Behera for the applicants in OA 316/99. Sh. V.K. Rao was for the respondents in both OAs.

6. Shri Singh, the learned counsel for Anand pleaded that as his client had been selected for promotion by a proper and due process, there was no reason for the same to be held in abeyance or modified. Sh. Behera, on the other hand contends that his clients who were denied their due by the improper DPC proceedings should be rendered justice. Shri Rao

appearing for the respondents point out that the proceedings of the first DPC have been correctly set aside but as the revised DPC held on 18.8.2000 also had come to the same conclusion, there was no ground for Tribunal's intervention. He, further points out that the applicants in OA 316/99 have not challenged the review DPC held on 18.8.2000 or its results. They cannot raise it now and agitate, pleads Shri Rao.

7. We have carefully deliberated on the rival contentions and have perused the records, including the DPC's proceedings. We also heard Sh. M.L. Khurana, Admn. Officer, who was himself one of the members of the review DPC, who appeared before us today.

8. Since the selection to the post of Section Officer from the Assistant is covered by the procedure laid down in DOPT's OM dated 27.3.1997, it is relevant to refer to the same.

Para "III" of the said OM reads as under:-

III (i),(ii), (iii) & (iv) of para 2.2.1. of OM dated 10.3.1989 may be substituted as under:-

SELECTIOIN-CUM-SENIORITY AND SELECTION MERIT

(i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts, a bench mark grade would be determined for each category of posts.

For all Group-C, Group-B and Group-A posts (upto and excluding the level of Rs.3700-5000) the bench mark would be 'Good' and will be filled by the method of Selection-cum-Seniority as indicated in sub-para(iii).

(ii) In respect of posts which are in the level of Rs. 3700-5000 and above, the bench mark grade should be 'very Good' and will be filled by the method of Selection by Merit as indicated in sub-para (iv).

(iii) Each Departmental Promotion Committee while considering the suitability of officers for promotion to posts for which the bench mark had been determined as 'Good' would grade the officers as 'Good' 'Average' and 'Unfit' only. Only those officer, who obtain the grading of 'Good' will be included in the panel in the order of their seniority in the lower grade subject to availability of vacancies.

(iv) Notwithstanding the provisions mentioned above, in the case of promotions made for induction to Grade A posts/services from lower groups, while the bench mark would continue to be 'Good', the DPC shall grade the officers as 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit' as the case may be and the officers will be arranged according to the grading obtained, placing the 'Outstanding' officers on top followed by those grade as 'Very Good' and so on in the select panel upto the number of vacancies, with the officers having the same grading maintaining their inter-se-seniority in the feeder grade. (emphasis supplied)

9. The promotion from the post of Assistant to that of Section Officer falls in the category of 'selection by seniority' and 'not selection by merit'. This is fairly admitted by the learned counsel for the respondents also. This would permit only 3 categorisations i.e. 'Good', 'Average' and 'Unfit' and those with 'Good' categorisation would make the grade for promotion strictly in the order of seniority. In other words from among the candidates under consideration for promotion, those who gain the categorisation 'Good' would be eligible for promoted, strictly in accordance with the seniority and the number of vacancies in the higher grade. There would not at all be case for any higher categorisation or out

of turn promotion, which is permissible only in selection by merit.

10. The proceedings of the DPC dated 10.11.98 and of the review DPC dated 18.8.2000 would have to be seen in this context and accordingly we have perused the said proceedings. Minutes of the DPC dated 10.11.98, read that DPC chaired by the Officer In-charge, ICPO, with Deputy Director and Assistant Director of ICPO as members, considered the case of the following five assistants:-

- " 1. Mr. P.K. Mathur
- 2. Mr. I.P. Jagga
- 3. Mr. R.K. Anand
- 4. Mrs. Madhuy Bala
- 5. Mrs. J. Nathani

Based on the seniority and also of ACR of the above employees, the DPC have made the following recommendations in order of merit:-

1. Mr. Rajiv Kumar Anand

- Sd - - Sd - - Sd -
(B.K. Sharma) (M.M. Gupta) (D.K. Das)
10.11.1998 "

11. The above does not say anything other than that the DPC found Rajiv Kumar Anand fit for promotion as Section Officer, for their own reasons. It would appear as if, the DPC was held only to find him suitable for promotion at the cost and detriment to everyone else. To say the least, this meeting of the DPC was only a farce, that too with no redeeming features. Interestingly, DPC did not have among its members, any outsiders or representatives from I.C.M.R.

as was the usual practice. Naturally, therefore, complaints arose and the D.G., ICMR had to intervene, order on enquiry and direct that a - Review DPC be held. The same has been done on 18.8.2000. One expected that at least the Review DPC would take correct steps. We are sorry to say it has not and it has compounded the mistake committed by its predecessor. The relevant proceedings of the review DPC read as below:-

" The candidature of the following departmental candidates were considered with the following qualification and experience as per ICMR letter NO. 16/39/92-Admn.II dated 31.10.94.

"Assistants with Minimum 8 years of service in that grade only, will be eligible for promotion as Section Officers. Office Superintendents will be eligible for promotion as Section Officers after completing a minimum combined service of 8 years as Assistant and Office Superintendent."

1. Mr. P.K. Mathur
2. Mr. I.P. Jagga
3. Mr. Rajiv Anand
4. Mrs. Madhuri Bala Dhuri
5. Mrs. Jai Shree Nathani

Keeping in view various office memorandum issued by the Government of India Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions regarding procedure to be observed by departmental promotion committees. The members given their observation as below:-

1. Mr. P.K. Mathur	Average
2. Mr. I.P. Jagga	Average
3. Mr. Rajiv Anand	Very Good

Ranking

1. As per guidelines in OM dated 27.3.97 with reference to para 2.1.1. (III) (iii): 2.1.4. and read with para 2.1.4. of OM dated 10.3.89 and also of para 2.2.1. (c) & (e) of Memo dated 27.3.97, the members of the DPC after going through the ACRs made the ranking in r/o the following employees as follows:-

1. Mr. P.K. Mathur	-3 (three)
2. Mr. I.P. Jagga	- 2 (two)
3. Mr. Rajiv Anand	- 1 (one)

In view of this Shri Mr. Rajiv Anand alone found fit to the promotion of Section Officer.

In view of above, only Mr. Rajiv Anand being fit/eligible for the promotion to the post of Section Officer and we recommend accordingly.

The members of the DPC have noted that the case is pending with Hon'ble CAT and M/s. Sikri & Co., the legal advisor of the Council with regard to their advice to hold the review DPC vide their letter dated 3.2.2000 has clearly indicated that the "Review DPC would be subject to the outcome of the OA and this may be clarified in any order passed by ICPO". In view of this the DPC recommends that the appointment against these recommendations shall be provisional and will be subject to the final outcome of the OA in the matter of Shri Rajiv Anand, P.K. Mathur and others which is pending in Hon'ble CAT.

-Sd-
(vinay Kamal)

-Sd-
(Hari Mohan)

-Sd-
(M.L. Khurana)

-Sd-
(M.M.Gupta)

-Sd-
(A.B. Mitra)
18.8.2000 "

12. Thus we find that the review DPC has also found only Raj Kumar Anand fit for promotion, by categorising him as 'Very Good' and grading the two seniors P.K. Mathur and I.P. Jugga as 'Average'. (There is no mention as to how the DPC assessed the candidates at Sl.No. 4 & 5) This is surprising as there is no category 'Very Good' for promotion on selection by seniority in terms of the existing instructions. The only three authorised categorisations are 'Good', 'Average' and 'Unfit' and the senior with categorisation 'Good' would make the grade for promotion strictly on the basis of seniority.

As the selected individual has been graded as 'Very Good' against the prescriptions in the instructions, we chose to go through the ACR's of the first three persons i.e. P.K. Mathur, I.P. Jagga and Rajiv Kumar Anand for the period of eight (8) years from 1997-98 backwards and the same tells a revealing story. The reports of Sh. P.K. Mathur does not show him in a favourable light and DPC's categorisation 'Average' in his respect cannot be assailed. But not so the case of I.P. Jagga. During the eight years under examination, he has been rated as 'Very Good' twice and 'Good' five times and once as 'Average'. Inspite of seven years overall reports of 'Good' and 'Very Good', during eight years, DPC finds him only 'Average'. A curious finding indeed! He should have been properly graded as 'Good'. Rajiv Kumar Anand's reports are throughout 'Very Good' but that would also make him only 'Good' as the only permissible categorisations are 'Unfit', 'Average' and 'Good' and nothing more on this promotion.

13. Obviously therefore, I.P. Jagga and Rajiv Kumar Anand deserved to be categorised as 'Good' and being the senior of the two, Jagga should have been approved for promotion about Anand. Still the review DPC arrived at its findings which ran counter to the instructions on the subject. Suffice it to say, a strange procedure was adopted to benefit the junior and at the cost of the senior who had even worked as ^{easy/} Section Officer for four years _L though on ad-hoc basis. The review DPC, which was expected to exhibit greater care and caution, more so on account of the complaints

generated by its predecessor which necessitated the review, did not cover itself with glory ^{in his proceeding.} We can ~~also~~ only say that we are sorry ^{to see} ~~at~~ this state of affairs. It is time, somebody cried a halt to this. The decision of the DPC in selecting the junior person, that too against the instructions on hand was totally wrong. Normally, the Tribunal would have remitted the matter back to the DPC for reconsideration but in the circumstances of the case, we are not inclined to permit a second review by the same DPC which may also go the same way. And hence our decision.

14. In the result OA No. 189/99 filed by Rajiv Kumar Anand, fails being devoid of any merit and is accordingly dismissed. The order promoting him as Section Officer on 11.11.1998, was correctly held in abeyance and the same does not warrant any interference. The subsequent proceedings for promoting him on the basis of the findings of the review DPC is quashed as illegal. OA No. 316/99, succeeds as far as applicant No. 2 (Shri I.P. Jagga) is concerned and he is deemed to have been promoted w.e.f. 18.8.2000, the date of the review DPC. Respondents shall issue the necessary orders within two months from the date of receipt of the copy of this order and shall also pay him cost of this OA, quantified at Rs.5000/- (Rupees Five Thousand only). Before we part with this we would also like to suggest to D.G., ICMR, to enquire as to how the review DPC, which was constituted to rectify the mistake committed by the first DPC also chose to

adopt the same wrong course of action and take necessary remedial action.

(Govindan S. Tampi)
Member(A)

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(V. Rajagopala Reddy)
(Vice-Chairman(J))