

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2558/1998

(B)

New Delhi, this 17th day of December, 1999

Hon'ble Shri S.P. Biswas, Member(A)
Hon'ble Shri Kuldip Singh, Member(J)

K. Vijayakumaran
Joint Commissioner (Fisheries)
Dept. of Animal Husbandry & Dairying
Ministry of Agriculture, New Delhi .. Applicant

(By Shri M.K. Gupta, Advocate)

versus

Union of India, through

1. Secretary
Dept. of Animal Husbandry & Dairying
M/Agriculture, Krish Bhawan
New Delhi
2. Secretary
Dept. of Personnel & Training
North Block, New Delhi
3. Secretary
UPSC, New Delhi
4. Director General
Fishery Survey of India
Botwala Chambers, Sir P.M. Road
Mumbai
5. Dr. K.P. Philip
Zonal Director
Cochin Base of Fishery Survey of India
Kochangadi, Cochin .. Respondents

(By Shri R.V. Sinha, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

The Applicant, a Joint Commissioner (Fisheries) in the Department of Animal Husbandry & Dairying, challenges the proceedings of the DPC held on 4.12.98 for considering officers for promotion to the post of Deputy Director General(Fisheries) (DDG/F in short) in which Respondent No.5 has been recommended allegedly superceding applicant's superior claims. The applicant is presently holding the post of Joint Commissioner (fisheries) in the office of R-1 on deputation basis in

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the scale of Rs.4100-5300 (pre-revised) with effect from 17.8.95. Prior to that, he was holding the regular post of Zonal Director (Rs.2700-5000) in the office of R-4. He was selected and appointed to this post with effect from 7.7.86. The next promotional post for the applicant is DDG/F and as per Recruitment Rules, the said post is to be filled up by promotion failing which by transfer on deputation and failing both by direct recruitment. It is a selection grade post and the requirement is that Zonal Directors with 3 years regular service in the cadre will be eligible for consideration for such promotion.

(W)

2. It is the contention of the applicant that as per rules and seniority position, applicant as well as Shri K. Gopalkrishnan were eligible for promotion to the said post, which fell vacant in 1990. A DPC was held by R-3 on 30.12.95 and considered the aforesaid officers for promotion on year-wise basis. Since the applicant and Shri Gopalkrishnan did not obtain the prescribed Bench Mark i.e. "very good", the said vacancy was carried forward from 1990-91 right upto 1993-94. In the year 1993-94, applicant secured grading of "very good" and ultimately the DPC in 1995 **recommended his name** for promotion to the post of DDG/F in the office of R-4. Applicant was shocked to learn that the respondents have conducted a fresh DPC on 4.12.98 to consider officers for promotion to the same post and has **recommended the name** of R-5. Applicant alleges that R-5 is not only junior to him but was not even eligible for consideration for promotion to the said post in 1993 since he did not fulfill three years experience in the grade having been appointed as Zonal Director on 26.8.91. Applicant came

(D)

to know the development in the middle of December, 1998 about the DPC having been held on 4.12.98 and made a detailed representation to the respondents. Unfortunately, respondents decided to remain silent on this. (S)

3. Applicant challenges the DPC proceedings held on 4.12.98 on a large variety of grounds. We, however, would bring out into sharp focus only the vital ones. Thus, applicant would argue that though a successful candidate has no indefeasible right for appointment, but the State has no licence of acting in an arbitrary manner. There are no reasons for not filling up vacancy pursuant to the DPC proceedings of 30.12.95 wherein applicant's name was recommended.

4. It is also the contention of the applicant that for promotion to the post in question against the vacancy of 1993-94, R-5 was not even eligible for consideration. To add strength to his contentions, applicant places reliance of the judicial pronouncement of the apex court in the case of Shankarsan Dash Vs. UOI (1991) 3 SCC 47. In this connection, he drew our attention to the decision of the Lordships in para 7 of the aforesaid order, which is reproduced below:

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an

arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court and we do not find any discordant note in the decision of State of Haryana Vs. S.C. Marwaha 1974 3 SCC 220.

(b)

5. To lace his contentions further, applicant drew support from the decision of the apex court in the case LIC of India & Anr. Vs. Consumer Education & Research Centre & OIrs. (1995) 5 SCC 482. It was held therein that:

"Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest. It is the exercise of the public power or action hedged by public element that becomes open to challenge. If it is shown that the exercise of power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens simpliciter do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons".

6. On the strength of the views expressed by their Lordships in the aforesaid case, the applicant would submit that the respondents' action in not acting upon the recommendations of DPC dated 30.12.95 is vitiated by unreasonableness and arbitrariness.

7. In the counter, respondents have opposed the claims. It has been submitted that the outcome of the DPC proceedings dated 4.12.98 have not yet been made public and hence the applicant's challenge against the said proceedings is pre-mature and not tenable. It is

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further submitted that the 5th respondent has been appointed to the post of Zonal Director on 26.8.91 and became eligible for consideration of promotion to the post of DDG/F on 25.8.94 after completion of three years. Therefore, the statement of the applicant that R-5 was not eligible for promotion to the said post in 1995 is not tenable. Further, it is mentioned that R-5 became eligible for promotion for the carry-forward vacancy of 1995-96, whereas the DPC held on 30.12.95 considered the eligible feeder grade officers for the carry forward vacancy of 1993-94. It is also submitted that the respondents could not implement DPC recommendations of 30.12.95 for various administrative reasons. Firstly, the post of DDG/F remained vacant for more than a year and was deemed to have been abolished as per OM issued by the Ministry of Finance on 3.5.93. Secondly, the post of DDG/F was re-created with effect from 15.1.98 and 1998-DPC recommendations were sent to R-2 on 16.4.98 for confirmation and approval. The said respondent returned the proposal on 4.5.98 intimating that recommendations of DPC held on 30.12.95 had ceased to be valid after 30.6.97 in terms of extant orders on the subject and advised to take up the matter with R-3 for convening the meeting of fresh DPC. Respondents would also submit that there are no orders/obligations on their part to communicate non-implementation of the DPC recommendations to the applicant.

8. We have heard the learned counsel for both parties and perused the records thoroughly. It is well settled in service jurisprudence that where the DPC have not met for a number of years, the preparation of the panel have

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to be year-wise even though the vacancy arose during a particular year (or years). The DPC that meets thereafter should follow the following procedures:

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"(i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards"

9. It is not in doubt that the applicant is the senior-most in the feeder cadre of Zonal Director in the panel of eligibility list and was eligible to be considered for promotion to the single post of DDG/F against the carry-forward vacancy of 1993-94. Respondents have not come out with any reasons, much less convincing ones, as to why the proceedings of December, 1995 DPC could not be implemented wherein applicant's name was admittedly recommended. Hence the DPC of 4.12.98 was held ignoring the rules and instructions.

10. A scrutiny of records also reveals that approval of the concerned Minister was taken twice and yet the applicant was not promoted. The details are not known. Details in the respondents' OM dated 16.4.98 stand testimony to such a view.

11. Having held the DPC on 30.12.95, it cannot now be alleged that the said post was deemed to be abolished as per OM dated 3.5.93. The said post was re-created in 1998 goes to show that the vacancy is available. Moreover, the said post was allowed to continue by R-1

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from year-to-year by issuing specific orders from 1988-89 till 1998-99. Hence the post was in existence during these periods. The genuineness of applicant's claim for promotion cannot therefore be denied in the light of the details in OM dated 16.4.98. We find that the applicant's case is covered on all fours by the decision dated 17.6.97 of Madras Bench of this Tribunal in OA 33/97 filed by Benjamin C. Verghese Vs. UOI. That Bench allowed the OA with all benefits to the applicant therein. We are not in a position to accept the reliance placed by the respondents on OM dated 3.5.93 wherein it is mentioned that if a post is held in abeyance or remains unfilled for one year or more, it would be deemed to be abolished. We find that the said post was allowed to continue by R-1 from year to year by issuing specific orders from 1988-89 to 1998-99 and hence it was in existence all through.

12. In the background of the details aforesaid, the OA is allowed with the following directions:

- (i) The DPC proceedings of 1998 for the post of DDG(Fisheries) as well as appointment, if any, made pursuant to that shall stand set aside;
- (ii) Respondents shall consider applicant's promotion to the post of DDG(Fisheries) with effect from 30.12.95 pursuant to approval of DPC recommendations held on the same day;
- (iii) Applicant shall also be entitled to all consequential benefits.

12. There shall be no order as to costs

K. S. K. S.
(Kuldeep Singh)
Member (J)

S. P. B.
(S. P. Biswas)
Member (A)

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