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Shri A.N. Gupta Applicant(s)
(By Shri M.L. Ohri Advocate)

Union of India & Ors. Respondents

(By Shri E.X. Joseph Advocate)

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? YES
2. Whether to be circulated to ther Benches of the Tribunal?NO

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S.R. ADIGE)
Member (A)

(27)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 2179 of 1995

New Delhi, dated this the 21st MAY 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri A.N. Gupta,
S/o Shri Balkrishan Dass,
U.D.C.,
N.G.M.A.
R/o 204, West Guru Angad Nagar,
Laxmi Nagar,
Delhi-110092.

... APPLICANT

By Advocate: Shri M.L.Ohri

VERSUS

1. Union of India through
the Secretary,
Ministry of Human Resources Development,
Govt. of India,
Shastri Bhawan,
New Delhi.

2. The Director,
N.G.M.A.,
Jaipur House,
New Delhi-110003.

3. Shri Zile Singh,
U.D.C.,
O/o the Director,
N.G.M.A.,
Jaipur House,
New Delhi-110003.

... RESPONDENTS

By Advocates: Shri E.X.Joseph for R-1 & 2
Shri J.L. Jain for R-3

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicant Shri A.N. Gupta impugns official Respondents' order dated 21.8.95 (Ann. A-1) promoting Respondent No.3 Shri Zile Singh as Office Superintendent in Delhi office of N.G.M.A. and prays for quashing of review DPC held on 2.8.95. He seeks a direction to the R-1 and R-2 to reconvene the DPC and consider his case after making his ACRs available to the DPC.

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2. Two vacancies of Office Superintendent arose in N.G.M.A. in 1993, one in its Delhi Office and the other in its Bombay Branch. As per Recruitment Rules (Annexure A-4) the post of Office Superintendent has to be filled up from amongst UDCs/Accountants with four years service in the grade.

3. Admittedly in the DPC held on 15.9.93 the following UDCs/Accountants who were eligible for promotion were considered:

i) Shri K.N.Gupta, Accountant
(Since retired)

ii) Shri J.C. Sharma, UDC

iii) Shri P. Prasad, Accountant
Bombay Branch

iv) Shri N.N.Dongadi (ST), UDC

4. As a disciplinary case was pending against Shri J.C.Sharma, DPC held on 15.9.93 kept its recommendations in a sealed cover and recommended S/Shri P. Prasad and N.N. Dongadi (ST) be promoted against the Delhi and Bombay vacancies respectively. Shri P. Prasad was promoted on officiating capacity on 16.9.93. Subsequently applicant, as well as R-3 Shri Zile Singh filed representations in June, 1995 against the promotion of Shri P. Prasad and Shri Dongadi, on the ground that they were also eligible to be considered for promotion on 15.9.93 and the decision of the official Respondents not to consider them on the ground that they were ineligible was illegal and incorrect.

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5. After considering their representations, the official Respondents decided to hold a review DPC which accordingly met on 2.8.95 in which the following officials were considered:

- i) Shri K.N.Gupta, Acctt. (since ret'd.)
- ii) Shri J.C.Sharma, UDC
- iii) Shri P. Prasad, Acctt.,
Bombay Branch
- iv) Shri A.N. Gupta, UDC
- v) Shri N.N.Dongadi (ST), UDC

The Review DPC kept its recommendations in respect of Shri J.C.Sharma in a sealed cover, as Disciplinary Proceeding was still in progress. On the basis of the review DPC, recommendations R-3 Shri Zile Singh was promoted on regular basis as O.S. on 3.8.95 by order dated 21.8. 95 and Shri P. Prasad was reverted to the post of Accountant. Shri Prasad filed O.A. No. 1522/95 challenging his reversion and promotion of Shri Zile Singh as O.S., and that also with retrospective effect. The legality of the review DPC was challenged. That O.A. was disposed of by C.A.T., P.B. on 11.9.96 directing R-1 to pass ^a speaking order on Shri Prasad's representation, within three months from the date of the judgment and communicate the same to him. While the O.A. of Shri P. Prasad was pending, he was charge sheeted in a Disciplinary Proceeding and proceedings against him ^{are} ~~was~~ still going on.

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6. Meanwhile a speaking order rejecting Shri Prasad's representation has been passed and communicated to him.

7. Shri J.C.Sharma, UDC in whose case the recommendations of the DPC were kept in a sealed cover by original DPC and review DPC, filed O.A. No. 2159 of 1995 on 9.11.95 challenging the proceedings against him and also against Shri Zile Singh's promotion. He also prayed for opening of sealed cover and payment of back wages and consequential benefits. That O.A. was disposed of on 19.7.96 directing R-1 to complete the disciplinary proceedings within three months and also to consider his case for promotion as O.S. on ad hoc basis. Accordingly a DPC was held on 10.11.96 to reconsider his case for ad hoc promotion but he did not find suitable. Meanwhile he filed C.P. No. 6/97 for quashing the disciplinary proceedings against him which was disposed of on 12.2.97 with a direction to the Respondents to complete the enquiry proceedings by 12.3.97 failing which the enquiry proceedings would abate. We are informed that as the words used are "enquiry proceedings", official Respondents have sought clarification from that Bench whether the Disciplinary Proceedings would abate.

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8. Meanwhile the present applicant who was appointed on 28.11.73 as LDC, and subsequently promoted as UDC was regularised as such on 30.4.89, filed this O.A. on 16.11.95 challenging Shri Zile Singh's promotion.

9. A perusal of the above facts drawn from the status note submitted by the official Respondents taken on record and not seriously disputed, makes it clear that filling up of this post of Office Superintendent has generated considerable litigation, and different benches of the Tribunal had passed different orders/directions at various points of time. In the interest of justice, therefore, we had directed the Registry on 28.2.97 to keep all these O.As available for our perusal when the present O.A. was heard, which was done.

10. We have heard Shri M.L.Ohri for the applicant and Shri E.X.Joseph for the official Respondents. We have also heard Shri J.L.Jain for private Respondent No.3. Shri Ramakrishna who was counsel for the applicant Shri J.C.Sharma in O.A. No.2159/95 was also permitted to address us.

11. We note from the photo copy of review DPC's minutes dated 2.8.95 on record that in the case of applicant Shri A.N.Gupta, his overall grading is stated to be not available and yet further down on the same page it is stated that on the basis of his overall grading made available he was not found fit for promotion. Furthermore, if the review

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DPC was to review the original DPC's decision taken on 15.9.93 it was required under rules to put itself into the shoes of that original DPC, and considered the records of the eligible candidates upto 15.9.93 alone but from the review DPC's proceedings dated 2.8.95 it is clear that they have considered ACRs of the eligible candidates for the year 1993-94 also. Manifestly therefore the review DPC's recommendations dated 2.8.95 warrants our judicial intervention and require to be quashed and set aside.

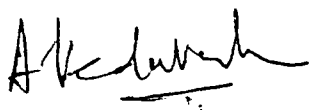
12. When we put it to the official Respondents' counsel Shri Joseph as to what should be the best course of action to follow in the facts and circumstances of this particular case which would be just and fair to all the eligible candidates, he submitted very fairly that what should be done is to quash the review DPC's proceedings dated 2.8.95 and direct Respondents to re-hold the review DPC as on 15.9.93 on the basis of the ACRs of all the eligible candidates upto that date. In the facts and circumstances of this particular case, we accept this suggestion as fair, just and appropriate. Shri Ramakrishna's assertion that the sealed cover in respect of his client Shri J.C.Sharma should be opened, is without merit in the light of the fact that the review DPC's recommendations dated 2.8.95 cannot be sustained in view of the fatal infirmities noticed in paragraph 11 above.

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13. In the result this O.A. succeeds and is allowed to the extent that

- (i) Respondents impugned order dated 21.8.95 (Ann. A-1) to the extent that it promotes Shri Zile Singh against the second vacancy of O/S for General Category in NGMA, Delhi is quashed and set aside. It is made clear that this will not affect filling up of post of O/S in NGMA, Bombay Branch occupied by Shri N.N.Dhongadi (ST) on his promotion;
- (ii) Respondents shall re-hold the review DPC as on 15.9.93 within two months from the date of receipt of a copy of this judgment taking into account the ACRs and such other materials as are relevant in accordance with rules in respect of the eligible candidates as on 15.9.93;
- (iii) Official Respondents will ensure that the relevant ACRs for this purpose in respect of all eligible candidates are made available to DPC and in case any ACR for the relevant period in respect of an eligible candidate is not available, full facts along with reasons thereof will be intimated to the DPC;
- (iv) official Respondents will take a decision on the recommendations of that DPC within one month of its receipt; and
- (v) No recovery will be made from the emoluments of the person(s) as a result of the direction to re-hold the review DPC as on 15.9.93 if the same results in any reversion.
- (vi) In case any person who has not been impleaded as a party before us is likely to be adversely affected by the aforesaid order he should be given a reasonable opportunity of being heard before final orders are passed by Respondents.

14. This O.A. stands disposed of with above directions. No costs.



(DR. A. VEDAVALLI)
Member (J)
/GK/



(S.R. ADIGE)
Member (A)