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Central Administrative Tribunal
Principal Bench: New Delhi

RA No.17/97

IN OA No.18/96

MA No.86/97

New Delhi this the 4th day of ~~January~~ ^{February} 1997

Hon'ble Mr Justice B.C.Saksena, Acting Chairman
Hon'ble Mr R.K.Ahooja, Member (A)

Shri R.C.Sachdeva
S/o Shri Ram Lal
R/o Rohini, Delhi
C/o Shri Sant Lal, Advocate
C-21(B) New Multan Nagar
Delhi -110 056.

...Applicant.

(By Sh. Sant Lal, advocate)

Versus

1. Union of India through
Secretary
Ministry of Communications
Sanchar Bhawan
New Delhi.
2. The Chief General Manager
Dept. of Telecommunications
Haryana Circle
Ambala Cantt.
3. The Telecommunication Dist.
Manager, Rohtak
Haryana - 123 001.

...Respondents.

(By Sh. M.M.Sudan, Advocate)

ORDER

Hon'ble Mr R.K.Ahooja, Member (A)

Review applicant submits that he could not submit the review application in time due to illness. He produced a medical certificate from the Chief Medical Officer, Hindu Rao Hospital, Delhi to that effect. The MA, therefore, is allowed and the delay is condoned.

2. Applicant in original application No.18/96 had sought a direction to compel the respondents to hold a review DPC to consider his claim for promotion under the one time bound promotion scheme for every year since 1983. His case was that due to pendency of a criminal charge and also under the assumption that part of the period was dies non, his case was not considered. Later, his leave period was regulated under the directions of the Tribunal and

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the disciplinary proceedings initiated against him had also been dropped. In the impugned order, it was concluded that on the basis of the materials available before the Bench, the case of the applicant had been duly considered and that neither the pendency of the criminal charge nor the alleged dies-non had stood in the way of such consideration being made. In these circumstances, it was not considered a fit case to exercise discretionary jurisdiction in favour of the applicant and hence the OA was dismissed.

3. Review applicant submits that there is a mistake of facts apparent on the face of records in the observations of the Tribunal. The case of the applicant, as per para 4.3 of the OA was that he had become due for consideration to be placed in the next higher pay scale w.e.f. 30.11.83 under the one time-bound promotion scheme, but he was not considered. This was contested by the respondents and in the rejoinder, applicant had submitted that the respondents should be put to strict rule, as no such order has been communicated to the applicant. Furthermore the respondents had not offered any reason as to why he was not considered by the DPC. The only reason given by the respondents was that from 1983 onwards, he was habitually absenting himself from duty and later managed to cover the period by submitting medical certificates. Such a reason, submits the review applicant, would not be accepted when no opportunity of being heard had been provided. He submits that the Tribunal had also not taken note of his submissions that when in the documents relating to DPC annexed by the respondents to their reply there was a charge against him, then the recommendations should have been kept in sealed cover. The applicant further states that the Tribunal had concluded that this was not a fit case to exercise discretionary jurisdiction in his favour when the plea was for exercise of the legal jurisdiction in his favour.

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4. We have heard Sh. Sant Lal, counsel for the review applicant. The main ground taken in the OA was that the applicant had not been considered for promotion under the one time-bound promotion scheme though he had become due for it from 1983 onwards. Respondents have annexed with the reply copies of communications intimating that the DPC had considered cases for promotion but have not found certain persons including the applicant as fit for such promotion. These are dated 21.1.91, 13.3.90, 24.7.89, 2.12.88,, 7.9.85, 28.1.87, 15.10.87, 18.2.87,, 18.5.87, 29.10.86, 6.10.86, 28.3.85 and 25.11.85. These documents were considered sufficient to support the contention of the respondents that the applicant had been duly considered by the DPC from 1983 onwards and that pendency of his criminal case or the disciplinary proceedings had not stood in the way of consideration.

5. Learned counsel for the review applicant pointed out that no reasons had been given as to why the applicant had not been found fit. Obviously, according to the learned counsel, even if the applicant had been considered, this was a perfunctory exercise since on account of pendency of his case, his controlling officers had not recommended his case. Now that his case was decided, he was entitled to a review of such DPC. We are unable to agree with this argument. It is correct that no reasons had been given by the DPC for considering him as not fit but DPCs are not required to give such reasons. ~~even though there is a requirement of such reasons being given~~ The Supreme Court in State of Rajasthan Vs. Sriram Verma JT 1996 (9) SC 558 has also observed that it is difficult to say either that ordinarily DPC should record reasons for not selecting a person or that at least record should indicate some reason thereof. It is fair and desirable but not obligatory or necessary and hence selection cannot be set aside for not complying with the said requirement.


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6. It is also alleged that the Tribunal overlooked the allegation that the applicant had not been informed of the results of the so-called DPC. ~~There~~ ^{we} find that once it had been concluded that the case of the applicant has been considered and communication ^a ~~has~~ ^{in this case} been sent to his office regarding the results of the DPC, nothing would ~~have depended~~ on this allegation.

7. The point raised by the applicant regarding the court's discretionary jurisdiction is also misplaced. The Tribunal has the discretion to intervene where it has legal jurisdiction. On the facts of the case as seen by the Tribunal, it was considered proper not to exercise that discretion in favour of the applicant.

8. ^a In the light of the above discussion, we find no merit in the RA. ^{which is} ~~The RA~~ is, accordingly, dismissed. No costs.


(R.K. Ahooja)
Member (A)


(B.C. Saksena)
Acting Chairman

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