

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1658/97
T.A. No.

199

DATE OF DECISION 6.5.98

Sh. M. M. Singh Suman
Sh. M. M. Singh Suman

Petitioner

Sh. R. Doraiswamy

Advocate for the Petitioner(s)

UOI M/O Surface

Versus

Respondent

Sh. K. C. D. Gangwani, Sr. Counsel for the
~~official respondents~~ Advocate for the Respondent
Ms. Raman Oberoi, Counsel for private
respondents.

CORAM

The Hon'ble

Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble

Shri K. Muthukumar, Member (A)

1. To be referred to the Reporter or not? Yes

2. Whether it needs to be circulated to other Benches of the
Tribunal No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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Central Administrative Tribunal
Principal Bench

O.A. 1658/97

New Delhi this the 6th day of May, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

M.M. Singh Suman,
S/o Shri Udhamp Singh,
R/o E-11-F, DDA Flats,
Munirka,
New Delhi.

Applicant.

By Advocate Shri R. Doraiswamy.

Versus

Union of India through

1. Secretary to the
Govt. of India,
Ministry of Surface Transport,
New Delhi.

2. D.K. Singh Meel,
S/o Shri Panna Lal,
R/o E-5/21, CGS Colony,
Ghatkopar (West),
Mumbai-86.

Respondents.

By Advocate Shri K.C.D. Gangwani, Sr. Counsel for the
official respondents.

By Advocate Ms Raman Oberoi, Counsel for private
respondents.

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the respondents
not processing the DPC recommendations selecting him for
the promotional post of Deputy Director General (Civil)
(in short 'DDG(C)').

2. The facts in brief are that prior to the
amendment of the Recruitment Rules on 18.11.1996, the post
of DDG (C) was required to be filled in accordance with the
provisions of the Department of Light Houses and Light
Ships Group 'A' Technical Post Recruitment Rules, 1990. The

respondents have stated that even though the applicant did not fulfil the requirement of 5 years regular service in the grade of Director, he was included in the consideration zone since he fulfilled the qualifications of Deputy Director and Director in accordance with the Recruitment Rules of 1990 for the post of DDG (C) on 31.8.1995 when the vacancy arose. The respondents have also submitted that one other officer who was included in the consideration zone was under suspension and, therefore, his recommendations were kept in a sealed cover. They have also stated that based on the recommendations of the DPC held on 3.1.1996, the proposal for promotion of the applicant was processed for obtaining approval of the Appointments Committee of the Cabinet (ACC) but in view of the status quo order passed by the Tribunal (Mumbai Bench) dated 10.6.1996 in D.K. Singh Meel Vs. Ministry of Surface Transport & Ors. (O.A.529/96), they did not process it further. The status quo order was vacated by order dated 27.4.1997. In the intervening period, the recruitment rules were amended by which Director (Mech) was also included as being eligible for promotion to the post of DDG. The amended recruitment rules came into force w.e.f. 18.11.1996. In the circumstances, the respondents have submitted that it was not possible for them to process the earlier DPC decision recommending the applicant for promotion to the post of DDG (C) on the basis of the DPC held on 3.1.1996. According to them there is no post of DDG (Civil) in the Department of Light Houses and Light Ships at present and all the three existing posts of DDG are now without any suffix of Civil or Electronics, under the amended Recruitment Rules. However, at the time when

the applicant was considered, promotion to the said post of DDG (C) was open only to the officers from the Civil engineering discipline. Shri K.C.D. Gangwani, learned counsel, has submitted that the panel prepared by them as a result of the recommendations of the DPC held on 3.1.1996 has lapsed as more than one year has passed because of the interim order of the Tribunal dated 10.6.1996 and, therefore, the applicant was not entitled for promotion as DDG (Civil). They have, therefore, submitted that it was not possible to act on the earlier panel ~~and~~ ^{as B} it would be necessary to convene a fresh DPC in accordance with the provisions of the amended recruitment rules. For these reasons they have submitted that it was not possible for them to process the earlier proposal for promotion of the applicant as DDG (Civil), now DDG under the amended recruitment rules.

3. The applicant has filed a rejoinder in which he has more or less reiterated his stand in the O.A. Shri Doraiswami, learned counsel for the applicant, has relied on the judgement of the Supreme Court in P. Mahendran Vs. The State of Karnataka and Ors. (1989 SC SLJ P-167), (copy placed on record). We have also heard Ms. Raman Oberoi, learned counsel for intervener, Shri D.K. Singh Meel. She has submitted that the respondent who is a Mechanical Engineer should also be considered for promotion to the post of DDG. According to her, as per the seniority list dated 1.1.1996, Shri D.K. Singh Meel is at Serial No. 3 while the applicant is at Serial No. 7. Shri D.K. Singh had filed O.A. 221/94 in the Calcutta Bench of the

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Tribunal which was disposed of by order dated 28.3.1996. By this order, the Tribunal had directed the respondents to review the recruitment rules and pass appropriate orders. Learned counsel has submitted that while under the recruitment rules of 9.8.1990, there were promotional avenues for civil and electrical engineers, none was there for the mechanical engineers till the recruitment rules were amended by Notification dated 18.11.1996. She has very vehemently submitted that the respondents themselves had realised the need for the amendment so as to include mechanical engineers for a number of years, which was finally done only in 1996, and in the circumstances she has submitted that the private respondent should also be considered for promotion. She has also vehemently argued that the panel which the applicant is seeking to implement has already lapsed and Shri D.K. Singh's name may be included for consideration for promotion to the post of DDG. She relies on the judgement of The Vice Chancellor Vs. Dr. Anand Prakash Mishra & Ors. (1997(2) SLJ 97).

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. The main issue in this case is whether the DPC held on 3.1.1996 recommending the name of the applicant for promotion to the post of DDG (Civil) as per the then existing rules should be processed further or not. The respondents have submitted that they had taken action to process the recommendations of the DPC for obtaining

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approval of the ACC but had kept it in abeyance in view of the Tribunal's order dated 10.6.1996 in D.K. Singh Meel's case (supra). The order was vacated only on 27.4.97 by which date the amended recruitment rules had come into effect by Notification dated 18.11.1996. In similar circumstances, the Hon'ble Supreme Court has in P. Mahendran's case (supra) allowed the appeal directing the State Government to make appointments to the post of Motor Vehicle Inspector on the basis of the select list prepared and finalised by the Karnataka Public Service Commission (in short 'Commission'). In that case, the High Court of Karnataka had passed certain interim orders which were later modified allowing the Commission to proceed with the selection reserving seats for the petitioners, and again modified the order by permitting them to make selection and appointment with the condition that the appointments so made will be subject to the decision of the writ petitions. In that case, following an advertisement given by the Commission for appointment to the post of Motor Vehicle Inspector, for which holders of Diploma in Automobile Engineering or Mechanical Engineering were eligible under the Recruitment Rules of 1962. The Commission had commenced the process of selection and interviews in August, 1984 and it had almost completed the process of selection but could not complete the same on account of interim orders issued by the High Court at the instance of candidates seeking reservations for local candidates. The Commission completed the interviews of all the candidates and finalised the list of selected candidates by 2.6.1987 and the result was published on 23.4.1987. In view of these facts, the

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Supreme Court has observed that the sole question for consideration is as to whether the amendments made in the Rules on 14.5.1987 rendered the selection illegal. It was held that the amending rule must be held to be prospective in nature. In this judgement, the Supreme Court has held as follows:

"The Rules which are prospective in nature cannot take away or impair the right of candidates holding Diploma in Mechanical Engineering as on the date of making appointment as well as on the date of scrutiny by the Commission they were qualified for selection and appointment. In fact the entire selection in the normal course would have been finalised much before the amendment of Rules, but for the interim orders of the High Court. If there had been no interim orders, the selected candidates would have been appointed much before the amendment of Rules. Since the process of selection had commenced and it could not be completed on account of the interim orders of the High Court, the appellants' right to selection and appointment could not be defeated by subsequent amendment of Rules".

(Emphasis added)

6. It is not the case of any of the parties that the amendment of the recruitment rules by the Notification dated 18.11.1996 is with retrospective effect. The seniority list of 1.1.1996 is that of Director (Regional), and will not assist him. Admittedly, before the amendment of the Rules in November, 1996, Director (Mechanical) was not in the eligibility zone for consideration for the post of DDG (Civil). The respondents have submitted that the DPC which was held on 3.1.1996 had recommended the case of the applicant for promotion to the post of DDG (Civil) in accordance with the then existing rules which they were processing till the Tribunal passed the status quo order in D.K. Singh Meel's case (supra) on 10.6.1996 which was vacated on 27.4.1997. Therefore, it is clear from these

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facts that approval of ACC to the DPC recommendations would have been obtained in time well within one year of the panel, but for the interim order dated 10.6.1996.

7. The facts and circumstances of the present case are in all fours with the judgement of the Supreme Court in P. Mahendran's case (supra). This is a larger Bench judgement of three Lordships of the Supreme Court and is binding on us. Since, the process of selection had commenced and would have been completed before the expiry of one year of the panel but for the interim order passed by the Tribunal, the applicant's right to selection and appointment cannot be defeated by the subsequent amendment of the rules in November, 1996. In the facts and circumstances, we are unable to agree with the contentions of Ms. Ramam Oberoi, learned counsel for the intervener as well as the respondents that the Select panel prepared by a duly constituted DPC held on 3.1.1996 has lapsed and fresh selections have to be held even for the post lying vacant from 1995 in accordance with the amended rules of 1996. We also find no merit in the other submissions made by the learned counsel for the intervener that merely because the respondents took several years to amend the rules, the intervener should also be considered for promotion as DDG in accordance with the amended rules in a post that was existing prior to the date of amendment. As mentioned above, the judgement of the Supreme Court in P. Mahendran's case (supra) which is of a larger Bench is binding on us. The judgement in The Vice Chancellor Vs. Dr. Anand Prakash Misra's case (supra) relied upon by the intervener will not assist him in the facts of the case.

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8. In the result for the reasons given above, the application succeeds and is allowed. The respondents are directed to complete the selection process of the DPC held on 3.1.1996 for promotion of the applicant to the post of DDG (Civil) as expeditiously as possible, and in any case within two months from the date of receipt of a copy of this order.

No order as to costs.



(K. Muthukumar)
Member(A)

'SRD'



(Smt. Lakshmi Swaminathan)
Member(J)