

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(13)

O.R. NO. 765/1994

New Delhi this the 26th day of February, 1996.

HON'BLE SHRI JUSTICE P.K.SHYAMSUNDAR, ACT. CHAIRMAN
HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

M. L. Meena S/O Gangaram Meena,
R/O 119/15, Sector-1,
Pushp Vihar,
New Delhi-110017.

... Applicant

(By Advocate Shri A. K. Behara)

-Versus-

1. Union of India through
the Director General,
Indo Tibetan Border Police,
Ministry of Home Affairs,
Block-2, CGO Complex,
Lodhi Road, New Delhi-3.
2. Shri D. K. Arya,
Ex-Director General,
Indo Tibetan Border Police,
at present Director General,
Border Security Force,
CGO Complex, New Delhi-3.
3. Shri Ramash Chandra,
Section Officer (Engg. Branch),
Directorate General,
Indo Tibetan Border Police,
Ministry of Home Affairs,
CGO Complex, New Delhi.
4. Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

... Respondents

(By Advocate Shri K. C. Sharma)

ORDER (ORAL)

Shri Justice P. K. Shyamsundar —

The applicant, a member of Scheduled Tribe,
belongs to the Indo Tibetan Border Police unit where
he is presently working as an Assistant. The
applicant started his career in the year 1973 as an
LDC. Ten years later, he became an Assistant and
thereafter, he also became eligible to be considered
for promotion to the next higher grade of Section

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Officer. In the recruitment rules eight years of service in the feeder cadre, in this case being that of the Assistant, is required and that tenure qualification the applicant finally attained in the year 1991 and thereafter he came into the zone of consideration for promotion.

2. A Departmental Promotion Committee (DPC) was held for assessing the candidates eligible for promotion as Section Officers. The applicant was considered for that position along with seven others including respondent No.3, Ramesh Chandra who belongs to the Scheduled Caste. It needs to be mentioned that some other candidates belonging to the general category were also in the run but there were only two vacancies that had to be filled and amongst the two, one was earmarked for ST and the other for general category candidates. In the fray there were two reserved category candidates, one ST and another ST. The applicant is an ST and respondent No.3 is an SC candidate. Herein respondent No.3 has remained absent despite notice and is now placed ex parte.

3. The point that was sought to be made out on behalf of the applicant is that there has not been proper coverage of his case by the DPC and that despite being proficient in all respects he has been denied the promotional post which has instead gone to respondent No.3, a person who belongs to SC.

4. Many arguments were advanced on behalf of the applicant including one of mala fides in which it was submitted that the officer who presided over the DPC was himself an SC and to favour the third respondent.

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who is also an SC, the applicant's result was toppled. These allegations are squarely met and denied, but that is an aspect into which we would not like to go into in these proceedings.

5. Learned counsel appearing for the respondents placed before us the original DPC proceedings. He have perused the same. We find that there has not been proper application of mind by the DPC in regard to the choice of the candidates with particular reference to the reserved category. We notice the successful SC candidate, respondent No.3, who was promoted had an adverse entry in the year 1991 whereas the applicant had one adverse remark in the year 1989 and one in the year 1984 which probably would not have counted but for the fact his ACRs for the year 1988 were said to be not available. When we solicited information from the learned counsel for the respondents about this aspect touching this somewhat equivocal statement in the DPC proceedings indicating the ACRs for the year 1988 were not available, we were told that according to available information the applicant had not worked during September to December, 1988. But the applicant joins in and his counsel tells us that from January to September, 1988 the applicant had in fact worked and had a reporting officer to whom he was reporting which necessarily means that the reporting officer should have recorded his ACR. The submission made by the learned counsel for the applicant is not accepted on behalf of the respondents who submit, that the statement being uncorroborated and not borne out by the records with them, it was very difficult for them to react to the statement supra.

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6. Be that as it may, albeit the fact remains that generally we do not go into the question of tenability of the view taken by the DPC as otherwise it would mean superimposing our own views on the DPC, which is not permissible under law, we, however, think that DPC proceedings in this case are slightly unusual. The third respondent's latest report of 1991 was adverse. But in the case of the applicant he had been awarded an adverse remark in 1989 and one in 1984. The performance for the year 1984 would not have been counted but for the fact that his ACRs apparently were not written for the year 1988 and, therefore, by way of compensating the omission on the part of the respondents in not doing their duty by recording the ACRs of a person who is said to have worked for the whole year should probably have been balanced by overlooking the adverse remarks of the year 1984 by the DPC. Even otherwise, it seems to us that a man who had an adverse remark just one year before the DPC met should have been found fit to gain promotion, whereas the applicant who had an adverse remark three years prior to meeting of the DPC in the years 1989 and 1984 had not been found fit for promotion, *affers clearly*

7. We think that all these inputs do require a fresh consideration by a review DPC. To facilitate such fresh consideration by the review DPC, we quash the impugned order dated 19.3.1993 (Annexure A-1) only with reference to Ramesh Chandra, respondent No.3.

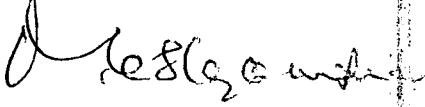
8. In the view we take as aforesaid, we remit the matter back to the DPC for a *de novo* consideration and for a fresh evaluation of the case of the applicant and that of the third respondent for promotion.

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DPC will take an objective view of the entire thing bearing in mind our observations herein. The proceedings of the review DPC will be held and concluded within three months from the date of receipt of a copy of this order by the respondents. No order as to costs.


(K. Muthukumar)

Member (A)


(P. K. Shyamsundar)
Acting Chairman

/as/