

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1628/1994

(9)

New Delhi this the 10th Day of March 1995

Hon'ble Mr. Justice B.C. Saksena, Vice Chairman

Hon'ble Mr. S.R. Adige, Member (A)

Shri J.S. Dhillon,
S/o Shri Hazara Singh,
Sr. Technical Officer,
under Regional Director,
National Airport Authority,
A.C.S.,
Calcutta.

... Applicant

(By Advocate: Shri B.S. Maine)

Vs.

Union of India : through

1. The Secretary,
Government of India,
Ministry of Tourism & Civil Aviation
& Tourism,
Patel Bhawan,
New Delhi.

2. The Director General,
Civil Aviation,
Civil Aviation Department,
Technical Centre,
Safdarjung Airport,
New Delhi.

3. The Chairman,
National Airport Authority,
Rajiv Bhawan,
Safdarjung Airport,
New Delhi.

... Respondents

(By Advocate: Ms. Rachna Joshi)

ORDER

Hon'ble Mr. Justice B.C. Saksena, Vice Chairman

B.C.

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The parties have exchanged their pleadings and we have heard the learned counsel for the parties.

The applicant's case, in short, is that he was eligible for promotion to the post of Assistant Technical Officer. He had been sent on deputation to Libya. During the period of deputation, the respondents held a D.P.C. for the said post but ignored the applicant from consideration. After return from deputation, the applicant made a representation and a review DPC was held but the applicant was not recommended by the DPC because he was graded as 'Good'. The applicant filed a writ petition in the Delhi High Court which was transferred to this Tribunal and Registered as TA 1155/1985. The said transfer application was decided by a judgment dated 30.11.1988. This Tribunal in its judgment was pleased to direct the respondents to hold a fresh DPC as on 16.12.1980 and to consider the suitability of the application for promotion as Assistant Technical Officer. Certain other directions were also given in the alternative. It was provided that if the applicant was not found suitable for promotion as on 16.12.1980 a second review DPC be held to consider his suitability for promotion as on 5.10.1981. A direction was given accordingly to give promotion to the applicant from the relevant date, when his

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next junior was empanelled either as on 16.12.1980 or in the alternative on 5.10.1981. Admittedly, a review DPC was held on 27.2.1989. The applicant was informed that he has been placed at Serial No. 64 in the panel prepared as on 16.12.1980. Feeling aggrieved by the said action, the applicant filed a second O.A. No. 530/90. The said O.A. was decided by a judgement dated 4.2.1992. In this judgment the Tribunal held that the directions given in the judgment in TA No. 1155/1985 had not been carried out properly and correctly and accordingly a fresh direction was given to the respondents to convene a review DPC. A review DPC was held on 27.2.1989 and the applicant by a Notification dated 10.6.1992 was promoted as Assistant Technical Officer with effect from 16.12.1980 and his name was directed to be placed between S.K. Biswas, Serial No. 110 and Shri K.S. Negi, Serial No. 111 in the seniority list of Assistant Technical Officer circulated in the year 1986. The applicant has challenged the assessment of seniority and the grading made by the DPC. A detailed reply has been filed on behalf of the Respondents to which the applicant has filed the rejoinder. On behalf of the respondents, Mrs. Rachna Joshi Issar, raised a preliminary objection. The objection was that all the issues now sought to be raised had been duly considered while discussing a Contempt Petition No. Bcr

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No. 27/1992. She submitted that in the Contempt Petition also the claim was that the review DPC held on 18.5.1992 had not evaluated the applicant's C.R. properly and he ought to have been evaluated and given a grade higher than the grade 'Good'. The order passed in the Contempt Petition is on record. Since we have heard the learned counsel for the parties on the merits of the case and we proceed to decide the case on merit, we do not consider it necessary to deal with the preliminary objection. The submission of the learned counsel was that on the basis of the recommendations of the review DPC the applicant has been granted promotion with effect from 16.12.1980.

It was urged that there was no justification as serial no. provided in L 5 of the endorsement to the Notification dated 10.6.1992, Annexure A-1, by which it was directed that the applicant's seniority in the grade of Assistant Technical Officer will be between Shri S.K. Biswas (Sl.No. 110) and Shri K.S. Negi (Sl.No. 111) in the seniority list of Assistant Technical Officers circulated by the letter dated 27.7.1986. The precise objection is that Shri S.K. Biswas according to the seniority list was promoted on 1.10.1981 as Assistant Technical Officer where as the applicant having been granted promotion with effect from 16.12.1980, his name should have been found placed between Serial No. 71 and 72.

Recd

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The learned counsel for the applicant gave up this submission when it was pointed out to him that officers beyond Serial no. 72 were also shown as having been promoted with effect from 16.12.1980.

The learned counsel submitted that the applicant atleast was entitled to ^{be} assign^{ed} seniority at Serial

No. between 103 and 104. For this plea and submission no factual basis has been laid down in the O.A. Simply on the basis of the seniority list

this plea was raised. The respondents in their counter affidavit have categorically stated that the review DPC recommended the applicant's name

to be placed at the bottom that is to say at serial No. 52 of the list prepared for the selection

held on 16.12.1980. The learned counsel for the respondents further submitted that the grading and

recommendations made by the DPC cannot be faulted and it would not be open to the applicant to urge

that this Tribunal may make its own assessment and grading of the applicant. The applicant's case was

that in the various review DPC his placement in the merit list has been altered and thus there has

been no proper and due consideration of the applicant's candidature and he should have been given a higher grading and place in the merit list. We are inclined to agree with the submission made by the learned

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counsel for the respondents. The Tribunal does not act as a selecting body and in the absence of the relevant material, no case for interference with the assessment and grading made by the D.P.C. is made out. The position, therefore, is that the applicant on the basis of the recommendations of the review DPC even as on 16.12.1980 has to be placed at Serial No. 52 that is to say at the bottom of persons selected at the said selection.

The learned counsel for the applicant urged that Shri K.S. Negi above whom the applicant has been assigned seniority is a selectee at the subsequent selection namely held on 5.10.1981. No factual basis for this plea has been laid in the O.A. Simply on the basis of the date of promotion of Shri K.S. Negi we are not agreeable to accept the plea taken at the Bar by the learned counsel for the applicant. From Serial No. 70 to the names of the officers who were promoted on 16.12.1980 have been indicated. On the basis of the applicant's placement at Sl.No. 52 that is to say the last candidate in the select list, the assignment of seniority to the applicant between Serial No. 110 and Serial No. 111 cannot be said to be arbitrary in any manner. Since no such dispute has been raised

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in the O.A., the factual position is a little hazy. But all the same since the recommendation of the review DPC in our opinion is not open to challenge the order assigning seniority to the applicant between Serial No. 110 and 111 also does not merit any interference at our hands. The learned counsel for the applicant then as a last resort submitted that since the applicant has been granted promotion with effect from 16.12.1980 he is entitled to arrears of salary. In the counter affidavit it has been shown that Shri K.S. Negi was promoted to the grade of Sr. Technical Officer with effect from 20.6.1991 and consequently the applicant has also been granted promotion as Sr. Technical Officer with effect from 20.6.1991 as per the next below rule and the applicant's pay has also been notionally fixed in the pay scale of Rs. 3000-4500/- with effect from 20.6.1991 and he has been drawing salary accordingly after his taking charge. The learned counsel for the respondents also invited our attention to the consolidated instructions issued through OM dated 10.4.1989 by the Department of Personnel and Training on the subject of departmental promotion committees. The said instructions have been printed in the Journal Sec. of the 1989 Administrative Tribunal Reports Vol. II from page 17-32 at page 32 it

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has specifically been laid down that on promotion on the basis of the review DPC, the pay should be fixed under FR 17 at the stage it would have reached had he been promoted from the date the officer below him was promoted but no arrears would be admissible. (Emphasis supplied). The validity of this notification and the instructions have not been questioned before us and thus the learned counsel for the respondents is right in urging that no arrears of pay could have been given to the applicant on the basis of the recommendations of the review DPC granting him promotion with effect from 16.12.1980. The learned counsel for the applicant referred before us a decision of the Hon'ble Supreme Court Vasant Rao Raman Vs. Union of India reported in 1993 (1) ATJ P 561. A perusal of this judgment shows that Hon'ble Supreme Court ~~interferred~~ with the order passed by the Jabalpur Bench of the Tribunal since in its opinion the Tribunal wrongly based its conclusion that the applicant was not entitled to emoluments and other benefits on the basis of memo issued by the Ministry of Home Affairs issued on 22.12.1964. The Apex Court found that none of the conditions for the applicability of the said memo was present since neither the appellant was put under suspension nor any disciplinary

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proceedings were pending against him. The said decision is clearly not applicable in the facts of the present case. In the case before the Apex Court the appellant was not promoted, as found by the Apex Court as no fault on his part and the junior has been promoted and therefore it was held that the principle of 'no work no pay' would not apply, whereas in the present case admittedly after the applicant had returned from Libya, a review DPC has been held and his candidature was considered. It is a different matter that the applicant was not satisfied with the grading given by the review DPC and he filed another O.A. before this Tribunal. We have based our conclusions on the relevant instructions dealing with the consequence flowing out of the recommendations of a review DPC. The Office Memorandum relied upon by us squarely deals with the situation in question. Neither the applicability of Fundamental Rule 17 to the facts of the present case has been disputed.

The next decision cited by the learned counsel for the applicant is reported in 1992(1) ATJ 371 Union of India vs. K.V. Jankiraman. The learned counsel relied specifically on paragraph 25. In the said paragraph the contention advanced on behalf of the authorities that the rule of 'no work no pay' should apply was rejected and it was held that where the employee, although he is willing to work is kept away from work for his own reasons, although the work is offered to him. It was held that the said rule inapplicable to such cases.

Re:

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In ~~view~~ ^{B.C.} of the light of the discussions
hereinabove since all the contentions raised on behalf
of the applicant has been answered against him, the
C.A. is liable to be dismissed and is accordingly
dismissed. No order as to costs.

Arif Ali
(S.R. Adige)
Member (A)

B.C.
(B.C. Saksena)
Vice Chairman

Mittal