

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(19)

O.A./T.A. No. 1951/94/19

Decided on: 23.4.96

D.N. GUPTA

..... APPLICANT(S)

(By Shri Raj Kumari Chopra Advocate)

VERSUS

U.O.I & Ors.

..... RESPONDENTS

(By Shri K.C.D. Gangwani
S.S. Rana & Advocate)
Mrs. B. Rana

CO RAM

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

THE HON'BLE ~~SHRI/SHR. / DR.~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal ? Yes

S.R. Adige
(S.R. ADIGE)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No.1951/94

New Delhi, dated the 23rd the day of April, 1996

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

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

Shri D.N. Gupta,
Medical Social Service Worker,
Room No.219, 2nd Floor,
Dr. R.M.L. Hospital,
New Delhi-110001.

..... APPLICANT

By Advocate: Mrs. Raj Kumari Chopra.

VERSUS

1. The Union of India through
the Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.
2. The Director General,
Health Services,
Nirman Bhawan,
New Delhi.
3. The Medical Superintendent,
Dr. R.M.L. Hospital,
Willington Crescent,
New Delhi.
4. Shri Ram Vir Singh,
Dr. R.M.L. Hospital,
New Delhi.

..... RESPONDENTS

By Advocate: Shri K.C.D. Gangwani for the R-1 to R-3

By Advocate: Shri S.S. Rana along with Mrs.B.Rana
for the pvt. respondent No.4

JUDGMENT

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

In this application Shri D.N. Gupta has
prayed for quashing of (i) the DPC proceedings

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dated 20.9.93 and (ii) the appointment of Shri Ram Vir Singh as Medical Social Services Officer (Group B Gazetted Rs.2000 - 3500), R.M.L. Hospital, New Delhi vide order dated 11.2.94 (Annexure A).

2. The applicant joined the R.M.L Hospital as Welfare Worker on 12.9.66 and as Medical Social Worker on 11.4.80. From the Hon'ble Supreme Court's judgment dated 13.11.92 in Civil Appeal No. 4806/92 Shri Ram Vir Singh Vs. UOI & Ors. it is clear that three posts in the cadre of MSW were created in R.M.L. Hospital by the Union Health Ministry vide order dated 24.8.78. These posts were to be filled through names sponsored through Emp. Exchange as also in-service candidates of the Hospital, according to their performance at an interview, which was held on 1.2.79 and a select list of three candidates was prepared. In that list Shri Ram Vir Singh who was sponsored by the Emp. Exchange was selected while the present applicant was not selected. Shri Ram Vir Singh, and one other person Shri Radappa, joined two of the posts on 25.9.79. The other post remained vacant as the third appointee did not join. It was readvertised on 10.1.80 and the present applicant having applied for the same was appointed and joined on 11.4.80. When a provisional seniority list of MSWs of the

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Hospital was prepared on 25.7.84, Shri Ram Vir Singh was shown as senior to the applicant. On 15.3.87 the applicant sought preponement of his date of appointment as MSW from 11.4.80 to 25.9.79 as to coincide with the date of appointment of Shri Ram Vir Singh, which was granted by the respondents on 10.6.89, upon which the Director General, Health Services appointed him to the next higher level of Medical Social Service Officer by order dated 9.7.90 on ad hoc basis. Upon this, Shri Ram Vir Singh who was senior to the applicant as MSW as per provisional seniority list referred to above, challenged the ad hoc appointment of the applicant as MSSO in the Tribunal, but the same was dismissed by judgment dated 26.7.91 on the reasoning that by preponing the applicant's date of appointment as MSW to 25.9.79 the Hospital authorities had merely corrected an error. That judgment dated 26.7.91 was challenged in Civil Appeal No. 4806/92. By its judgment dated 13.11.92 the Hon'ble Supreme Court held that the order of the Hospital authorities preponing the applicant's date of appointment from 11.4.80 to 25.9.79 was arbitrary if not whimsical, and the Tribunal was also unjustified in upholding the action of the Hospital authorities in the matter of disturbing the inter se seniority of Shri Ram Vir Singh and the applicant. Accordingly the appeal was allowed and the order dated 23.6.90 appointing the applicant as MSSO on regular/

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temporary basis w.e.f. 22.6.92 was quashed and the respondents were directed to refix the inter se seniority of Shri Ram Vir Singh and the present applicant in the cadre of MSW in the Hospital and consider their cases afresh for appointment to the higher cadre post of MSSO in the Hospital in the light of that judgment and in accordance with law.

3. Accordingly a meeting of the DPC was held on 12.8.93 under the Chairmanship of D.G., Health Services to make recommendations for selecting a candidate for the post of MSSO. A copy of the minutes of that DPC has been taken on record. The DCP noted that Shri Ram Vir Singh who admittedly was senior to the applicant had been graded as 'Very Good' for the years 1983 to . In 1990-91 he had been graded as 'Good'. For the years 1991-92 and 1992-93 he had been graded as 'average'. Taking the average of all the gradings the DPC considered that Shri Ram Vir Singh could be graded as 'Good'. On the other hand the present applicant was graded as 'Outstanding' for all the 8 preceding years, except for one year. A doubt arose in the mind of the DPC that when there were two candidates, one of whom was graded as 'Outstanding' and the other as 'good', whether it would be proper to discard merit altogether in a selection post and select a candidate who was graded only as 'good' only because he was senior to the outstanding candidate. The DPC desired that

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the advice of the Dept. of Personnel & Training be obtained, who opined that after the issue of the O.M. of DOPT dated 10.3.89, there could be no doubt that where the bench mark was good, any person graded as 'good' could not be superceded.

4. On that basis the DPC in its meeting on 20.9.93 recommended the case of Shri Ram Vir Singh for promotion as MSSO. The meeting was presided over by DGHS and took into account the fact that there was two eligible candidates in the feeder category namely Shri Ram Vir Singh and the applicant Shri D.N. Gupta, for the post of MSSO, of whom Shri Ram Vir Singh was admittedly senior to the applicant. The DPC also recorded that while Shri Ram Vir Singh had been assessed overall as 'good', applicant Shri D.N. Gupta as assessed as 'outstanding'. The DPC noted that according to DP & T's O.M. dated 10.3.89 for making promotion by selection to all Group 'B' and Group 'A' posts upto and excluding the level of Rs.3700-5000 excepting promotions for induction to Group A posts or services from lower groups, the bench mark would be 'Good'. The DPC minutes further record that the DPC found the senior most candidate Shri Ram Vir Singh satisfied the bench mark of 'Good'. Though the DPC found Shri D.N. Gupta the better candidate, the minutes record that the senior most candidate fulfilled the requirement of bench mark 'good' and all other requirements for the post.

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Keeping in view the guidelines contained in the O. M. dated 10.3.89, the DPC recommended that Shri Ran Vir Singh, the senior most candidate be promoted as MSSO, and accordingly the impugned order dated 11.2.94 was issued against which this O.A. has been filed.

5. We have heard Mrs. Raj Kumari Chopra for the applicant and Shri K.C.D. Gangwani for the official respondents. We have also heard Shri S.S. Rana for the private respondent Shri Ran Vir Singh. We have perused the materials on record and given the matter our careful consideration.

6. The procedure to be observed by DPCs has been set out in DP & T's O.M. dated 10.3.89 (Ann. R-1) which has not been impugned in the O.A. Paragraph 1 of that O.M. states that each DPC should decide its own method and procedure for objective assessment of the suitability of the candidates. Paragraph 2.1.1 sets out the selection method and paragraph 3 the non-selection method. Paragraph 2.3.1 of this O.M. which has to be read as a part of the selection method reads as follows:

" The list of candidates considered by the DPC and the overall grading assigned to each candidate, would form the basis for preparation of the panel for promotion by the DPC. The following principles should be observed in the preparation of the panel:

- (i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts a bench mark grade would be determined for each category of

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posts for which promotions are to be made by selection method. For all Group 'C' Group 'B' and Group 'A' posts upto (and excluding) the level of Rs.3700-5000 excepting promotions for induction to Group 'A' posts or services from lower groups, the bench mark would be 'Good'. All officers whose overall grading is equal to or better than the bench mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their inter-se seniority in the lower category without reference to the overall grading, obtained by each of them provided that each one of them has an overall grading equal to or better than the bench mark of 'good'.

Wherever promotions are made for induction to Group 'A' posts or services from lower groups, the bench mark would continue to be 'good'. However, officers graded as 'outstanding' would rank en bloc senior to those who are graded as 'Very Good' and officers graded as 'Very Good' would rank en bloc senior to those who are graded as 'Good' and placed in the select panel accordingly upto the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder post.

- (ii) In respect of all posts which are in the level of Rs.3700-5000 and above, the bench mark grade should be 'Very Good'. However, officers who are graded as 'outstanding' would rank en bloc senior to those who are graded as 'Very Good' and placed in the select panel accordingly upto the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder post.
- (iii) Appointments from the panel shall be made in the order of names appearing in the panel for promotion.

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- (iv) Where sufficient number of officers with the required bench mark grade are not available within the zone of consideration, officers with the required bench mark will be placed on the panel and for the unfilled vacancies, the appointing authority should hold a fresh DPC by considering the required number of officers beyond the original zone of consideration".

7. Admittedly the higher post of MSSO in R.M.L. Hospital is a promotion post from the feeder category of MSS to be filled through selection. It is also admitted that there were only two eligible candidates viz. the applicant and Shri Ram Vir Singh in the feeder category of whom Shri Ram Vir Singh is admittedly senior to the applicant. It is also clear that while the DPC has graded the applicant as outstanding on the basis of his CRs for the period from 1983 to 1992-93, they have graded Shri Ram Vir Singh overall as 'good' on the basis of his CRs for the above period. Thus Shri Ram Vir has been given an overall grading equal to the bench mark, and on that basis was recommended for promotion by the DPC.

8. The first ground taken by the applicant is that the promotion has been made in violation of the recruitment rules and the O.M. dated 10.3.89. As mentioned above, the recruitment rules for this post require it to be filled up by promotion through selection from amongst the feeder category of M.S.S. The

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O.M. of 10.3.89 which supplements and does not supplement the Recruitment Rules lay down guidelines as to the manner in which the selection method is to be followed in case of Group 'B' posts such as the present one. It is clear that the respondents have strictly followed that procedure and ^{no} infirmity can be detected in their action. This argument therefore fails.

9. The next ground taken is that the DPC has no absolute discretion in the matter and it must act fairly. There is nothing to indicate that the DPC has deviated from the recruitment rules or the contents of O.M. dated 10.3.89. There is also nothing to indicate that it has not acted fairly and impartially. Hence this ground also fails.

10. The next ground taken is that bench mark does not mean 'qualified' and the applicant's outstanding services have been ignored. This ground is also without merit in terms of the guidelines set out in DP & T's O.M. dated 10.3.89 in respect of the manner of operating the selection method for filling up Group 'B' posts.

11. It has next been urged that the DPC's recommendations are tainted by malafide, but no materials have been furnished to substantiate this charge and prima facie we are satisfied that the respondents have acted scrupulously fairly and in accordance with DP & T's own O.M.

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on the subject. Hence this ground also fails.

12. It has next been suggested that Shri Ram Vir Singh could have been declared senior to the applicant only by the Ministry and not by the Medical Superintendent, R.M.L. Hospital as has been done. It is not denied that Shri Ram Vir Singh is senior to the applicant and hence this argument has no merit.

13. It has next been urged that the recruitment rules lay down 8 years eligibility for promotion, which was not followed by the respondents. In this connection from the departmental notings on the subject, which led upto the issue of the impugned order dated 11.2.94 it would appear that the grading of those two candidates according to their CRs was as follows:

Sl. No.	ACR for the year	Gradation of Sh. Ram Vir Singh	ACRs in respect of Sh. D.N. Gupta
1.	1983	Very Good	Outstanding
2.	1984	Very Good	Outstanding
3.	1985	Very Good	Outstanding
4.	1988-89	Very Good	Very Good
5.	1989-90	Very Good	Outstanding
6.	1991-92	Good	Outstanding
7.	1991-92	Average	Outstanding
8.	1992-93	Average	Outstanding

14. It is on the basis of the above remarks that the DPC graded Shri Ram Vir Singh overall as "good". During arguments Mrs. Chopra asserted that the remarks of Shri Ram Vir Singh

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showed a declining trend, which should have debarred him from selection, and that also he required a minimum of 'good' in each year to be rated overall as good, which in any case could not override 'outstanding'. She also asserted that some weightage should have been given to the fact that the applicant had earlier worked against that post. It is well settled that the Tribunal cannot substitute its own assessment of the ACRs of a Govt. servant in place of the DPC's assessment. The DPC which was a properly constituted one rated Shri Ram Vir Singh overall as good for the period in question after taking into account 5 'Very Goods', one 'good' and two 'averages' which brought him upto the bench mark of good, and this overall grading has to be accepted by us. Nothing in the rules or guidelines requires that a person should secure a minimum of good each year to be graded overall as good. There is also nothing in the rules/instructions which required that previous performance against that post must also be given weightage. Hence none of those arguments avail the applicant.

15. It has also been urged that the DP&T's guidelines only speak of preparing panels and not for making actual promotion. This argument has no basis, as in the facts and circumstances of the present case, there was only one post and the distinction if any stood removed.

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16. Both sides have cited a very large number of rulings.

17. The first ruling cited by Mrs. Chopra is M.P.Rai Vs. UOI ATR 1991(2) CAT 173 Jabalpur, but this ruling merely states that when superceded on the basis of seniority-cum-merit, the junior should be of a distinctive higher class. This ruling is no authority on the point that a junior with a higher grading should invariably supercede a senior official in a selection post even of Group 'B' category.

18. The next ruling is K. Somasundaram Vs. Govt. of Pondicherry 1990(13) ATC Madras. This ruling states that the DPC proceedings should broadly indicate how it appreciated the process of selection. In the present case, the approach of the DPC is clear from its minutes and hence this ruling does not advance the applicant's case.

19. The next ruling cited is R.S.Das Vs. UOI 1987(2) ATC 628 but that ruling relates to the promotion of IAS officers and is therefore distinguishable on facts from the present case which relates to promotion to a Group 'B' post in accordance with the DOPT's guidelines in O.M. dated 10.3.89.

20. The next case cited is G.S.Parvathy Vs. S.D. Inspector (Postal) & Ors. 1992(1) CAT 540 Ernakulam on the point of giving weightage to previous experience in recruitment of an Extra Departmental Agent and is therefore distinguishable from the present case.

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21. The next ruling cited is G.M., Southern Railway Vs. Rangachari AIR 1962 SC 36, but this ruling only reiterates that promotion to selection posts is included both under (1) & (2) of Art. 16 of the Constitution and further that the State is empowered to make reservation against selection posts under Article 16(4). Hence this ruling does not advance the applicant's claim either.
22. The next ruling cited is UOI Vs. M.L. Capoor AIR 1974 (SC) 87 but that case relates to promotions from the U.P. State Police/Civil Service to the IPS/IAS and has no bearing on the present case which relate to promotion to a Group 'B' post.
23. The next ruling cited is S.K. Das Vs. B.Patnaik 1995 (29) ATC 357 in support of the contention that in case of merit-cum-suitability, the seniority should have no role to play, and even a junior most man may steal a march over his senior and jump the queue for accelerated promotion. This ruling however, was based on different facts and circumstances, and has not noticed O.M. dated 10.3.89 (which has not been impugned) and the guidelines contained therein for making promotion to Group 'B' selection posts. Hence this ruling cannot be said to be applicable to the facts of the present case.

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24. The next ruling cited is K.C. Rajawat Vs. UOI (1994) 26 ATC 737 on the point that the period spent by the appellant as a temporary duty prior to his regularisation was required to be taken into consideration for considering eligibility for promotion. It is not denied that both candidates in present case were eligible for promotion, and hence this case does not help the applicant.

25. The next ruling cited is K.C. Gupta & 117 Ors. Vs. L.G. Delhi and 43 Ors. JT 1994 (5) SC 121, but that ruling is on the determination of seniority and promotion of various categories of teachers. The fact that Shri Ram Vir Singh is senior to the applicant has not been seriously disputed by the applicant. Hence this ruling has no relevance to the facts of the present case.

26. The next ruling cited is S.R. Sharma Vs. UOI AIR 1967 SC 1920 but that case again relates to promotion to the IPS and has no bearing on promotions to a Group B Gazetted post covered by O.M. dated 10.3.89.

27. Yet another ruling cited is J.P. Parmoo & Ors. Vs. State of J & K & Ors. 1993 1 SCC 420, but that judgment was delivered in the context of the Kashmir S.C. and Backward Classes Reservation Rules, 1970 and has no application to the facts of the present case.

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28. The next ruling cited is Smt. R. Sharma Vs. State of Punjab & Ors. JT 1994 (6) SC 531, but in that case it was held that where the appellant did not possess the minimum educational qualifications, the appointment was bad and then could be no esstopal against such bad appointment. In the present case it is not denied that both the candidates possessed the minimum qualifications for promotion. Hence that judgment does not apply to the facts of the present case.

29. The next ruling cited is State of West Bengal Vs. Aghore Nath Dey 1993 (2) SLR 528 but there again the facts relate to the seniority dispute between promotees and direct recruits and does not apply to the facts of the present case.

30. The next ruling cited is Sardana Singh Vs. State of Punjab AIR 1991 SC 2248, but a plain reading of that judgment makes it clear that it has no bearing on the facts and circumstances of the present case.

31. Lastly reliance has been placed on State of Orissa Vs. S. Mohapatra JT 1993 (2) SC 579 on the point that illegal entry into service cannot be allowed to be regularised in exercise of powers which enable relaxation of rules, but manifestly that ruling also has no application to the facts and circumstances of the present case.

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32. In this connection it is also necessary to advert to some of the contents of the reply of the official respondents. Besides reiterating that both Shri Ram Vir Singh as well as the applicant fulfilled the requirements for promotion as MSSO they have emphasised that the DPC took into account the ACRs for 8 preceding years and it was the overall grading (and not bench mark qualification for each and every ACR) that had to be taken into account as per 10.3.89 guidelines, which the DPC followed. The official respondents have further stated that for the year 1991-92 and 1992-93 under the heading general remarks, Shri Ram Vir Singh had been graded as an Average Officer in his ACR, but after going through the other columns of the ACRs for those two years, the DPC felt that Shri Singh could not be considered as merely average. The DPC had particularly noticed that the review officer had declared Shri Singh fit for promotion in both those years. The DPC had come to the conclusion that none of the reports of Shri Singh was below 'good'. The DPC also noticed that the ACRs for the year 1990-91 was written by applicant Shri D.N. Gupta the other contender, who was the present applicant. The official respondents have reiterated that Shri Singh was senior to the applicant, and though the applicant had put in a longer period of service in the lower post of MSS, the total length of service in Govt., or age was not a criteria for making promotion to post of MSSO.

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33. Private respondent No.4 has also filed reply in which he has asserted that the applicant was not even eligible to be appointed in feeder category of MSW as he was overaged on the relevant date of appointment. However, as this lies outside the scope of adjudication of the present case, we make no comments upon this assertion. As for the rest, Respondent No.4 has supported the stand taken by the official respondents.

34. Reliance has been placed by the respondents, both official and private on various rulings also. One such is UOI & Ors. Vs. Air Vice Marshal S.L. Chhabra JT 1993(3) SC 359 which lays down, that courts cannot encroach upon the power of Selection Boards by substituting its own view and opinion.

35. Another ruling cited is Major General I.P.S. Dewan Vs. UOI & Ors. JT 1995 (2) SC 654 which is in the same vein and lays down that courts cannot sit as an appellate authority over the acts and proceedings of Selection Boards.

36. Another ruling which is on identical lines is D.A. Solanki Vs. B.S. Mahajan AIR 1990 SC 434 which lays down that the decision of the Selection Committee can be interfered with by Courts only on limited grounds such as illegality, or patent material irregularity in

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the constitution of the committee or its procedure vitiating the selection, or proved malafides affecting the selection. The Hon'ble Supreme Court held in that case that in sitting in appeal over the selections made, and in setting it aside on the grounds of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction.

37. We may summarise. The post of MSSO in R.M.L. Hospital, New Delhi is a Group 'B' Gazetted post to be filled up by promotion through selection from amongst feeder category of MSW. In the DPC held on 20.9.92 there were only two candidates for the single post of MSSO viz. Shri Ram Vir Singh and the applicant. Admittedly the applicant was junior to Shri Ram Vir Singh. The DPC considered the service records of both the officers for the preceding 8 years. They rated Shri Ram Vir Singh overall as 'Good' and the applicant as 'Outstanding'. While doing this they took into account the fact that the applicant, had been given an overall rating of 'Average' in the years 1990-91 and 1991-92 but on going further into his ACRs for the 2 years the DPC noted that the individual remarks in each, of the columns added up to more than 'Average' and the Reviewing Officer had recommended him as fit for promotion in each of those years. They also

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noted that for atleast one of these years, the remarks of 'Average' had been given by the applicant Shri Gupta when he had held the charge of the post of MSSO before his appointment was set aside by the Supreme Court. Following the guidelines set out in DOPT's O.M. dated 10.3.89 the respondents held that the overall grading of Shri Ram Vir Singh as 'Good' which meant that he had achieved the bench mark for promotion ot MSSO (Group B Gazetted) and he therefore could not be superceded by the applicant, who had admittedly an Outstanding record of service for the relevant period, but was junior to Shri Ram Vir Singh. Since this O.M. itself has not been impugned before us, we do not consider it necessary to express any opinion on the same.

38. As there is no illegality, patent material irregularity in the constitution of the DPC or its procedure, or proved malafides vitiating the selection, we find ourselves unable to interfere in this matter.

39. This O.A. fails and is dismissed.
No costs.

A. Veda Valli

(DR. A. VEDAVALLI)
Member (J)

S. R. Adige

(S.R. ADIGE)
Member (A)

/GK/