

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~YERNAKULAM BENCH~~

PRINCIPAL BENCH: NEW DELHI

O. A. No. 1176/89

~~YERNAKULAM~~

199

DATE OF DECISION 15/4/91

Nand Kishore _____ Applicant (s)

Mr RG Aggarwal _____ Advocate for the Applicant (s)

Versus

Union of India rep. by the _____ Respondent (s)
Secretary to Govt of India
Ministry of Defence, DHQ PO,
New Delhi and another.
Mr PH Ramchandani (Sr. Counsel) _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member
and

The Hon'ble Mr. Maharaj Din, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

Shri NV Krishnan, A.M

The applicant is an Assistant Civilian Staff Officer (ACSO) in the Directorate of Engineering, Air Headquarters, Vayubhavan. His grievance is that when promotions from the rank of ACSO were made to the rank of Civilian Staff Officer (CSO), purely on an ad-hoc basis, he was not promoted and he was superseded on five occasions, i.e., 17th May, 1988, 8th August, 1988, 28th September 1988, 24th October 1988 and 7th April, 1989 vide orders at Annexures 1 to 5 respectively.

2 The applicant alleges that as this was an ad-hoc promotion it should have been done on the basis of seniority subject to fitness, as is admitted by the respondents themselves. He avers that there was no reason for his being superseded on this basis, as

no adverse remark had been communicated to him eversince he was promoted as ACSO. He, however, apprehends that he might have been considered to be unfit by considering the punishment of censure which was awarded to him by an order dated 11th September 1986 (Annexure XI B) in respect of certain allegations pertaining to the years 1969 and 1978 and 1980, i.e. long before he was promoted as ACSO with effect from 12.7.82 (Annexure VI). In addition, the applicant submits that his annual Confidential Report for 1987 contained a number of adverse remarks against which he had made representation. By an order dated 16.8.88 the competent authority had declared that the ACR for 1987 is illegal. The applicant apprehends that despite such declaration this ACR might have stood in the way of his promotion. The applicant also alleges that due consideration has not been given to his being a Scheduled Caste official.

3. In this background the applicant has prayed for the following reliefs.

(i) It is prayed that the Hon'ble Tribunal be pleased to call for the record of service of the applicant to examine for itself the claim of the applicant for ad-hoc promotion as CSO, and if satisfied, direct the concerned authorities to consider his case for promotion as CSO on ad hoc basis based on seniority cum fitness. Directions should also be issued to ignore the ACR for the year 1987 which has been quashed and also the punishment of CENSURE which is no bar for promotion based on seniority cum fitness. Directions should also be issued to grant the concession of upgrading the report by one step to the applicant in

the matter of ad hoc promotion as CS 0 as provided under the instructions. Directions may also be issued for payment of all consequential benefits on promotion from the date his next junior was promoted.

(ii) Any other relief which this Hon'ble Tribunal deem fit and proper in the circumstances of the case be also granted to the applicant.

(iii) Cost of the litigation be also granted to the applicant.

4 The respondents have filed a reply in which the reasons for trying to fill up the posts of CSO on ad hoc basis from amongst ACSOs/Stenographers Gr.A have been mentioned. Due to the large scale retirement of war time entrants, persons with requisite length of approved service were not available for promotion as CSO. The promotion to this post in accordance with the Recruitment Rules is on the basis of selection. To mitigate this hardship, Government proposed that the eligibility conditions could be relaxed by reducing the length of approved service needed for consideration. This was not agreed to by the Union Public Service Commission. Hence, to carry on the day-to-day administration, the competent authority decided to make ad-hoc promotions from ACSOs and Stenographers Grade A having 4 years of approved service on the basis of their seniority cum fitness as recommended by a Board.

5 It is submitted that although the applicant was eligible for consideration for adhoc appointment on all the five occasions, yet, based on his record of service

the Board did not find him suitable for such appointment and hence it did not recommend his name.

6 In regard to the apprehension that the penalty of censure might have come in the way of adhoc promotion, the respondents admit that as per instructions censure is not a bar to promotion. However, " the competent authority has to assess the suitability of an officer for promotion based on the overall record of his service." Similarly, in regard to the adverse ACR for 1987, the respondents submit that the decision declaring this ACR of the applicant to be illegal is already kept in the CR dossier of the applicant and therefore, there was no question of taking that CR into consideration. The reply affidavit avers specifically as follows:

" It is submitted that the competent authority did not find the applicant suitable for appointment as CS O on ad hoc basis or on officiating basis under Rule 10(2) based on his record of service and the report for the year 1987 was not taken into consideration after it was declared null and void".

7 The respondents also submit that as the ad-hoc promotion is on the basis of seniority cum fitness, no gradings were awarded i.e., the record was not classified by the Board as 'outstanding', 'very good' etc.

8 The respondents have produced the proceedings of the meetings of the Board held on 28.4.88, 17.3.89, 20.3.89 and 6.4.90 and 10th October 1990 as well as the CR of the applicant for our perusal. It is stated that in the

(10)

meeting held on 10.10.90 the Board has recommended the applicant's name and that the applicant has since been granted ad hoc promotion.

9 We have perused the record and heard the learned counsel on both sides. As the respondents have specifically averred that the 1987 ACR was ignored and that the applicant's promotion was not held up only because of the censure given to him, the applicant's allegation did not, *prima facie*, have any force. In decided order to satisfy ourselves on this account, we, nevertheless, to pursue the records.

10 The Board meeting held on 28.4.88 was presided over by the Deputy Chief Administrative Officer. That Committee approved in all 22 officers for promotion, including one Stenographer Gr.A, the others being ACSOs who have rendered 7 years of approved service and ACSOs who have rendered 6 years of service. The applicant is in the category of ACSOs who have rendered 7 years of approved service. He was found 'not yet fit for promotion'. Similarly, in the second category, i.e. ACSOs who have rendered 6 years of approved service, two officers were not found fit for promotion. At the next meeting held on 17.3.89 and 20.3.89, 141 officers belonging to three categories were found fit for promotion and 10 officers including the applicant were found 'not yet fit for promotion'.

11 The applicant's counsel had submitted that the applicant being a Scheduled Caste candidate should have been promoted after relaxing the standards. We notice

that almost half of the persons included in the select list for promotion prepared on 17.3.89 and 20.3.89 belong to the Scheduled Caste and a few belong to the Scheduled Tribe. Therefore, we do not find any merit in the insinuation that the applicant's case was not considered properly as he belongs to a Scheduled Caste.

12 The next meeting took place on 6.4.90. 131 officers holding the post of CSOs on adhoc basis were found fit to continue on those posts. The cases of those persons who have been superseded in the past were then considered and in respect of the applicant it is stated that he was considered unfit for promotion earlier basically because his overall record was average and also due to the fact that he was awarded penalty of censure in September 1986. It is also stated that the officer's case was also considered recently by the RRM and rejected.

13 The next meeting took place on 10.10.90. It was then stated that the officer was considered unfit for promotion earlier for the reasons mentioned above. However, as the last two reports showed marked improvement, he was recommended for promotion.

14 We have seen the ACR of the applicant from the year he was promoted as ACSO. We notice that between 1982 when he was promoted as ACSO and 1988 when promotions on adhoc basis was made there are reports which suggest that his work is of an average quality and that he was suitable for working in assignments of day-to-day office.

(12)

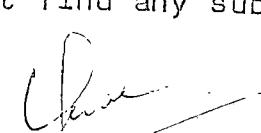
work. Such reports occur even before the year 1987, the annual report of which year has been declared illegal. In fact, before 1987 he has been classified as an average worker in atleast 3 years. We are, therefore, satisfied that it is neither the punishment of censure awarded in 1986 nor the report of 1987 declared as illegal, which weighted with the Board. The Board found him unfit on the basis of his general record and we cannot find fault with that decision.

15 After 1987, the report for the year 1988 which was written on 10.2.89 is complimentary to him, so is the report for 1990 written on 31st May, 1990. It is on the basis of these 2 reports that he was found fit for promotion by the Board on 10.10.90.

16 Having perused the CR and the proceedings of DPC, we are satisfied that the applicant was not promoted by the AnnexureAI to Annexure-AV orders only on the ground that on an overall assessment he was bonafide not yet found fit for promotion.

17 In the circumstances, we do not find any substance in the application which is dismissed.


15.4.91
(Maharaj Din)
Judicial Member


(NV Krishnan)
Administrative Member