

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1702 of 1989

New Delhi this 13th of May, 1994.

CORAM:

Hon'ble Mr. J.P. Sharma, Member (J)

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

Shri Y.P. Singh,
s/o Sh. Gajadhar Singh,
aged about 52 years working as
Chief Prosecutor in the Delhi
Administration,
r/o 166, Lakshmi Bai Nagar, New Delhi.

2. Shri S.N. Srivastava,
s/o Sh. J.N. Srivastava, aged about 48 years,
Working as Senior Prosecutor in
Delhi Administration, r/o 829, Timarpur,

Delhi-110 007

....Applicants.

By Advocate Shri Shankar Raju

Versus

1. The Delhi Administration,
through its Chief Secretary,
5, Alipur Road, Raj Niwas Marg,
Delhi-110 054

2. The Chairman,
Union Public Service Commission
Dhaulpur House,
New Delhi.

3. Sh. P.C. Mishra,
s/o Late Sh. K.G. Sharma,
working as Sr. Prosecutor in Delhi
Administration,
residing at A-116,
Vikaspuri,
New Delhi

.....Respondents.

By Mrs. Avnish Ahlawat, Advocate.

J U D G M E N T

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

In this application, Shri Y.P. Singh, Chief
Prosecutor and Shri S.N. Srivastava, Senior Prosecutor,
Delhi Administration have impugned the selection of

respondent no.3 Shri P.C.Mishra as Chief Prosecutor, Delhi Administration consequent to the DPC's recommendation on 27.7.89.

2. Admittedly, the applicant no.1 was appointed as PSI on 1.8.61 and on 1.6.70 he was appointed as Prosecutor. On 27.6.78, he was promoted as Senior Prosecutor and was confirmed as such w.e.f. 27.6.78. On 27.11.87, he was promoted as Chief Prosecutor on adhoc basis and has been working continuously against that post since then. Similarly applicant no.2 was appointed as PSI on 13.3.63 and was appointed as Prosecutor on 1.6.70. On 14.5.87, he was promoted as Senior Prosecutor and was confirmed with effect from that very date. On 17.8.88, applicant no.1 was also directed to look after the work of Deputy Legal Adviser till further orders (Annexure-A4). Applicants no.1 and 2 are mentioned in the seniority list of Senior Prosecutors working in the Directorate of Prosecution, Delhi Administration as on 1.1.85 at serials No.14 and 16.

3. The applicants contend that on 27.7.89, a ^{Promotion} ^{As headed by a} ^{Member} ^{Dept} Committee of the UPSC held its meeting to examine the cases of Senior Prosecutors for promotion to the rank of Chief Prosecutor, on regular basis. The post of Chief Prosecutor is a promotion post and the criteria for promotion is selection on the basis of seniority-cum-fitness. There is no written test or interview and the service records of the past five years are considered for promotion. They further contend that the action of the respondent in ignoring their claim to promotion as Chief

Prosecutor and recommending respondent no.3 instead, who was junior to them, was illegal, arbitrary, malafide and unjustified. They aver that they had filed representations against such action to the Lt. Governor, Delhi on 21st and 22nd August, 1989, and also filed the present O.A.

4. The first ground taken by the applicants while assailing the ^{D.P.C.'s} ~~UPSC's~~ recommendations is that the ACR of the applicant no.1 for 1988-89 was not placed before the UPSC for their consideration, whereas the ACR for the said period of respondent no.3 was made available and considered by them. We have gone through the Departmental file of Delhi Administration which was produced for our inspection by the respondents and find that it is a fact that the ACR of applicant No.1 Shri Y.P. Singh for 1988-89 was not placed before the ^{D.P.C.M} ~~UPSC~~ for their consideration in their meeting on 27.7.89, but we are not persuaded to accept the applicants' contention that for that reason, the DPC's recommendations are fit to be set aside. In fact, the applicants have themselves referred to Paragraph 2, 2.1(1) of the mandatory guidelines contained in O.M.No.F-22011/5/86-Est(B) dated 10.3.89 which state that if the C.R. of a relevant period is not written or available, then the DPC should consider the C.R. of the preceeding year. Hence, if the ACR of applicant no.1 Y.P. Singh was not available with the ^{D.P.C.M} ~~UPSC~~ it was open to them to consider the ACRs for the five years preceeding 1988-89 and then compare it with the ACRs of the others. This, the ^{D.P.C.M} ~~UPSC~~, appears to have done. In such matters, a practical view has to be

taken. Furthermore, after a careful perusal of the ACRs of the applicants No. 1 and 2 as well as of the respondent no. 3 for the relevant period, we are satisfied that even if the ACRs of applicant no. 1 for 1988-89 had been placed for consideration before the DPC, the eventual result would have been no different.

5. The second ground taken is that since February, 1985, by an executive order, the respondent no. 3 was no longer entrusted with court-work but instead ^{he} was deputed to handle the routine clerical and accounts work, but in his ACR form Columns 13 to 17 ^{he has been filled} without ^{his} even working in Court ^{in which} he has been given excellent remarks by his superiors. It is alleged that the ^{D.P.C.} ~~case~~ was not apprised of this fact when they considered respondent No. 3's case for promotion, and had they been so apprised they would not have given such a good grading to respondent no. 3. It is asserted that the DPC is required to make an independent assessment of the overall grading of the candidates based upon their ACRs after scrutinising the contents of their ACRs and then they should have come to ^{certain} ~~any~~ considered findings, instead of mechanically reproducing those annual gradings ^{as are contained in the ACRs} and basing their ^{as} ~~draft~~ assessment thereon. The ^{official} respondents deny the allegation that respondent no. 3 was not entrusted with court work after February, 1985 and state that ^{while} court work continued to be entrusted to him, he was assigned additional work of DDO which was extremely responsible and arduous in nature, which itself speaks of his calibre.

6 As stated above, we have gone through the ACRs of applicants no. 1 and 2 as well as the respondent no. 3

We have also perused the minutes of the DPC meeting held on 27.7.89. We are satisfied that the DPC's recommendations were based upon objective consideration and that their holding that the service record of respondent no. 3 was superior to that of applicants no. 1 and 2, cannot be faulted. The post of Chief Prosecutor is a selection post. The applicants no. 1 and 2 had a right to be considered and were considered. They had no right to claim promotion against a selection post, when their records of service were compared with the records of service of other candidates and the service record of respondent no. 3 was found superior to ^{theirs} ~~them~~.

7. It may be noted that the respondent no. 3 has also been since regularised as Chief Prosecutor.

8. Under the circumstances, this matter warrants no interference by us and this application is accordingly dismissed. No costs.

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

J. P. Sharma
(J. P. SHARMA)
MEMBER (J)

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