

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1559 of 1988

New Delhi, this the 25th day of April, 1995.

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

Shri C.D. Anand,
Industrial Adviser (Chemicals),
Directorate General of Technical Development,
Udyog Bhawan, Maulana Azad Road,
New Delhi. Applicant
(Appeared in person)

Vs.

1. The Secretary (TD) & (DGTD)
Directorate General of Technical Development,
Udyog Bhawan,
Maulana Azad Road,
New Delhi.
2. The Secretary (ID),
Ministry of Industry,
Udyog Bhawan, Maulana Azad Marg,
New Delhi.
3. The Secretary (PP),
Department of Personnel & Public Grievances,
North Block, New Delhi.
4. Shri M.S. Grover,
Industrial Adviser (Chemicals),
DGTD, Uyog Bhawan,
New Delhi. Respondents

(Through Mr. V.S.R. Krishna, Advocate)

JUDGEMENT

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

In this O.A., bearing No.1559/88,
filed by the applicant Shri C.D. Anand, the
then Industrial Adviser (Chemical), Industry
Ministry, New Delhi, the applicant had
prayed for the following reliefs to:

- (a) quash the letters dated 12.10.84,
29.7.85 and 3.11.86 as well as
the recommendation of the DPC
held on 29th June, 1988 and
direct respondent No.1 and 2 to
implement the decision taken by
two different Hon'ble Ministers
of Industries as well as the
Committee of senior officers

of the DGTD to hold a review of the 1978 DPC held on 8.3.78 in accordance with the prescribed instructions;

- (b) call for the entire records of the aforesaid case which would show that two different Ministers had specifically ordered the holding of a review of the 1978 DPC and that a Committee of senior officers of the DGTD had upon careful investigation admitted that the applicant was in-correctly graded by the 1978 DPC;
- (c) direct the respondents to finalise the correct seniority list of the officers belonging to the grade of DO(Chemicals) AIA(Chemicals) and IA(Chemicals) and to further direct the respondents to reconstitute a DPC for consideration promotions to the post of Dy. Director General (Chem) after holding a review of the 1978 DPC and after finalising the concerned seniority lists;
- (d) direct the respondents to give to the applicant all consequential benefits in terms of the seniority, arrears of pay and promotion to the highest post."

2. It appears that this O.A. came up for hearing on 8.7.94. Shri S.S.Tewari appearing for the applicant stated on that date that the applicant now pressed only relief 'c' above. Respondents' counsel Shri V.S.R.Krishna stated on that date that in pursuance of the order dated 21.10.90 in O.A. No. 1047/87, a review DPC had taken place and the matter was before the ACC. He stated that no final decision had been taken by the ACC and whatever recommendations were made by the DPC and approved by the ACC in relation to the applicant, would be honoured and the applicant would be informed of ACC's

decision within a period of three weeks thereafter.

3. Thereafter, Shri Krishna was directed to file an affidavit stating the relevant facts therein and two weeks time was granted to file the same. The case was posted on 25.7.94. On that date none appeared for the applicant. Shri V.S.R. Krishna appeared for the respondents and in view of his statement, it was noted that nothing survived in that application, which was dismissed as having become infructuous.

4. Thereafter, the applicant filed R.A.No.308/94 seeking review of the Tribunal's decision dated 25.7.94 dismissing the O.A. In that R.A., it was contended that by judgment dated 21.10.90 in O.A.No.1047/87, a tentative seniority list of IA(Chem) as on 1.9.93 was circulated by DGTD on 10.12.93 (Annexure-RAI). It was contended that the said list was not final as factual errors/omissions had been invited within two weeks of this issue of the list and the applicant had brought to the notice of DGTD that his qualifications had not been shown correctly in the aforesaid seniority list, and had requested that his additional educational qualifications be included, vide his letter dated 12.1.94. He contended that while the said judgment was under implementation, he was given the benefits upto the level of Industrial Adviser (Chem) wherein his name had correctly been shown in the tentative seniority list of Industrial Adviser (Chem) dated 10.12.93, but the final seniority list had not been circulated, as he had not received any copy of the same inspite.

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of his request dated 9.2.94. Meanwhile, he had retired on 28.2.93 on attaining the age of superannuation. He contended that Relief 'c' still remained to be granted for the reason that no DPC had taken place for DDG (Chem) subsequent to the issuance of the tentative seniority list dated 10.12.93 for IA(Chem). He contended that on 8.7.94, the respondents were directed to file an affidavit to the effect that a review DPC for DDG (Chem) had taken place subsequent to the issuance of the tentative seniority list of IA(Chem) dated 10.12.93, but instead of filing an affidavit on 25.7.94, a vague statement was made that a review DPC had taken place and the matter was before ACC. It was alleged that no review DPC for DDG(Chem) had taken place, ^{after} considering the final seniority of IA(Chem), subsequent to the tentative seniority list of IA(Chem) dated 10.12.93 and, therefore, this O.A. deserved to be reheard on merits in respect of the applicant's claim for promotion as DDG(Chem).

5. In their reply to R.A., the respondents stated that it was incorrect to say that the seniority list of IA(Chem) issued by the respondents was not final. In the letter dated 10.12.93 (Annexure-RA-1) circulating the seniority list of IA(Chem) as on 1.9.93, it was stated that factual errors or omissions if any, should be brought to the notice of the concerned section within two weeks of the date of issuance of the seniority list, and if no communication in this regard was received, it would be treated as final. It was contended in the reply that no

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communication was received within the stipulated period and, therefore, the seniority list became final after the expiry of two weeks i.e. 24.12.93. The applicant had made a representation/much after the last date i.e. 24.12.94 ('9' is obviously misprint for '12') and in his representation of 12.1.94, he had no objection with regard to his placement in the seniority list. His representation was with reference to his ^{educational} qualifications only. It was further contended that as the seniority list was deemed to have become final on the expiry of the stipulated period of two weeks w.e.f. 10.12.93 and the applicant did not have any objection with reference to his placement in the said seniority list, no action was called for on his representation. A ^{review} DPC for promotion to the post of DDG(Chem) had taken place in compliance of the Tribunal's judgment dated 31.10.90. It was averred that the DPC was held on 5.11.93 on the basis of tentative seniority list which had become final. The respondents further contended that the review DPC for the post of IA(Chem) had taken place on 31.5.93 in the UPSC in which a number of officers who had already been working on the post of IA(Chem), were recommended by the review DPC. In the case of four officers who were to be promoted on the basis of this review DPC, the appointment required the ACC's approval. In the case of those who had already been approved by the ACC for the appointment to the post of IA(Chem) office order was issued on 26.8.93 (Annexure-I) giving them notional promotion from the dates

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as per the review DPC's recommendations but in the cases of other four officers where the ACC's approval was required, the respondents could not issue seniority list of IA(Chem) until the ACC's approval in those four cases was received. This approval was received on 19.11.93 and Office Order promoting the four officers was issued on 25.11.93 (Annexure-II) after which the draft seniority list could be issued on 10.12.93. They further state that if the review DPC for the post of DDG(Chem) was held after the receipt of the ACC approval to the aforesaid four cases for appointment to the post of IA(Chem), the same might have delayed the implementation of the Tribunal's order dated 31.10.90. Respondents, therefore, drew a provisional seniority list of IA (Chem) on the basis of their Office Order dated 26.8.93 (Annexure-I), copy of which was also given to the applicant. The UPSC was requested by the respondents on 8.93 to hold the review DPC for the post of DDG (Chem) on the basis of the said provisional seniority list of IA(Chem) (Annexure-III) and it was on the basis of this provisional seniority list that the Commission held the review DPC for the post of DDG (Chem) on 5.11.93. The respondents contend that the applicant has in no way suffered because of his position in the tentative seniority list submitted to the Commission for holding review DPC for the post of DDG(Chem) and his position in the seniority list issued on 10.12.93 was exactly the same. The post of DDG(Chem) was to be filled through promotion by selection method and additional qualifications were not relevant. The applicant was considered by the Review DPC for the post of DDG(Chem).

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as per his seniority, but his name was not recommended. His request would have been justified, had his name been excluded from the consideration list of the review DPC or his seniority had been shown wrongly, but this was not the case. The applicant's name was not recommended by the review DPC and, therefore, he could not be promoted.

6. In his rejoinder, the applicant has reiterated that the tentative seniority list of IA(Chem) as on 1.9.93 circulated on 10.12.93 was not final, and filing the delay, if any, in his representation was because he had not received a copy of that list. He states that it was mandatory for the respondents to include the additional qualifications in the final seniority list of IA(Chem), and whenever the Govt. circulates the final seniority list, the letter circulating the said seniority list always makes a reference to this aspect. He alleges that the omission of his technical and educational qualifications was done deliberately to give advantage to Shri M.S.Grover who was junior to the applicant in the tentative seniority of IA(Chem) circulated on 10.12.93, and who had been promoted as DDG(Chem) purely on officiating arrangement w.e.f. 5.1.89 and was appointed on regular basis as DDG(Chem) on 5.11.93. It is contended that Shri Grover was not even eligible for promotion to DDG(Chem) when the DPC for D.D.G. (Chem) was held on 29.6.88, as his date of appointment to IA(Chem) was from 1.1.84, and as he had ^{less} than five years' qualifying service. It is contended that the date of continuous appointment of the applicant was 7.6.82 and although he was eligible for the post of DDG(Chem), he was not

considered for promotion to DDG(Chem) in the DPC held on 29.6.88. Had the applicant been considered in the said DPC for DDG(Chem) held on 29.6.88 with the correct seniority list of IA (Chem), he would have definitely been promoted as DDG (Chem) from 5.1.89, instead of Shri M.S.Grover. It is further alleged that though the Tribunal's judgment dated 31.10.90 directed the respondents to draw the seniority list of IA(Chem) correctly but the same was intentionally delayed by the DGTD to safeguard the interest of Shri M.S.Grover who became Second in Command in the DGTD from 5.1.89 to 31.3.94 till his transfer to the Ministry of Chemicals and Petrochemicals. Thus, it has also been contended that serious procedural irregularity has been committed by the DPC held on 5.11.93 inasmuch as a tentative and not final seniority list was considered, which followed DPAR's O.M. dated 30.12.76. It is also alleged that the officers, who were technically not competent, were associated with the DPC held for the post of DDG(Chem) on 5.11.93. While, the Secretary(TD) and(DGTD) was the only officer concerned with the working of DGTD and was associated with DGTD for more than 30 years, was not consulted while deciding the selection of DDG(Chem) either in 1988 or 1993 DPCs, it is alleged that the Secretary (Chem. & Petro Chem) who participated in the DPC held on 5.11.93 was a personal friend of Dr. Grover, ^{and} ensured that the latter found a place in the select list for the post of DDG(Chem) although his position in the tentative revised seniority list of IA(Chem) was 13 while the applicant's own position was 7. It is alleged that this was done by ensuring that all

the IAs senior to Dr. Grover having retired, or on the verge of retirement did not find a place in the panel of DDG(Chem) prepared by the DPC dated 5.11.93, to avoid Dr. Grover being reverted, who had been officiating as DDG(Chem) since 5.1.89. It is further averred that the applicant's additional qualifications were extremely relevant for technical posts such as that of DDG(Chem), which should have been included in the seniority list of IA(Chem) made available to the DPC on 5.11.93, but this was not done.

7. Further more, it is alleged that the DPC was not provided with the correct seniority list of IA(Chem) on the basis of which the DPC was conducted for the post of DDG(Chem) on 5.11.93. It is contended that on the one hand the list included the names of 4IA's whose appointment required ACC's approval which was received only on 19.11.93 after the DPC had been held, while the name of 6 IAs who had retired or were likely to retire by December, 1993 and were senior to Dr. Grover, including the applicant, did not find place in the panel submitted to the DPC on 5.11.93.

8. It has accordingly been prayed in the rejoinder that the DPC held on 5.11.93 be quashed and set aside as being malafide, illegal, arbitrary and unduly favouring Dr. Grover, and fresh review DPC's held on 29.6.88 and 5.11.93 be ordered for the post of DDG(Chem) on the basis of the final seniority list of IA(Chem), and the respondents be further directed to give the applicant all consequential benefits in terms of seniority, arrears of pay, promotion to highest post,

pensionary benefits etc.

9. We have heard the applicant in person and Shri Krishna for the respondents. We have perused the materials on record and given the matter our careful consideration.

10. Admittedly, the applicant has no grievance upto and including promotion to the level of IA (Chem). The next level was to that of DDG(Chem), for which the review DPC was held on 5.11.93. That DPC was held under the Chairmanship of the UPSC, and the respondents have correctly pointed out that the respondents had no authority to direct the UPSC to hold the review DPC on an earlier date; nor indeed was the UPSC made one of the respondents by the applicant. Furthermore, the review DPC for the post of DDG(Chem) had to be proceeded by the review DPC for the lower level post of IA(Chem) which itself was held on 31.5.93. In the list of officers recommended for promotion as IAs (Chem) as a result of the DPC of 31.5.93, some were already working as IA(Chem) while in the case of others, approval of ACC was required which was received only on 19.11.93 and only thereafter could the seniority list issue on 10.12.93, inviting objections. The respondents point out, that if they had waited till all the objections to the seniority list of IA(Chem) issued on 10.12.93 had been received and disposed of, and moved UPSC for holding the review DPC for the post of DDG(Chem) only after that process had been completed, they would have invited contempt of Court action, consequent to CCP No.358/92 filed by N.G.Basak and others for non-implementation of the Tribunal's judgment dated

31.10.90. Under the circumstance the respondents drew up a provisional list of IA(Chem) as on 1.9.93, vide their office order dated 26.8.93, and requested the UPSC to hold the review DPC for the post of DDG(Chem) on the basis of that provisional seniority list, which was done on 5.11.93. The fact that the applicant was not a party in Basak's CCP(Supra) as contended by him, does not change the situation, that the review DPC for the post of DDG(Chem) was required to be held without delay to avoid Contempt action being initiated against the respondents, for which purpose, the available i.e. provisional seniority list of IA(Chem) was used, instead of waiting for the seniority list to be finalised. It must also be remembered that the review DPC for DDG(Chem) was held on 5.11.93, at which point of time it was not known when ACC's approval for the list of IA(Chem) on the basis of the revised DPC of 31.5.93 would be finally approved, which was received back only on 19.11.93 i.e. after the review DPC for DDG(Chem) had been held. Having regard to the ^{facts} particular and circumstances, and the different authorities and levels through which such matters are processed, we are not persuaded to accept the view that the respondents acted arbitrarily, or malafidely or illegally in using the available provisional seniority list of IAs(Chem) for the review DPC on 5.11.93, more so as the applicant in no way appears to have suffered, for his position in the provisional list continued to be the same as in the list ultimately finalised.

11. In this connection, File No.A-320/2/23/93/E-1 of the DGTB on the subject "Review DPC for promotion

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to the grade of DDG(Chem) following judgment of CAT dated 31.10.90" was produced by the respondents for our inspection and was perused by us. That file contains the self explanatory forwarding letter dated 8.9.93 of the respondents addressed to the UPSC for holding the review DPC for the post of DDG (Chem) together with various annexures, including the tentative seniority list of IAs (Chem) as on 1.9.93 in which the applicant finds place at Serial No.7. A perusal of that forwarding letter shows that the applicant's CRs for the period 1967 to 31.3.91 were also sent to the UPSC for the review DPC and proceedings of that DPC dated 5.11.93 clearly show that the CRs of the seniormost eligible officers as per the provisional seniority list, including that of applicant were evaluated, and in that evaluation, the applicant's CR was rated as 'Very Good' while some were rated as 'Outstanding'. The vacancy arose in 1982 for which the DPC considered four names and recommended two, both of whom had secured 'outstanding' grading against the 'Good' and 'Very Good' grading secured by the two others respectively. Thereafter, a vacancy arose in 1988 for which the DPC considered four names and recommended the name of that officer who had secured 'outstanding' grading as against 'Very Good' grading secured by the three others. Subsequently a vacancy arose on 26.4.91 for which the DPC again considered four officers and recommended the existing incumbent Dr. Grover who had secured 'outstanding' grading as against 'Very Good' grading secured by the three others. The applicant has alleged

that if his educational and technical qualifications had been included as per letter dated 10.12.93 circulating the seniority list and inviting objections, his grading may have improved, but it is difficult to accept the contention that mere inclusion of certain educational and technical qualifications would ~~per se~~ have upgraded the applicant from 'Very Good' grading to 'Outstanding' grading. In this connection, it must also be remembered that Dr. Grover had been appointed as DDG w.e.f. 5.1.89 itself with the ACC's approval on the basis of DPC held on 26.9.88, while the applicant already stood retired from service upon reaching the age of superannuation i.e. 28.2.93, when the DPC was held on 5.11.93.

12. From a recital of the above facts, it cannot be said that the respondents acted illegally, arbitrarily, malafideley or in violation of Articles 14 and 16 of the Constitution in accepting the recommendations of the review DPC dated 5.11.93 which recommended the promotion of that officer to this high level post of DDG(Chem) which was to be filled on selection basis, who had secured 'outstanding' grading, each time the vacancy arose, in preference to those officers such as the applicant, who had secured only 'Very Good' grading. It is true that the DPC based its recommendations on the provisional seniority list, but this was done because the seniority list of IAs (Chem), as finalised after the ACC's approval had been obtained, was not available with them, and any delay in convening the DPC for the post of DDG(Chem) would have invited Contempt of Court act. In any case, we are ^{unable to take the} unable to view that any prejudice was caused to the applicant in the absence of the finalised seniority list, and as his position continued to be the same as before, ^{and} mere addition in the seniority list of certain educational

and technical qualifications would not, in our opinion, have materially affected the outcome of the review DPC's recommendations. Furthermore, the DPC was held under the Chairmanship of the UPSC but the applicant has nowhere made the UPSC a respondent in the O.A.

13. In the rejoinder, various assertions have been made which go beyond what has been stated in the O.A. itself. The rejoinder has to be limited to meet the points raised in the reply, and cannot be used to make averments beyond those contained in the O.A., because the respondents got no opportunity to rebut the pleadings contained in the rejoinder.

14. In the conspectus of the facts and circumstances of this case, therefore, we see no good reasons to interfere in this matter, and this O.A. fails. It is accordingly dismissed. No costs.

A. Vedavalli

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(Dr. A. VEDAVALLI)
MEMBER (J)

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

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