

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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D.A.2072/88

Date of Decision: 7/2/92

Anand Sagar Bhardwaj

Applicant

Shri H.D. Mahendru with
Shri Nawal Bhatia

Counsel for the Applicant

Vs.

Union of India & Ors.

Respondents

Shri P.H. Ramchandani

Counsel for the Respondents

CORAM:

The Hon'ble Mr. Ram Pal Singh, Vice Chairman(J)

The Hon'ble Mr. I.P. Gupta, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the reporter or not?

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri I.P. Gupta)

In this application filed under section 19 of the Administrative Tribunal's Act, 1985, the applicant was a Manager (Map Reproduction) in Gazetted group 'B' General Central Service Cadre duly selected by the UPSC in 1976. The applicant joined his duty as Assistant Manager w.e.f. 9.9.76. He underwent two years probation period for the said post and was confirmed on 10.2.83.

2. A charge-sheet under Rule-16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was issued to him on 31.10.1985. The applicant submitted

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his representation denying the allegations. He alleges that no enquiry was held and no opportunity of personal hearing was afforded. By order dated 30.6.87, the applicant was awarded the penalty of with-holding of promotion for a period of one year with immediate effect. The vacancy in the post of Manager (Junior) in Gazetted group 'A' service fell on 1.3.87. The applicant alleges that he is the senior most officer in the post of Assistant Manager (Group 'B') as per seniority list, as it stood on 1.1.87. However, by order dated 20.8.88, Shri Surjit Roy was promoted to the post of Manager (Map Reproduction(Junior) General Central Service Group 'A'), superseding the applicant. The applicant has sought for the relief that the order dated 20.8.88 (Annexure 'H') passed by Respondent No.2 be quashed, in that the order is illegal on various counts.

3. The learned counsel for the applicant contended that the penalty imposed on the applicant was a minor one namely with-holding of promotion for a period of one year w.e.f. 30.6.87. A minor penalty should not stand in the way of promotion. Further, the period of one year expired on 30.6.88 and therefore, the applicant who was senior to Shri Surjit Roy should have been promoted, more so, when no adverse remarks had ever been communicated to the applicant. The learned counsel further contended that the representation of the applicant against his non-promotion was disposed of by the order dated 11.10.88, which said that his case of promotion was considered/would be considered when his turn came within the consideration zone. Therefore, it would be inferred that he was not considered by the DPC when his junior was selected on the wrong premise that his turn had not come within the consideration zone. This is obviously wrong since he was a senior most officer in the zone of consideration. The learned counsel further contended that

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out of five members of the DPC, which selected Shri Surjit Roy, one member was absent. Besides, instead of Surveyor General of India, the officer holding only current duty charge of Surveyor General of India was present. Therefore, DPC proceedings are vitiated. The learned counsel for the respondents argued that the case of the applicant was duly considered by the DPC held on 8.7.88. The post is a selection post. The DPC proceedings which were produced for inspection showed that Shri Surjit Roy was assessed as very good and the applicant was not yet fit. The learned counsel for the applicant objected to this assessment of 'NYF' ^{which} could not have been made when no adverse remarks in ACRs were ever communicated to the applicant.

4. Analysing the facts and issues in this particular case, we find that the applicant was considered by the DPC along with Shri Surjit Roy and others. Law is clear that nobody has right to promotion but has right to be considered for promotion. Tribunal can only issue directions to the Government and cannot substitute its own assessment for that of Government (State of Mysore Vs. C.R. Seshadri & Ors. (AIR 1974(SC) 460)). While a minor penalty is no bar to promotion after ^{the} period of currency of the penalty (in this case, the period between 30th June 1987 to 30th June 1988- with-holding of promotion for a period of one year), the case has to be considered on the basis of assessment of ACRs, as also the fact of imposition of penalty. The totality of factors was considered by the DPC and the applicant was not found good enough to make the mark against the selection post. The ACRs of the applicant and Shri Surjit Roy upto 1988 were also seen and we find no irrationality as such in the findings of the DPC. No malafides have been shown against any member of DPC either.

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The departmental letter dated 11.10.1988, which had said that the applicant's case was considered/would be considered, when his number came within the selection zone was badly worded but the fact remains that the DPC did consider his case and made assessment about the officer. As regards irregularity in the constitution of DPC, the learned counsel for the respondents pointed out that the Surveyor General of India had retired and Brig. D.M. Gupta, who was discharging current duty of the post attended the DPC. We see no irregularity in this matter. Further the absence of one member out of five, would not vitiate the proceedings in the absence of any rule or law on the subject.

5. In the conspectus of the aforesaid facts, the application is dismissed with no order as to costs.

I.P. Gupta
(I.P. GUPTA)
MEMBER(A) 7/2/92

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN(J)

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