

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 100
T.A. No.

1988

DATE OF DECISION 9.6.89

Shri R.R. Goyal

Petitioner

Shri S.C. Luthra

Advocate for the Petitioner(s)

Versus

Union of India & ors

Respondent

P.H. Ramchandani,

Sr. Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. J.C. Roy, Member (A)

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. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000



J.C. ROY
MEMBER (A)

(AMITAV BANERJI)
CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN. No. D.A. 100/88

Date of Decision: 9.6.89.

Shri R.R. Goyal Applicant

Vs.

Union of India & Ors. Respondents.

CORAM:- HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN
HON'BLE MR. J.C. ROY, MEMBER (A).

For the applicant Shri S.C. Luthra, Advocate

For the respondents Shri P.H. Ramchandani, Sr. Advocate

(JUDGEMENT OF THE BENCH DELIVERED BY
HON'BLE MR. J.C. ROY, MEMBER (A))

This is an application under Section 19 of the Administrative Tribunals Act, 1985, from Shri R.R. Goyal, an officer of the S.S.B. (Directorate General of Security), New Delhi, against the denial of promotion to the applicant.

2. The undisputed facts of the case are that the applicant who is a Senior Field Officer in S.S.B. was looking forward to promotion to the next higher rank of Research Officer and to the next higher rank of Assistant Director (Cipher-Computer) (in short A.D) for which post he became eligible for consideration of promotion. Due to the retirement the post of one Research Officer fell vacant w.e.f. 1.5.1983. In March 1984 a D.P.C. was stated to be held for filling up of this post. The applicant was the only eligible candidate and it is claimed that he was recommended by the D.P.C. for promotion to the post of Research Officer. But in 1982, a decision of computerisation in the Cipher unit of S.S.B. was taken and consequently re-organisation with amendment of the Recruitment Rules for the various grades was initiated. This was finalised in 1986 and the Recruitment Rules of the various grades of officers of S.S.B. was amended vide notification.

dated 29.8.86. As a result of this re-organisation, which took four years to be formulated and notified, the grade of Research Officer in the pay scale of Rs. 700-1300 were abolished. In its place for managing the Cipher-Computer Section, one additional post of Assistant Director (Cipher) in the scale of Rs. 1100-1600 was created. The post of a Deputy Director was also created. One post of Research Officer was down-graded to Senior Field Officer in the scale of Rs. 650-1200. The applicant was already holding one of the last named post.

3. There were two posts of Research Officer at the time when the re-organisation was initiated; one post fell vacant due to the superannuation of the incumbent on 30.4.83, and therefore, in March 1984, a D.P.C. was held for filling up this post. The other incumbent of Senior Field Officer Shri R.N. Gupta was selected and finally appointed as Assistant Director on 5.7.85. The post of Research Officer which fell vacant w.e.f. 1.5.83 was therefore, never filled up. With the adoption of the amendment of the Recruitment Rules, both the posts of Research Officer of S.S.B. were abolished.

4. Although Recruitment Rules were finalised on 29.8.86, a new post of Assistant Director (Cipher) was created on 31.12.1985. The new Recruitment Rules provide two modes of filling up of the post of Assistant Director: (a) 50% by promotion, failing which by transfer on deputation or re-employment of retired Government servant etc; and (b) 50% by direct recruitment or transfer on deputation etc. It is the contention of the applicant that since creation of the second post of Asstt. Director the department without giving due consideration for his promotion to the post of Asstt. Director, had sought people from outside for filling up this post on deputation. Recruitment Rules provide for promotion to 50% of the vacancies of Asstt. Director and therefore, applicant represented for his promotion to the post of Asstt. Director. A D.P.C. was held to consider his case for promotion on 21.8.87. The applicant was the only eligible candidate for promotion to the post of A.D but the D.P.C. found him unfit for promotion. Finally the post of A.D was filled in by a deputationist from outside the S.S.B. The prayer of the applicant are that he should be promoted to the post of Research Officer w.e.f. 1.5.83 from

when the post was lying vacant or in the alternative he should be promoted to the post of Assistant Director. The D.P.C. proceedings held on 21.8.87, which found him unfit should be quashed and set-aside. The applicant also wants that he should be deemed to have been promoted to this grade w.e.f. 29.8.86 when the new post of A.D. was created.

5. Before we deal with the reply of the respondents, we examined the two Misc. Petitions filed on 17.2.1989 (M.P. 440/89) and 12.5.89 (M.P. 745/89) filed by the applicant. In the first Misc. Petition the applicant complained of alleged harassment to him after the O.A. was filed. For example he has pointed out that his absence during the period 5.1.89 to 1.2.89 on the ground of sickness was not regularised by the respondents out of malice and ill-will caused by the filing of the present O.A. In the second Misc. Petition the applicant alleges that during the pendency of this case a review D.P.C. was held for considering his eligibility for promotion to A.D's rank after this Tribunal has expunged the adverse remarks recorded in the C.R. dossier for the year 1985 and 1986 in its judgement dated 24.5.88 in O.A 81/88 filed by the same applicant. He complains that holding of this Review D.P.C. during the pendency of the present O.A was in contravention of Section 19(4) of the Administrative Tribunals Act, 1985. Incidentally, this Review D.P.C. also found that the applicant was not fit for promotion to Asstt. Director. We heard these two Misc. Petitions alongwith original application of the applicant.

6. On behalf of the applicant, it was urged that he was denied promotion to his next higher ranks, Research Officer where vacancies occurred w.e.f. 1.5.83 and again 5.7.85, or for the post of Asstt. Director when a new post was created. For promotion to Research Officer or for Asstt. Director he was the only eligible departmental candidate. Actually for filling up the post of Research Officer, a D.P.C. was held and although the applicant was found fit for promotion as Research Officer, the promotion order was not issued. The post of Research Officer was finally abolished by Govt. order dated 28.1.1987. Although the new post was created earlier

1982, the department kept it vacant till the new Recruitment Rules were notified on 29.8.86. Even after that without considering the claim of the applicant the efforts of the department was directed for securing for the post of A.D an officer on transfer/deputation from another department like I.B., R.A.W. and DPCR etc. In fact SSB had to circulate the vacancy more than once for obtaining the proper person on deputation. The applicant represented against these steps and finally a D.P.C. was convened on 21.8.87 which found the applicant unfit for promotion. The applicant contends that, earlier the D.P.C. was convened on 4.6.87 and this D.P.C. did not proceed with the selection as it was found that there was certain adverse remarks in the C.R. dossier of the applicant for the year 1985-86 and 1986-87 which were not communicated to him. The D.P.C. was actually convened after these were communicated to him. The A.C.R of 1986-87 containing adverse remarks on three counts were communicated to him and his representation was turned down on the eve of meeting of the D.P.C. He attributes malafide on the part of his departmental authorities. He also points out that during the period 1982 to 1986 when the draft amendment of the Recruitment Rules and re-organisation of the S.S.B. were on the anvil, there has been promotion according to the previous Recruitment Rules of 1977 to the grade of Senior Field Officer and also to the grade of A.O. whereas the applicant's case for promotion to the grade of Research Officer was turned down by the Government, on the ground that the Recruitment Rules had to be finalised first. Even for promotion to the Asstt. Director's grade the controlling officers of S.S.B. have shown their malafides by circulating the post for deputationists. Although the amended Recruitment Rules of 29.8.86 provides for 50% vacancy to be filled up by promotion from eligible departmental officers and the applicant was eligible to be promoted as A.D. his case was not considered. During the hearing learned counsel for the applicant emphasised on the point of holding Review D.P.C. during the pendency of this O.A.

7. On behalf of the respondents, it has been explained that the re-organisation of S.S.B. with a Cell for Cipher-Computer was necessitated

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by the decision of the computerisation of S.S.B. procedure from 1982 onwards. For effective operating of computer process it was decided to create one post of Deputy Director for the Cell and one additional Assistant Director. These posts were created by surrendering the posts of Research Officer which were intermediate between Senior Field Officer and Assistant Director and which were considered redundant. There were two posts of Research Officer out of which one incumbent retired on 30.4.83. The incumbent of the second post was promoted to Asstt. Director on 5.4.85. In between a D.P.C. was held, but the Government decided not to accept the recommendation of the D.P.C. pending finalisation of the re-organisation of Cipher-Computer Cell of S.S.B. and pending notification of the amendment of the Recruitment Rules. Any promotion order is not valid till the competent authority accepts the recommendation of the D.P.C. and orders of promotion. In this case the applicant could not be promoted to the post of Research Officer as a decision of the Government to do away with this intermediate rank, was already taken. This cannot be considered as wilful denial of promotion to the applicant

8. As regard the promotion to the post of Asstt. Director of Cipher-Computer Cell, the respondents submits that a new mode of recruitment to this post from two different streams viz., from amongst departmental officers and from outsiders by transfer or deputation was laid down in the new Recruitment Rules of 24.8.86. The Department of Personnel and Admin. Reforms O.M. No. 22011/5/76-ESTT-D dated 24.6.78 enjoins that whenever situation like this arise this should be treated as starting point for maintaining of a recruitment roster. Since the Recruitment Rules for Asstt. Director of S.S.B. was amended on 29.8.86 the cadre controlling authority have the power to resort any method of filling up the vacancy being the first vacancy. The action of bringing an officer on transfer or deputation, therefore, was completely within the competence of the Cadre controlling authority but the applicant represented. It was finally decided to consider him for promotion to the Asstt. Director's grade and the D.P.C. met on 21.8.87. The applicant earned adverse remarks in C.R. dossier for the year 1986-87 before the D.P.C. met. He represented against these adverse remarks when the

same were communicated but out of three adverse remarks only one was expunged. The D.P.C. was constituted as per the Recruitment Rules of 1986 and found the applicant unfit for promotion. Therefore, filling up the post of Asstt. Director, Cipher-Computer, by an officer drawn on transfer or deputation was perfectly in order. In regard to the point agitated by the applicant in M.P. No. 745/89, in their reply the respondents have produced a representation dated 1.8.88 wherein the applicant himself had prayed for a review D.P.C. on the basis of the judgement dated 24.5.88 of the Principal Bench of the Central Administrative Tribunal in O.A 81/88. As already observed in this judgement, this Tribunal was pleased to expunge the two remaining adverse entries in the A.C.R of the applicant for the year 1986-87. The Review D.P.C. also found him unfit for promotion to the A.D's rank. The respondents, therefore, contends that although the respondents have been very fair and just to the applicant and if the applicant had not been promoted either to the grade of Research Officer or Assistant Director, there were very valid reasons for the same.

9. As regards the holding of the review D.P.C. we have no doubt whatsoever that the D.P.C. was convened properly and in accordance with law. What is significant is that this was done on a written representation made by the applicant himself. The applicant had, therefore, no basis for urging that the respondents illegally convened the Review D.P.C.

10. As regards the question of harassment agitated in M.P. No. 440/89 we find that respondents' action of deputing a Medical Officer to examine the applicant for his absence due to alleged sickness was quite bonafide and all other points raised in the M.P. are without any basis.

11. It is now well established in law that a Government servant has only a legal right to be considered for promotion when he becomes eligible for promotion under the relevant rules. He has no right to be promoted to a higher post, particularly if this is on the basis of selection on merit-cum-seniority and not merely seniority-cum-fitness. In so far as his allegation of being denied promotion to the rank of Research Officer we find the argument of the respondents

change

is convincing. When a major system takes place in an organisation this requires some corresponding change in the organisation structure. When S.S.B. decided to computerise its functions the re-organisation as claimed by the respondents appears to be necessary. In the process S.S.B. decided, in consultation with the Government, that the intermediate grade of Research Officer in the scale of Rs. 700-1300 which was available for providing a promotional avenue to the Senior Field Officer in the scale of Rs. 650-1200 was not necessary. There were only two posts - one was to be abolished when the incumbent retired on superannuation and other was abolished when the incumbent was promoted. The respondents in their reply dated 24.2.88 have filed as Annexure R-11, a confidential letter of Cabinet Secretariat dated 27.3.84 saying that the appointment to the post of Research Officer (Cipher-Computer) and Asstt. Director (Cipher-computer) will be done after the finalisation of the Recruitment Rules. This appears to be an administrative decision at high level unconnected with any bias or prejudice against the applicant. We, therefore, hold that the first relief sought by the applicant of his being declared promoted to the post of Research Officer is not maintainable.

12. The next question was whether any injustice was done to the applicant in denying him the promotion to the grade of Assistant Director and whether there was any infirmity in the proceedings of the D.P.C. held on 21.8.87. Here again we do not find any bias against the applicant on the part of cadre controlling authority. The additional post of Asstt. Director created alongwith the new could have been filled up by way of two modes notified on 29.8.86. Recruitment Rules on 29.8.86. Although the cadre controlling authorities was not under obligation to decide that first point for the new Recruitment roster should begin with a promotee, the applicant's case was duly considered by the D.P.C. held on 21.8.87. The D.P.C. was also constituted according to the Recruitment Rules. Incidentally we cannot agree with the learned counsel for the applicant that the D.P.C. for selection to a Group 'A' post should have associated the U.P.S.C. The Recruitment Rules are statutory Rules and where it involves post in Group B and Group A it requires consultation with the U.P.S.C. before framing or amending the rules. If U.P.S.C, in their

wisdom, had agreed that for the post of A.D, S.S.B., the D.P.C. need not be presided over by the Chairman/Member of the U.P.S.C., we have no reason to question the proceedings of the D.P.C. on the ground that U.P.S.C. was not associated with this particular D.P.C.. The respondents in their written reply also categorically denied that for the selection to the A.D's post there was an earlier meeting of the D.P.C. on 4.6.87 as alleged in para 6.2. of the O.A.. We have no reason to disbelieve this as the applicant has not succeeded to even raise any suspicion about the bonafide of the respondents. In their rejoinder also we find that the applicant has not refuted this statement of the respondents. We, therefore, come to the conclusion that proceedings of the D.P.C. held on 21.8.87 and the review D.P.C. held subsequently for considering the fitness or otherwise of the applicant for the post of A.D do not suffer from any infirmity.

12. The last point raised on behalf of the applicant is that the D.P.C. meeting held in 21.8.87 for considering the applicant's case for promotion to A.D should have evaluated his C.R. dossier upto year 1986, as the post was created in 1986 and should have been filled up before March, 1987. This claim was based on an extracts from the Ministry of Home Affairs Memo Nos. 22011/3/76-Estt(D) dated 24.12.80 and 22.5.1981. The full text of these two Memorandums were not produced by the applicant but this appears to be ^{an} internal guideline for the D.P.C. In the present case considering the facts that the applicant was the only eligible candidate and also that the subsequent Review D.P.C. was held when all the adverse entries in his last A.L.R. for the year 1986-87 were expunged and the Review D.P.C. came to the same conclusion, we are unable to agree with the applicant that the D.P.C. proceedings were vitiated because the D.P.C. decided to assess his records for five years beginning from the year 1982-83.

13. There is, therefore, no merit in the Application.

14. In the result we dismiss this Application without any orders as to costs. We also dismiss M.P. 440 of 1989 and M.P 745/89.

J.C. RUY
MEMBER (A)
9.6.89

(AMITAV BANERJI)
CHAIRMAN