

(VB)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 186/86

T-2/90

DATE OF DECISION: 17th October, 1994

Shri D.N. Mohila

vs.

Union of India & ors.

CORAM: Hon'ble Shri J.P. Sharma, Member (J)

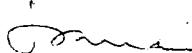
Hon'ble Shri B.K. Singh, Member (A)

Counsel for Applicant Shri/Alex J.P. Verghese

Counsel for Respondent Shri/Vs. V.S.R. Krishna

1. Whether to be referred to the Reporter? ✓
2. Whether Reporters of Local Newspapers may be allowed to see the judgement? X
3. Whether their Lordships wish to see X the fair copy of the Judgement?
4. Whether to be circulated to other X Benches?


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

(W)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.186/86

T-2/90

New Delhi, this 17th October, 1994

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

Hon'ble Shri B.K. Singh, Member (A)

Shri D.N. Mohila,
s/o Shri K.R. Mohila, U.D.C.
Central Ground Water Board,
Krishi Bhawan,
Ministry of Water Resources,
New Delhi.
presently located at
NH-IV, Faridabad.

... Applicant

By Advocate: Shri J.P. Verghese

Vs.

Union of India through

1. The Secretary,
Govt. of India,
Ministry of Water Resources,
(Department of Irrigation).

2. Chairman,
Central Ground Water Board,
Ministry of Water Board,
Ministry of Water Resources,
Krishi Bhawan,
New Delhi.

3. Chief Engineer,
Central Ground Water Board,
Jamnagar House,
New Delhi.

... Respondents

(By Shri V.S.R.Krishna, Advocate)

ORDER

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

At the relevant point of time in February, 1986
the applicant has been working as U.D.C. in Central
Ground Water Board (C.G.W.B.), New Delhi. The next

(45)

promotional post is that of Assistant and eligibility is 5 years service on regular basis as U.D.C. in C.G.W.B. Another channel of promotion is Assistant Accounts and eligibility is 5 years service as U.D.C./Cashier out of which 2 years should be in the account works. The applicant was promoted to the post of Assistant vide office order No.171/86 dated 16.1.85. He was promoted alongwith 16 other U.D.Cs. However, on promotion he was posted to Jaipur from the Headquarters Faridabad. It is also written in that letter that in case of failure to report for duty on promotion, no fresh offer of appointment will be given to the above officials for a period of one year in terms of Ministry of Home Affairs,DOPT G.M. dated 1.10.81. The applicant made a representation for review of posting order for Jaipur on promotion to the grade of Assistant. The representation of the applicant alongwith others was rejected by the office order No.420/86. The offer of appointment for the post of Assistant issued by the Office Order 171/86 was cancelled observing that they shall not be given any fresh offer of appointment for a period of one year.

2. This Original Application was filed in Principal Bench in February,1986. It was admitted on 7.6.86. Notices were issued to the respondents and the respondents filed their counter. The applicant however, in the meantime prayed for time for impleading some ore respondents. The pleadings

of the case were complete on 9.4.87 and the matter was ordered to be kept on Board by the order of the Hon'ble Chairman dated 9.2.90. The D.A. was transferred to C.A.T. Gauhati Bench and was numbered as 382/90 by the order of Hon'ble Chairman dated 25.3.94. This case was re-transferred to the Principal Bench.

3. The applicant has filed this application against the office order No.171/86 dated 16.1.86. He has prayed for the grant of the following reliefs.

- a) The posting order of the applicant ordered to be withdrawn.
- b) Stay may be granted against the promotion of the juniors of the applicant in the grade of Assistants, Superintendent and again the filling up of the posts in the grade of Assistant and Superintendent.
- c) The applicant be given promotion with retrospective effect alongwith monetary benefits.
- d) He has also sought an ex parte stay against the order No.171/86.

4. By the order dated 7.8.86, the prayer for staying the order No.171/86 was rejected as the order of posting of the applicant had been cancelled. The official respondents contested this application and stated that the applicant is not entitled to the grant of the reliefs prayed for. His representation for transfer to Jaipur was

(VR)

duly considered by the competent authority and the same was rejected. The applicant has also since been promoted as Assistant since 1990.

5. We heard the learned counsel of the parties at length and perused the records and rejoinder filed by the applicant.

6. Though the applicant has challenged his transfer to Jaipur but he has also sought for promotion from retrospective date. As said above, the next promotional post is that of Assistant/Assistant Accounts. The D.P.C. for selection of this post was held on 23rd/24th September, 1982. However, in this D.P.C. promotion to the grade of Assistant and Assistant Accounts was considered jointly. There were 19 vacancies in the grade of Assistants out of which 4 were reserved for S.C. and 2 for S.T. There were only 4 vacancies in the grade of Assistant Accounts of which one was reserved for S.T. For these 23 vacancies, the zone of consideration was 69 officials in the grade of U.O.C./Cashier but since number of S.T. candidates were less, the zone of consideration was extended 5 times of the vacancy. However, after this D.P.C. was held there were certain representations made that clubbing both the posts of Assistant and Assistant Accounts together the zone of consideration of the officials has been unduly increased. Since it is a selection post and there are 3 different categories namely Outstanding, Very Good and Good.

J

335.

7. The applicant, however, was not graded by D.P.C. because of his service record and therefore was not empanelled for the vacancy for which Review D.P.C. was held. The learned counsel for the applicant, however, vehemently argued that the respondents have wrongly taken into account 19 vacancies of Assistants. According to applicant's counsel there were 14 vacancies available and the respondents have wrongly considered 4 vacancies as resultant vacancies in the grade of Assistants which have fallen vacant due to promotion of Superintendent to the post of Assistant Administrative Officer by the order dated 7/10.10.83. It is further contended that in the DPC of 1982, one vacancy was also wrongly considered in view of the fact that one of the Assistants has been on deputation only for a period of one year and there is clear admission of the respondents in their counter in para 6(k) that vacancy arising on account of deputation for a period of more than one year should be taken into account. In this connection, the learned counsel has referred to O.M. dated 30.12.76 of DOP&AR.

8. Though not admitting the calculation made by the learned counsel for the applicant and if the Review DPC is held for only 14 vacancies of Assistants even in that case the applicant could not have been empanelled. The applicant has not disputed the seniority of Assistants. If the DPC considers 19 vacancies then 57 persons were considered upto Shri Chain Lal and the applicant

comes at S.No.40 and 4 more S.C. candidates were considered besides the 5 already in the list at S.Nos. 26, 27, 34 and 36 and the applicant at 40. In the extended zone 3 more S.T. candidates were also considered thus Review DPC has considered 16 U.D.Cs. Out of these 4 S.C. candidates were selected Shri K.S. Bhaskar, Shri Madan Pal, Shri Jai Chand and Shri H.S. Harit. Shri Madan Pal is senior to the applicant so also Shri Jai Chand. Shri K.S. Bhaskar and Shri H.S. Harit are junior to the applicant. Even if 14 vacancies are considered, Shri K.S. Bhaskar who is junior to the applicant will come within the zone of consideration.

S/ Shri Madan Pal, R.N. Surya, Mohan Singh and Jai Chand have been given higher grading by the DPC than the applicant. If the contention of the learned counsel for the applicant is accepted that a communal roster for these 14 vacancies will make out a claim for 3 S.C. candidates even then the applicant cannot be included in the panel. Presuming that the next DPC is held for 4 vacancies then those who were left out will be considered in the zone of consideration extended to 5 times to the number of vacancies for S.C. Even then the applicant who is graded average cannot compete with other S.C. candidates who have been graded 'Good' and 'Very Good' and for one S.C. vacancy applicant cannot be empanelled. The learned counsel for the applicant has taken sufficient time to explain this point and we have also heard the learned counsel as well as

the applicant at greater length and we find that any of the case whether 14 vacancies are considered of 1982 and 4 of 1983 the applicant could not be empanelled by virtue of his average grading by the D.P.C. In fact the respondents have given a reasonable calculation of vacancies of Assistants which are 19. Though the calculation is in the manner that there were 7 clear vacancies and 12 vacancies were available due to promotion of Assistants to the post of Superintendents including one vacancy on account of deputation of an Assistant outside the department. The D.P.C. held in the year 1982 for these vacancies was challenged because respondents have considered the 19 vacancies of Assistants alongwith 4 vacancies of Assistant Accounts and jointly conducted the exercise for 23 vacancies. This was agitated by the staff side after consideration of the representations of the staff side, it was directed that separate DPC be held for Assistants and Assistant Accounts. So the Review DPC was held in August, 1994 for 19 vacancies of Assistants and 4 vacancies of Assistant Accounts as on 23.9.82. We have seen the proceedings of the Review DPC of August, 1994 and it has also been perused by the learned counsel for the applicant. We do not find any flaw in the proceedings of the DPC and the counsel for the applicant has not challenged the grading given to the applicant nor it can be judicially reviewed by Tribunal, as the Tribunal do not exercise any such power as that of appellate authority. The Review DPC has followed the

(51)

instructions of O.M. dated 30.12.76. In the general category the zone of consideration was 3 times the number of vacancies and was extended by 5 times of vacancies for reserved categories. D.P.C. has drawn the panel of 13 general category candidates, 4 S.C. candidates and 2 S.T. candidates. The S.C. candidates empanelled are S/Shri K.S. Bhasker, Madan Pal, Jai Chand and H.S. Harit. A waiting list in the panel of Assistants was also prepared and in the S.C. category 2 U.D.Cs. Shri R.N. Surya and Shri Mohar Singh were placed. Now seeing to the grading of empanelled persons and the person in the waiting list all of them have better grading given by D.P.C. than the applicant. None of the empanelled UDCs are below 'Good' while the applicant has been graded as 'Average'. The benchmark taken by the DPC is 'Good'. Thus, the applicant has no claim to be placed in the panel on the basis of the DPC of 1982 for which Review DPC was held in August 1984 for the post of Assistant, already As illustrated above even by bifurcating the vacancy the applicant cannot be empanelled because of his lower grading. Though the contention of the learned counsel for the applicant cannot be accepted because as per O.M. of 1976, a DPC is to be held for the existing vacancies and the vacancies which are resultant vacancies and likely to be available during the course of the year. It is a fact that the DPC for the post of Superintendent, promotional posts of Assistant was held earlier to the DPC of Assistants in 1982 and as a result 12 vacancies including 1 on deputation was calculated for the DPC which met in September 1982. Seeing to the life to the panel to the end of 1983 these vacancies

(52)

were rightly considered by the DPC for the vacancies arising or likely to arise in 1982 and 1983. If some of the Superintendents who were promoted from the post/Assistants joined sometime in 1983 that will not be considered that the vacancies were not available for the DPC held in the year 1982.

9. The next contention of the learned counsel for the applicant is that the Review DPC which was held for the 4 posts of Assistant Accounts only empanelled 3 persons and no S.C. candidate was appointed. A perusal of the proceedings of the DPC goes to show that no point in the communal roster for S.C. candidate was available and only one S.T. point in the communal roster fell for which there was no S.T. candidate available even in the extended zone of consideration of S.T. candidates. When a post is reserved for S.T. candidate, it automatically cannot be transferred to S.C. category. The reservation has to be done by the competent authority only if by postponing for 3 years post remains unfilled by the reserved category candidate. If the administration has not exercised its authority of converting this communal roster point of S.T. to S.C., this cannot be said to be illegal but can only amount to non action on the part of the administration. This non action cannot be remedied on this point of time when almost a decade has passed. The applicant by virtue of his seniority as well as grading could not come within the zone of consideration of Assistant Accounts. The position of the applicant is not high up that he can come within the first 12 seniority list of 12 U.D.Cs. to be considered on the

:10:

basis of merit irrespective of the communal roster point of S.C. This contention of the learned counsel also therefore has no basis.

10. The next contention of the learned counsel is that by virtue of the various administrative instructions the authorities have to call DPC every year and if the DPC is not called every year for the selection post then in that event a prejudice is caused as in the case of the applicant. This contention may be plausible but in the case of the applicant it has no basis. The second DPC was held in December 1985 and the applicant was selected and empanelled and given promotion to the post of Assistant by posting him to Jaipur. The applicant himself did not join. It was only the next DPC held after August 1984. There is a valid explanation from the side of the respondents that since the applicant who was the President of the Central Ground Water Board Employees' Union has agitated the proceedings of the 1982 DPC pointing out that the clubbing of post of 4 Assistant Accounts with the post of 19 Assistants has been wrongly done as 23 vacancies were considered together which has greatly affected the chances of promotion in the selection post of Assistants. The authorities could only take decision after the JCM meeting and it was decided to hold separate DPC for the post of Assistant and Assistant Accounts which could be held only by August 1984. Unless the proceedings of the earlier DPC are finalised, no DPC in the

meantime can take place. If the DPCs are held continuously yearwise and the result of the earlier DPC alongwith its proceedings have been challenged by the staff and higher authorities consider the same then the persons who were selected in that DPC cannot be treated to have been given promotion unless the higher authorities take a decision that the proceedings of the DPC are fair and according to rules and administrative instructions. Thus, the next DPC which was held in November-December, 1985 has considered the vacancies together which were existing on that date. The applicant in this O.A. has not challenged the proceedings of the D.P.C. of November and December, 1985. When the DPC met in December 1985, 18 posts of Assistants were vacant and 12 more posts were likely to be available so the DPC was held for 30 posts. Out of the 30 posts, 5 were reserved for S.C. and 2 posts for S.T. Though the details as to when these 18 vacancies have arisen i.e. either in 1983, 1984 or 1985 but that has not been challenged before us, so the DPC for 30 vacancies held in December 1985 can be said to have followed the relevant instructions on the subject. Moreover the applicants have been selected in the DPC of December 1985 and if he had joined his promotional post he would have claimed the benefit of the vacancy if he would have come within the zone of earlier years i.e. of 1983 or of 1984. But the applicant himself is at fault in not joining the promotional post when he was given offer of appointment to join as Assistant at Jaipur. Thus, for the

DPC of December 1985 even if there has been clubbing of vacancies of 2 years together, the applicant cannot get any benefit by virtue of his not joining the promotional post and his promotion was deferred for one year or till the fresh vacancy arises whichever is later. The life of the panel can only be for one year.

11. It has also come on record that in September 1985, the posts of Assistant Accounts have also been designated as posts of Assistants in the Central Ground Water Board. Thus, in December 1985 there was no question of holding any DPC for the post of Assistant Accounts. The conclusion of the above facts therefore is clear that the applicant could not have been promoted to the post of Assistant either in the original DPC of September 1982 or in the Review DPC of August 1984 for any of the posts either of Assistant or of Assistant Accounts.

12. The applicant in the O.A. has only prayed for being granted retrospective promotion. The other relief in the O.A. has not been pressed. However, the applicant has moved M.A. for consideration of other facts also. Though no formal amendment has been made in the O.A. but seeing to the fact that the applicant has been pursuing this case hotly having filed in 1986, we allow with the consent with the counsel for the other side the consideration of the other reliefs prayed for in the M.A. In fact those reliefs

claimed by the applicant only fall from the main relief of promotion of the applicant from retrospective date. During the course of the argument, it has come on record that the applicant has since been promoted to the post of Assistant in the year 1990, but no such amendment has been incorporated in the O.A. The main thrust of the applicant has been that the DPC of September 1982 was not convened according to administrative instructions and the Review DPC held as per directions of the higher authorities of the 1982 DPC has not applied its mind and only subjectively gave the same conclusion which was given by the DPC of 1982. In fact it is not so. We have gone through the proceedings of the DPC and we find that the DPC was rightly convened according to recruitment rules and the administrative instructions of the Department of Personnel & Administrative Reforms.

13. The applicant's counsel has also agitated the point that when the applicant was promoted as Assistant by the DPC of December 1985, he was transferred to the Jaipur against the rules. The offer of appointment given to the applicant clearly goes to show that if the consent to join on promotion at the place of posting is not given within the fixed time and the incumbent does not join within 10 days and accepts offer of appointment, the offer of appointment as well as promotion will be cancelled as per O.M. of DOP & AR dated 1.10.81. After receiving the offer of appointment

the applicant has made a representation of his posting to Faridabad as Assistant. This detailed representation in itself was an indication that the applicant will not accept his promotion and posting at Jaipur. The representation ends with the observation that the applicant be given reply within 2 days otherwise the applicant will knock at the doors of the Court. This clearly goes to show that the applicant was not in a mood for whatsoever reasons to join at Jaipur. Now going to the guidelines on transfer, a copy of which has been filed on record and the applicant as President of the Association has been a signatory to the same, the guidelines provides that field stay will be criterion to consider the transfer and stay. The field stay of the applicant was lesser than the other claimants so he was not posted at Faridabad. He was posted at Jaipur near his home town. In any case the applicant failed to give his acceptance of promotion within the stipulated period. The applicant could have joined the post at Jaipur and thereafter could have made his representation showing his personal difficulties in the matter and likely inconvenience he will suffer. If the applicant has not given his acceptance then he cannot claim that the offer of appointment given to him be now complied with by the respondents. The respondents informed the applicant in December 1986 as well as to others who did not join on promotion after selection, at the place of posting, that their promotion is cancelled and they will not be considered for promotion for one year or till a vacancy arises whichever is later. In view of this fact, we do not find any

fault with the orders of the respondents and cancelling his offer of appointment as well as promotion to the post of Assistant.

14. As already referred to in the earlier part of this order in M.A.1801/94 the applicant has further prayed that the wrong DPC of 24th September 1982 be quashed. This DPC has ~~not~~ ^{been} considered as valid DPC by the administration itself so the Review DPC was held. The Review DPC which was held in August 1984 and the panel issued subsequently has been given effect to. We have already considered that the Review DPC has rightly convened according to recruitment rules and extant administrative instructions does not call for any interference. There is no question of calling any fresh DPC in that regard. We have also considered the order dated 25.2.86 by which the offer of appointment of the applicant issued by Order No.171/86 was cancelled. We have already held a valid justification for passing the aforesaid order as per O.M. of DOP&AR dated 1.10.81. This O.M. clearly lays down that no fresh offer of appointment or promotion shall be made in a case where the promotion has been refused for a period of one year from the date of refusal of promotion or till next vacancy arises whichever is later. The respondents have followed their instructions and there is no arbitrariness or violation of any of the right of the applicant. In the rejoinder, the applicant has given certain instances but that will not be taken into account to support the contention of the applicant.

It is for the respondents to take work from the persons of choice of course in the exigency of the service. It is also open to the authorities to consider the representation of its employees and to give relief if possible, asked for in the said representation according to rules. In fact the representation placed by the applicant on record speaks out volume of certain discrimination meted out to the applicant since the holding of the DPC in September 1982. As said above, he has not restricted his representation only to the place of posting or even to give indication in the representation that he has accepted the promotion without any condition but he may be considered on medical grounds for posting at Faridabad. If the respondents have considered the cases of some other employees at earlier point of time, the decision arrived in those cases cannot be taken to be discriminatory in the case of the applicant. However, one fact remains. The respondents by their order dated 25.2.86 have deferred the promotion of the applicant for one year. The offer of appointment was made in January 1986. The life of the panel was till January 1987 liable to be extended till July 1987. The respondents have not placed on record whether any vacancy has occurred in the year 1986 or 1987 before life of the panel has come to an end. The last DPC was held in December 1985. The respondents should have considered the case of the applicant whenever any vacancy was available after one year. The respondents have not done so. It is also not evident from the record that any vacancy was available during this period.

It is conceded by the learned counsel for the respondents within the life of the panel the vacancy was available after a lapse of one year, the applicant could be adjusted in that vacancy. We therefore hold that if there was any vacancy available of the post of Assistant till July, 1987, the applicant should have been given fresh offer of appointment/promotion counting his seniority from the date of joining and those who had already joined ranking senior to him.

15. The application is therefore disposed of in the following manner:-

- (a) While holding the validity of the DPC of August 1984 as well as of December, 1985, the applicant has no case for retrospective promotion on the basis of DPC of 1984.
- (b) We also hold that the applicant has patently refused his promotion and offer of appointment by not joining at Jaipur and he cannot get any benefit of promotion from the date any of his junior was promoted as a result of the DPC of December, 1985.
- (c) We direct the respondents to find out if there is any vacancy till the life of the panel lasted i.e. July 1987 and if such vacancy is available in the communal roster point of S.C. irrespective of any other claimant, the applicant having already been recommended by the DPC an offer of appointment should be

:18:

placed in that vacancy and his promotion be antedated of the post of Assistant from the date of availability of that vacancy and he shall be entitled to difference of pay and allowance for that period upto the time he was regularised as Assistant, this is because juniors to the applicant ^{been} have already promoted and the applicant was not issued any fresh offer of appointment

(d) In case no vacancy is available till July, 1987, the applicant shall not be entitled to the grant of the relief as said above. In case he is granted the relief as said in para (c), he shall also be considered for the next promotional post on his turn reckoning his seniority on the post of Assistant from the date the vacancy was made available to him in compliance with the above para (c).

The application is disposed of as said above with no order as to cost. The respondents to convey the result of the directions issued in para (c) above to the applicant within 3 months from the date of receipt of copy of this judgement. Cost on parties.

(B.K. SINGH)
Member (A)

(J.P. SHARMA)
Member (J)