

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 780 of 1986
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DATE OF DECISION 14.9.87

Sh. D. P. Ratra

Petitioner/Applicant

Applicant in person

Advocate for the Petitioner(s)

Versus

Secretary, Ministry of Urban Development Respondent

Mrs Raj Kumari Chopra

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. CH. RAMAKRISHNA RAO, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No

Ch. Ramakrishna Rao

(CH. RAMAKRISHNA RAO)

S. P. Mukerji

(S. P. MUKERJI)

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Shri O.P. Ratra . . . Applicant

Versus

Secretary, Ministry
of Urban Development . . . Respondents

For Applicant . . . Applicant in person

For Respondents . . . Mrs Raj Kumari Chopra

CORAM :

The Hon'ble Sh. S.P. Mukerji, Administrative Member

The Hon'ble Sh. Ch. Ramakrishna Rao, Judicial Member

(Judgment of the Bench delivered by Hon'ble
Sh. S.P. Mukerji, Administrative Member)

JUDGMENT

The applicant, ^{who} is working as Assistant Director in the National Buildings Organisation (N.B.O) under the Ministry of Urban Development has moved the Tribunal with his application dated 12.9.1986 under Section 19 of the Administrative Tribunals Act, 1985 praying that the order of promotion of Shri Sunil Bery from the post of Assistant Director to that of Editor in the Class I scale of Rs. 1100-1600, as also his selection by the Selection Committee in their meeting dated 31.7.1985 should be set aside as invalid, biased, deliberate and discriminatory and that the applicant should be restored his right of promotion to the post of Editor.

2. The brief facts of the case can be recounted as follows. The applicant was selected through the UPSC in 1966 as Assistant Director in the scale of Rs.650-1200 with 5 advance increments. He was eligible for next promotion to the isolated post of Editor in the Class I scale of Rs. 1100-1600 which fell vacant on 1.8.1983 when the then incumbent retired. The respondents did not fill up the post inspite of several representations by the applicant and finally the Selection Committee met on 31.7.1985 after inviting applications from the open market, other Departments and the N.B.O. The Selection Committee consisted only of a Member of the UPSC and the Director of the NBO against whom the applicant has been representing to the Government. Since no candidate was found to be eligible except those who applied from the N.B.O itself, the Selection Committee considered the applicant as also other departmental candidates who had applied and selected one Shri Sunil Bery, another Assistant Director and promoted him as Editor by the impugned order dated 11th October 1985. The applicant's main contention is that firstly that the respondents should have conducted the selection by the Departmental Promotion Committee consisting of four Members in accordance with the Recruitment Rules and secondly that they constituted a Selection Committee consisting of a Member of the UPSC and the Director, NBO who was deeply prejudiced and against whom he had been representing long

before the Committee met for selection. He has also challenged the plea of the respondents that the Selection Committee was constituted for composit selection out of candidates from open market, other departments and the departmental candidates. The applicant has also contended that because of the prejudice, the respondents selected Shri Sunil Bery who joined as Assistant Director only in 1975 when the applicant ^{had been} was appointed in that grade in 1966.

3. According to the respondents, the post of Editor which is an isolated post can be filled by promotion of Assistant Directors in the NBO with four years of service or by transfer of Assistant Engineers, CPWD or Central Information Service by transfer/deputation or appointment on short term contracts. Admitting that the applicant was eligible for the post they indicated that all categories of eligible candidates were considered by composit method of selection for which DPC was not necessary as the same is meant only for appointment by promotion. Sh. Sunil Bery was selected by ^{the} Selection Committee ^{despite} ~~inspite~~ of his lesser length of service as Assistant Director because he had a Degree in Engineering which is a preferable qualification, ⁱⁿ accordance with the Recruitment Rules, while the applicant had a Degree of M.Sc. in Chemistry.

4. We have heard the arguments of the applicant in person and learned counsel for respondents

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and gone through the documents carefully.

In accordance with the Recruitment Rules the method of filling up of the post of Editor is as follows.

"Promotion:

1. Asstt. Director with 5 years service in the Grade.

Transfer/Deputation

1. Asstt. Engineer, CPWD with 5 years service in the Grade.
2. Suitable officers belonging to Central Information Service holding analogous post.

Appointment on short-term contract.

Suitable officers of the Council of Scientific and Industrial Research or Indian Standards Institution holding analogous posts.

(All officers mentioned in categories I, II & III above will be considered together for appointment to the post. If a departmental officer mentioned in category I is considered to be the most suitable for appointment to the post, the post will be treated to have been filled by promotion. (Period of deputation short-term contract ordinarily not exceeding four years)).

The Recruitment Rules further provide that "if a Departmental Promotion Committee exists its composition should be as prescribed for Class I posts in DPC". Reading these two provisions of the Recruitment Rules together we feel that since the selection for the post of Editor has to be made by the composit method of selection including both outsiders as well as departmental candidates, the provision of DPC which is meant exclusively for assessment of departmental officers alone will not apply. Normally in the Recruitment Rules different methods of recruitment are indicated in order of preference. The second method being

adopted if no candidate is available by the first method and the third method is adopted if no candidate is available by ^{the} first and second methods. In such a case adopting all the three methods together by composit selection would have been irregular. Since such an order of preference is not indicated in the Recruitment Rules meant for the post of Editor and it has been clearly stated that officers of all the categories "will be considered together", we see no irregularity in the mode of selection adopted by the respondents.

5. We also accept the argument of the learned counsel for respondents ^{that} since the mode of appointment was by selection the applicant cannot stake his claim of promotion on his length of service which is longer than that of the officer selected. We also accept the plea of the respondents ^{that} since the post held by the applicant and that held by Shri Sunil Bery though in the grade of Assistant Directors were isolated, the question of inter-se seniority for two such isolated posts does not arise. We also accept the plea of the respondents that since in the Recruitment Rules a Degree in Engineering is a preferred qualification the candidate selected holding such a degree can be deemed to be possessing the preferred qualification as compared to ^{than} that of the applicant who is only an M.Sc. in Chemistry.

6. Having accepted all the aforesaid averments of the respondents ^{grant} we have some reservations

about the objectivity of ^{the} Selection Committee which met on 31.7.1985, on a crucial ground. The Selection Committee consisted of only two Members comprising a Member of the UPSC and the Director of the NBO. There is nothing wrong in that as far as it goes— the Director being the Head of the organisation, his advice in the selection process would be of crucial importance ⁱⁿ the matter of selection. He has to deliver the goods. Any Selection Committee would think twice before over-ruling the advice of such a Member of the Committee who happens to be the Head of the organisation in which the post ~~should~~ ^{to} be filled up exists.

7. Unfortunately, in the present case the applicant who was one of the candidates before the Selection Committee, ^{had} irretrievably queered the pitch of his selection unwittingly by making a number of representations and allegations against the Director, NBO during the period prior to the meeting of the Selection Committee on which the same Director sat. For instance, in his representation to the Government dated 14.8.1984 (page 21 of the Paperbook) the applicant had made the following allegations against the Director.

"2.1 It is by now well known and well recorded in the Ministry that I have been representing my case for the last seven years (my last representation dated 20th May, 1980 to the Ministry, also remained un-attended) in respect of harassment, denial of promotion, constant efforts of Director NBO to undo and negative my technical contributions as an Officer of NBO. All along, Director NBO has claimed his 'supremacy' alleging from time to time that 'he cannot be questioned for any wrong he does to me', and he has been successful in continuing his negative role against me. The following examples may illustrate certain glaring facts.

2.1.1. During June-July 1976, Director NBO withdrew my name, earlier recommended, for the post of Technical Secretary for Agreement System Scheme, for which I had been responsible in planning and formulating the assigned work. In fact Director NBO saw to it that I did not benefit from this new activity, which would have otherwise provided a great scope for expansion of overall NBO's technical activities, and finally the Director NBO got this useful Scheme 'sabotaged' and closed for good.

2.1.2 During ASIAD-82, the Central PWD Chief Engineer assigned for Asiad Stadia projects, had sought for technical advice and assistance in respect of the use of a number of plastics products, and as an Officer I offered the desired advise, as per the official procedures. But simultaneously Director NBO displayed his negative role in misinforming CPWD officers. Though CPWD continued to draw on my technical advice and the projects got successfully implemented- but the Director NBO 'got his ego satisfied' - this episode was well recorded in CPWD and the Ministry.

2.1.3 During 1980, Director NBO made all out efforts to stop my last increment, as also withhold my salary, for motives well exposed thereafter.

2.1.4 As an officer of NBO, my advice and contribution in respect of 'suitability of plastics squatting pans' for use by the UNDP Global Project for Low-cost sanitation, and thereafter for use by CPWD in Hospitals, were not only underplayed, but ridicules by Director NBO. Though the new plastics products were approved and accepted for adoption by the Project and CPWD, successfully.

2.2 The Director NBO all along continued to receive patronage and encouragement for his acts of 'destruction and elimination'. Simultaneously, Director NBO has been asked to sit on 'judgment' in respect of my representations made against him, to the Ministry. The result has been 'obvious'.

3.0 Promotion policy in NBO based on norms of 'manipulation, nepotism and favouritism':

3.1 The Ministry of Works & Housing have been aware of the goings-on in NBO, and the Director NBO's achievements thereof in respect of favouring the favoured for 'untimely' promotion (officers who just completed 5-8 years of service in one grade) and denying others the right to even one promotion (after 18-24 years of service in one grade in NBO). Administratively, these acts may be termed as 'lapses' or manipulation, but these continue to be practiced in NBO. The following glaring examples may kindly be perused.

4.4. It does not require any administrative calibre to conclude from the above facts that the Director NBO, in connivance with certain vested interests in NBO (both past and present) and perhaps in the Ministry, have denied the benefit of promotion for the post of Editor to the incumbent in the post of Asstt. Director (Doc), knowing fully well (now for more than one year) that he is due to retire during during Nov.84 after completing 28 years of service in NBO, out of this 24 years as Asstt. Director only.

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7.0 How long negative and destructive attitude of Director NBO to be patronised:

7.1 Under the circumstances illustrated above, I am constrained to send a copy of this representation to i) the Deptt. of Personnel and Administrative Reforms, and ii) U.P.S.C., who may also like to look into the facts relating to the negative role of Director NBO against me, of delays and manipulation in general and in respect of promotion policy followed in NBO particularly for the post of Editor, which awaits selection/clearance through UPSC, for more than one year." (emphasis supplied)

Again on 14.12.1984 (page 26 of the paper book) the applicant expressed his grievance against Director, NBO in the following terms.

"4. Negative and destructive attitude of Director NBO :

I am sorry to bring to your kind notice that Director NBO has adopted against me, his negative and destructive attitude during the last eight years, undoing and ridiculing my technical contributions as an Officer, and sabotaging all useful work in the field directed for national projects. Even, he tried his utmost sabotage my assistance and advise to ASIAD-82 projects, and the then Chief Engr. CPWD, was fully aware of this episode, though I was called upon by DG CPWD to assist them in the implementation of the projects as regards usage of plastics products was concerned.

Determined to 'kill and eliminate' me technically, professionally and personally, the Director NBO continues his sabotaging his activities, and among these include his concerted efforts 'to deny me due promotion'.

5. Denial of promotion to the post of Editor NBO:

The post of Editor in NBO for which I am technically and administratively eligible as per recruitment rules-has been deliberately kept vacant for more than 16 (sixteen) months. Director NBO in connivance with certain vested interest in the Ministry of W & H, has been trying his best to delay and manipulate selection to this post; and thereby denying me the benefit. Though I am the senior-most Assistant Director in NBO, ~~is~~ both in service and experience, and stagnating at the maximum of the pay scale for the last four years.

6. Director NBO as the 'Supreme Authority/My various representations to the Secretary, Ministry of Works and Housing:

During the last years, I have brought my case of 'victimisation' through my various representations, to the Secretary, Min. of W & H. My last two representations dated respectively 14th Aug. 1984, and 14th Sept. 1983 (copies enclosed) stand unrepplied. In fact, whenever I have represented my case to the Secretary, Min. of W & H, the representation is forwarded to the Director NBO for comments, and - invariably, Director with his negative attitude against me, gets the same 'filed', or even does not send his comments to the Secretary." (emphasis supplied)

The applicant persisted in his 'near suicidal' campaign against the Director, NBO in his representation dated 2nd February, 1985 (page 29 of the paper book) in the following terms.

2. Once again I may kindly be permitted to enclose copies of my relevant representations, to illustrate the manipulation, and delays being managed by Director, NBO, in connivance with the Senior officers of the Min. of W & H. in respect of 'promotion/Selection to the post of Editor in NBO-lying vacant for 18 months, to which I am technically and administratively eligible as per recruitment rules-having served NBO now for over 18 years and being the senior-most Asstt. Director.

3. I am sorry to bring to your kind notice that the Min. of W & H continues to be misguided by Director NBO, in respect of the post of Editor, and I continue to be victimised and harassed by Director NBO, because I refuse to 'oblige him by unfair means'.

(emphasis supplied)
These representations were rejected by the Government on 14th June, 1985 with the assurance that his candidature

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for the post of Editor NBO about which he had expressed grave apprehensions because of the prejudice of the Director NBO would be duly considered along with other eligible candidates. Within less than two months of the communication of the rejection of the applicant's representations against ~~the~~ inter-alia ^{the} Director, NBO, the Selection Committee met with the Director NBO as the only other Member besides the Member of the UPSC and rejected the applicant for the post of Editor in preference to another candidate with less than half of his ~~service as~~ Assistant Director.

8. No reasonable person can against the aforesaid factual back-ground in which the selection took place ~~can~~ say with any credibility and honesty that the selection made in the aforesaid circumstances can be said to be totally objective and impartial. It is an established law that the public authorities in the exercise of administrative ^{bound} discretion are ~~bound~~ to act reasonably and fairly. The whole edifice of democratic structure depends upon reasonable and impartial conduct of public authorities on whom the public have reposed their confidence and mandate to act as such, in the general public interest. This obligation which is the 'sine qua non' of civilised governance acquires supreme paramountcy in the process of selection of public servants with impartiality, and without fear and favour, and strictly on ^{as also} merits and in accordance with the prescribed

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Recruitment Rules. We will go to the extent of suggesting that the degree of impartiality and objectivity ⁱⁿ the process of selection of public servants is no less than what is required in judicial proceedings. Just as in judicial matters justice should not only be done but ~~appeared~~ to be done, in case of selection of public servants, the appearance of impartiality is as important as the substance of impartiality. We are afraid that in the present case without going into the substance of impartiality of the selection made by the Selection Committee on 31.7.85, we have no hesitation in stating that the appearance of impartiality was tragically missing. The Director, NBO, against whom the applicant had been making repeated allegations of prejudice and that too in writing and sending these representations to the Government through the Director himself cannot by any stretch of reason be deemed to have taken an impartial view of the applicant's claim of promotion as Editor in the Selection Committee. This Selection Committee as has been stated earlier consisted only of the Director, NBO and a Member of the UPSC. The Director, thus was acting on the Selection Committee both as a representative of the organisation as well as an expert rolled into one. Generally, in such matters of recruitment to professional posts an expert who is an outsider is nominated. Unfortunately, in the present case such an expert from outside was

not on the Committee. The nomination of the Director, NBO in view of the allegations made to the Government by the applicant who was himself a candidate, was to our mind improper. The impropriety is heightened by the fact the Selection Committee had only three eligible candidates to be considered and all the three including the applicant were departmental candidates. The field of choice was so narrow that it would have been beyond human capabilities for the Director, NBO to keep personal relations between him and the three candidates working under him at bay. We feel that it was as unfair to the Director, NBO to be placed on the Selection Committee, as it was unfair to the applicant to be arrayed as one of the three candidates before a Committee of which his 'arch malefactor', the Director NBO was one of the two Members.

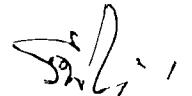
14. In the facts and circumstances, without casting any aspersion on the bona fides of the Selection Committee, in the interest of justice and enhancing public confidence in public appointments,

we set aside the selection made by the Selection Committee which met on 31.7.1985 and also the impugned order of promotion dated 11th October, 1985. Since our order is entirely ~~on~~^{related to} the process of selection and has nothing to do with the comparative merits of the applicant and Shri Sunil Bery who was selected by the Selection Committee, we did not find it necessary to implead Sh. Sunil Bery as one of the respondents. The learned counsel for the respondent also did not either in the written reply or during oral arguments raise this plea. We are also satisfied that even if Shri Bery was impleaded, he would not have been in a position to shed any further light on the process of selection as the facts relating to the process of selection are either admitted or documented and ~~had~~^{have} nothing to do with Shri Bery. It would therefore, have been futile and only ritualistic to get Shri Bery impleaded and restart the proceedings ab initio. At best Shri Berry could be a proper party but not a necessary party in this case where the process of selection has been assailed. In General Manager S.C. Railway Vs A.V.R. Siddhanti 1974 (1) SLR 597, the Supreme Court has held that in such cases non joinder of properties ~~parties~~ ^{parties} cannot be fatal. We further direct that a review Selection Committee comprising Chairman ^a or Member of the UPSC, a representative of ^a

the NBO but excluding the Director, NBO against whom the applicant had represented and including an outside expert should consider the cases of all the candidates who were considered by the Selection Committee on 31.7.1985 and make a proper selection for the post of Editor. The process of selection and appointment should be completed within a period of six months from the date of communication of the order. Till such time as the newly selected candidate is appointed to the post, the present incumbent Shri Sunil Bery will continue to hold the post with all existing benefits. In the circumstances there will be no order as to costs.



(CH. RAMAKRISHNA RAO)
JUDICIAL MEMBER



(S. P. MUKERJI)
ADMINISTRATIVE MEMBER