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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 18/87
T.A. No.

198

DATE OF DECISION August 1, 1988.

Shri G.R. Gupta Petitioner

Shri J.P. Verghese, Advocate for the Petitioner(s)

Versus

Union of India and others Respondent s.


Shri M.L. Verma, Advocate for the Respondent(s)

CORAM :

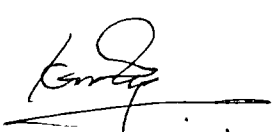
The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, 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.
4. Whether to be circulated to all Benches? No.


(Kaushal Kumar)
Member

1.8.1988.


(K. Madhava Reddy)
Chairman

1.8.1988.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

OA No.18/87.

Date of decision: August 1, 1988.

Shri G.R. Gupta

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Applicant.

Vs.

Union of India and others

...

Respondents.

Coram: Hon'ble Mr. Justice K.Madhava Reddy, Chairman.
Hon'ble Mr. Kaushal Kumar, Member.

For the Applicant Shri J.P.Verghese, Counsel.

For the Respondents Shri M.L. Verma, Counsel.

(Judgment of the Bench delivered by
Hon'ble Mr. Justice K.Madhava Reddy,
Chairman).

On scanning the records placed before us the facts that emerge are that a vacancy of Deputy Director General of Meteorology in the India Meteorological Department arose in the year 1983 and another was anticipated in 1984 and arose in 1984. In accordance with the seniority list, the following officers were eligible to be considered for appointment to those posts by way of promotion:-

- (1) Shri N. Seshadri.
- (2) Dr. N. S. Bhaskara Rao.
- (3) Shri C.E. J. Daniel.
- (4) Shri G.R. Gupta (Applicant herein).
- (5) Shri S.V. Datar.
- (6) Dr. B. Padmanabhamurty - since retired voluntarily.
- (7) Shri R.C. Maheshwari.
- (8) Shri S.D.S. Abbi

A requisition was sent by the office of the Director



General of Meteorology, India Meteorological Department to the Union Public Service Commission on 1.12.1983 stating that one post of Deputy Director General has fallen vacant and has to be filled in and requested for the concurrence of the Commission to fill up the said post by way of promotion and arrange for assessment of the eligible candidates at the earliest. Another requisition was sent to the U.P.S.C. on 13.1.1984 stating that in addition to the existing vacancies one is anticipated in 1984 and as two posts are to be filled in by way of promotion, the above-named eight eligible candidates may be considered and a panel drawn up.

In accordance with the said requisition, the Departmental Promotion Committee met on 17th July, 1984 and taking into account that two vacancies have to be filled in, proceeded to determine the zone of consideration at four times the number of vacancies and considered the above-named eight persons for promotion. Out of the 8 persons considered for promotion, all excepting the applicant were assessed as fit for promotion and a panel of seven was drawn up excluding the applicant. The vacancies then available were only two and the applicant was not appointed. Subsequently, three more vacancies, one in 1985 and two in 1986 arose and 12 candidates including the applicant were considered by the Union



Public Service Commission. The Union Public Service Commission recommended the names of 7 persons for the vacancies of 1985 and the names of Dr. H.N. Srivastava, Shri S. Raghavan and Shri U.V. Gopala Rao for the vacancies of 1986. Once again the applicant was not recommended for appointment to any of these vacancies. In the result, the applicant was not appointed, though senior to Shri S.V.Datar and Dr. B. Padmanabhamurty (having already taken voluntary retirement), Shri R.C. Maheshwari was appointed to the said post. It is this action of the respondents that is assailed under Section 19 of the Administrative Tribunals Act, 1985 inter alia on the grounds namely that respondents erred in not holding the Departmental Promotion Committee every year and in clubbing the vacancies that arose in 1983 and 1984 and considering 8 candidates and drawing up a panel of 7 persons. He also attacks the assessment made by the D.P.C. on the ground that several uncommunicated remarks were retained in the Confidential Reports sent to the Union Public Service Commission for assessing the fitness of the applicant. This action has resulted in grave injustice to the applicant. In assessing the fitness of the candidates, uncommunicated adverse remarks could not have been taken into account; they should have been totally eschewed.

It is a common ground that the vacancies



of 1983 and 1984 were clubbed together and the Departmental Promotion Committee which met in 1984 determined the vacancies to be two and the zone of consideration to be four times the number of vacancies at 8. Actually as per the standing instructions, the Departmental Promotion Committee must meet every year and determine the zone of consideration having regard to the vacancies existing and anticipated during that year. If the Departmental Promotion Committee could not meet and not having met every year, meets after a lapse of more than a year or two, it would still have to draw up separate panels for each year for the vacancies that arose in that year. The zone of consideration for each of these years has to be determined according to the vacancies arising in that year and ^{it has to} consider such of the officers who were eligible and fell within the zone of consideration for the vacancies of that year. The several memoranda governing the procedure to be adopted by Departmental Promotion Committee for drawing up panels of candidates found fit and suitable for promotion to the ~~posts for~~ vacancies arising in different years were considered at length by a Bench of this Tribunal of which one of us (Justice Madhava Reddy, Chairman) was a party in S.N.SHARMA & OTHERS Vs. UNION OF INDIA & OTHERS (T-442/85) vide judgment dated 13.11.1987 wherein

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it was held that the D.P.C. ought to have met annually for drawing up a select list to fill in the vacancies that were expected to arise in the succeeding year after considering such of the officers who were eligible to be considered under the Rules for the respective years.

This Bench finds itself in entire agreement with the said view. The respondents in clubbing the vacancies of 1983 and 1984 and considering 8 candidates instead of 5 for each of the vacancies that respectively arose in 1983 and 1984, committed an error of law and procedure which goes to the root of the matter. This has resulted in the applicant/^{/being} considered along with the persons who were not eligible to be considered during that year. The list drawn up by the respondents following such an unsustainable procedure could not be acted upon.

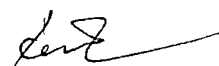
The panels drawn up cannot be sustained for yet another reason too. Instead of recommending the name of a single person for the single vacancy that arose in 1983 and the name of one other candidate for the vacancy that arose in 1984, a panel of 7 persons was drawn up after considering eight officers. Actually for each vacancy, five eligible candidates in the order of seniority which constituted the zone of consideration should have been considered and

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one name recommended. A panel in which names of seven officers were included was not warranted by any instructions. Such a panel is not valid.

The DPC, however, adopted the correct procedure when it met in 1986, drew up a panel in which only one name was included for the single vacancy that arose in 1985 and drew up a panel of three names for the three vacancies that arose in 1986.

Another grievance which the applicant ventilates in this application and seeks redressal is that several adverse remarks which were not communicated to him were retained in his Confidential Reports. We have gone through the Confidential Reports. The Confidential Reports of 1979 to 1984 were considered in which there were some adverse remarks. Admittedly, these remarks were not communicated to the applicant. First of all, uncommunicated adverse remarks cannot be taken into account for assessing the fitness/merit of the officer who is eligible to be considered for promotion. In OA 460/86 (Shri Dhanajaya Kumar Mishra Vs. Union of India) by judgment dated 14.7.1986 this Bench held that uncommunicated adverse remarks cannot be taken into account in assessing the merits of an eligible candidate for promotion and cannot be put against any candidate in the matter of selection and appointment. The assessment of the applicant was thus based on material which should not



have been taken into account. The impugned panel suffers from this defect as well.

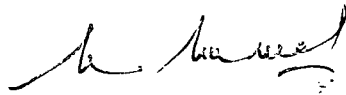
The DPC proceedings of 17.7.1984 and 1986 are, therefore, quashed. A review DPC shall be held for drawing up a panel by considering the applicant and others falling within the zone of consideration for the single vacancy that arose in 1983, that is, only 5 candidates in the order of seniority shall be considered. Likewise, a panel for 1984 shall be drawn up. In drawing up this panel, the adverse remarks against the candidates, if any, shall be wholly excluded if they have not been communicated to them and also if having been communicated, any representation was the same made and/remains undisposed off. As there was only one vacancy in each of these years, only one name shall be included therein. So also, for the single vacancy of 1985, the name of one officer shall be included. In the year 1986, there were three vacancies, and hence the zone of consideration would be 10 and a panel of 3 has to be drawn up.

This application is accordingly allowed. The directions as stated above shall issue and a review DPC shall be held in the light of the above directions. The applicant, if included in the panel for any of three years, shall be promoted with effect from the date his junior Shri S.V.Datar was promoted. He shall also be entitled to all consequential benefits of salary and

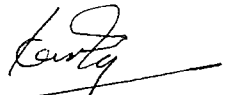
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further promotion in accordance with the rules. There shall be no order as to costs.

This judgment shall be implemented within three months of its receipt by the respondents.



(Kaushal Kumar)
Member
1.8.1988.



(K. Madhava Reddy)
Chairman
1.8.1988.