

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1885/87 198
T.A. No.

DATE OF DECISION 21.12.90

Varinder Kumar Sahdev Petitioner

E.X. Joseph Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

P.H. Ramchandani Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.C. Jain, Administrative Member.

The Hon'ble Mr. J.P. Sharma, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *y3*
2. To be referred to the Reporter or not? *y3*
3. Whether their Lordships wish to see the fair copy of the Judgement? *m*
4. Whether it needs to be circulated to other Benches of the Tribunal? *m*

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

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

P.C. Jain
(P.C. JAIN)
MEMBER (A)

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Central Administrative Tribunal
Principal Bench: New Delhi.

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Regn.No.OA-1885/1987

Date of Decision: 21.12.90.

Shri Varinder Kumar Sahdev,

... Applicant.

Vs.

Union of India & Ors.

... Respondents.

For the applicant

... Shri E.X.Joseph,
Advocate.

For the respondents

... Shri P.H.Ramchandani,
Advocate.

CORAM: Hon'ble Shri P.C. Jain, Member(Administrative)
Hon'ble Snri J.P. Sharma, Member(Judicial)

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

The applicant, Deputy Office Superintendent, Level I, Customs and Central Excise, Central Excise Collectorate, New Delhi filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the letters dated 24th June, 1987 (Annexure A-7), 24th August, 1987, ~~and~~ 19th October, 1987 (Annexure A-11) and Confidential D.O. letter dated 25th June, 1985 (Annexure A-2).

2. The applicant claimed the following reliefs:

- a) to quash the orders contained in letter dated 24th June, 1987 with the direction to declare the applicant to be promoted as Inspector(Ordinary Grade) with effect from the date on which promotions were made on the basis of selection made by the D.P.C. held in 1979.
- b) Direction to the respondents to grant the applicant all consequential benefits by way of arrears of pay, seniority in the grade of Inspector(Ordinary Grade) and all such due benefits arising from his promotion on the basis of D.P.C. held in the year 1979.

3. The applicant joined as a Stenographer with the respondent, Central Board of Excise and Customs. He was promoted to Selection Grade of Stenographer on 8.5.1978. The recruitment to the post of Inspector (Ordinary Grade) is done on the basis of Recruitment Rules(Annexure A-1) which prescribe that 75% of the posts are to be filled by direct recruitment and 25% by promotion.

Against 25% by promotion, the promotion is made by selection amongst the ⁽ⁱ⁾ U.D.Cs. with 5 years service, (ii) U.D.Cs. with 13 years of total service as U.D.C., and L.D.C., taken together subject to the condition that they should have put in a minimum of two years service in the grade of U.D.C. (iii) Stenographers (Senior Grade) with two years service. The applicant was eligible in the year 1979 to be considered as a Departmental candidate for promotion to the post of Inspector (Ordinary Grade). The applicant qualified the examination for Inspector (Ordinary Grade) and also appeared in the Physical test and interview. The applicant was not selected in 1979¹⁹⁸⁰ and also in 1982. The applicant had another channel of promotion as Deputy Office Superintendent Level I. The applicant also cleared that test and was declared successful and joined on that post of 23rd August, 1982. The applicant was subsequently selected as Auditor in C.R. (Audit). By adopting this channel of promotion, the applicant could not any more be considered for promotion in the departmental quota as Inspector (Ordinary Grade) carrying a pay scale of Rs.425-300 (pre revised). When the applicant was not selected then he was given to understand that he was not found fit by the DPC so he was not selected to the grade of Inspector (Ordinary Grade). It is because of this, the applicant took chance as Ministerial Supervisory Officer i.e. ^{for} the post of Deputy Office Superintendent, Level I in the Scale of Rs.550-750/-. The applicant took that examination of Deputy Office Superintendent in June, 1981. The Deputy Office Superintendent Level I and Level II ~~xxx~~ are treated in Central Excise (Audit) as Auditor and was required to conduct the audit of Central Excise records on various Central Excise duty paying units coming in their jurisdiction. The applicant ^{stated that} while working in Audit in Central Excise (Audit) and raised an audit objection on 14/15th January, 1985/ this was

the main cause that the respondents and their subordinates harboured prejudicial attitude and illwill against the applicant. However, this controversy is not material as it relates to a period after 1985. The applicant has alleged in the application that he was transferred as Deputy Office Superintendent, Level III but he made representations to the authorities and so he was again shifted to Audit Branch and retained there till 2nd November, 1986. In June, 1985 (Annexure-2), the applicant received a Confidential D.O. that the Annual Confidential Report for the period 1.1.1979 to 31.12.1979 and 1.1.1983 to 31.12.1983 has not been written so far, so certain information was sought from the applicant. The applicant submitted the representation (Annexure A-3) dated 1st July, 1985. In this representation the applicant, for the first time, raised the objection that his non-selection as Inspector (Ordinary Grade) in the year 1979, 80 and 1982 has been because there were no A.C.R. available for the year 1979 and 1983 and so the Departmental Promotion Committee held in 1980 did not recommend the applicant's case and as such now he be promoted as Inspector (Ordinary Grade). The applicant sent another reminder on 9th January, 1987 (Annexure A-4), 20th February, 1987 (Annexure A-5), 9th April, 1987 (Annexure A-6). By the letter dated 24th June, 1987 (Annexure A-7), the applicant was informed that the non-availability of A.C.R. for the year 1979 has nothing to do with his non-selection to the grade of Inspector (Ordinary Grade) as he was found physically unfit by the DPC held in 1979 and 1980 and unfit by DPC in 1982. The applicant, it was informed remained absent/in the year 1981. The applicant has ^{obtained} certain certificates of medical examination of the year 1987 which has sent to the respondents with his representation dated 3rd July, 1987. The applicant continued to send certain more representations and ultimately by the letter dated 19.10.1987 (Annexure A-11).

The representations had been rejected by the Board by letter dated 24th August, 1987 for the reasons intimated to him in the letter dated 23rd June, 1987. Aggrieved by this, the applicant has filed this application for the aforementioned reliefs.

4. The respondents have contested the application taking the objection that the applicant was, for the first time, not eligible for promotion in 1979 in the Departmental quota of the Inspector (Ordinary Grade). The procedure for selection is laid down in the Board's letter dated 18.8.1975 (Annexure R-1). This letter lays down that the CCR of the officer should not be seen by the Members of the Committee before or along with the interview and they should record their assessment of the candidate, (whether they are fit or unfit),

The Committee should see service record only of those officers whom they consider suitable for appointment as Inspector/Preventive Officer Grade I/Examiner or Preventive Inspector in the Narcotics Department after the interview proceedings are over and grade them as 'outstanding', 'very good' and 'good' on the basis of their overall record of service as in the case of their promotion to 'selection' posts on the ministerial side. Thus, the submission of the respondents is that the ACR of 1979 was immaterial. The respondents have also pointed out that physically the applicant was not fit as his height was short by 1/4" and his chest expansion was short by 3/4" than the laid down standards. He appeared before the D.P.C. and was assessed not yet fit. There is also a remark, namely, 'physically unfit' against the applicant's name made by the office. The applicant was again considered in 1980 and at the interview stage he was again found not fit and also a remark from the office that 'physically not fit'. In the year 1981, the applicant did not appear in the interview. The applicant's name again came up for consideration in the year 1982 and this time also he was again assessed as not fit. In the meantime, the applicant's name was considered in the ministerial cadre for the post of Deputy Office Superintendent.

Level I where he was selected and joined on 23.8.1982. The respondents have denied any malafide in the selection procedure or that the respondents harboured any prejudice against the applicant. The application, according to the respondents, is devoid of any merit and is liable to be dismissed. As regards the transfer from the audit side, ^{to the} ministerial side, the respondents have stated that the transfer was on administrative ground. The ACR for the year 1.1.1979 to 31.12.1979 and 1.1.83 to 31.12.1983 were not available in the dossiers of the applicant so the requisite information was called from the applicant to complete the ACRs, i.e. service record.

5. In the rejoinder, the applicant has stated that the Board's letter dated 18.8.1975 has made a change in the mode of selection has been superseded by the instructions contained in the C.M. issued by the Department of Personnel and Administrative Reforms dated 30th December, 1976 (Annexure A-14). Thus, the procedure adopted for selection as per board's letter (Annexure R-1) is totally illegal and against the above quoted letter of Ministry of Personnel and Administrative Reforms (Annexure A-14). The applicant has also assailed the averment in the reply filed by the respondents regarding the applicant being physically unfit. The applicant in the rejoinder stated that having been allowed by the Departmental Officers to appear before the member of the DPC for his personal interview clearly proves that he had fulfilled prior requirements, namely, passing of the ~~xxx~~ written test and being declared fit in the physical standard test. The applicant has also assailed that the height being shown $\frac{1}{4}$ " short and his chest expansion was short by $\frac{3}{4}$ " is not correct as the service record itself shows that the height of the applicant is 5'3" ^{how can} and the height of the applicant again become short at the time of his test for promotion? Further in Board's letter of 1962 it has been decided that the fractions of less than half an inch in measuring the physical standards should not be taken into account (Annexure A-15).

6. We have heard the learned counsel for the parties at length and have gone through the record of the case. The applicant has claimed the relief of promotion as Inspector (Ordinary Grade) as a result of the D.P.C. held in 1979, 1980 and 1982. As regards the D.P.C. of 1979, the A.C.R. of the applicant was very much there, from 1.1.78 to 31.12.1978. Departmental file shows that the applicant was considered and was not found fit. The DPC was held in the month of May, 1979. The DPC recommended that the applicant is not fit and also was not physically fit. In the DPC of 1980 held on 6.8.1980, the DPC made an endorsement against the name of the applicant that he is not yet fit. There is an official note that he is also not physically fit. In the DPC of 1981 the applicant absented himself. The DPC of 1982 was held on 15th March, 1982 and the assessment of the DPC for the applicant was that he was not fit. Thus, the applicant should have come for redressal of his grievance ^{or 1982} sometimes in 1980 and 1981 but he waited for all these years, and ^{when} only in June, 1985, he was informed to give certain particulars about his non-availability of ACR for the year 1979 and 1983 then the applicant developed an idea that he was not considered because of non-availability of ACR. The proceedings of the DPC have been perused thoroughly. The respondents have clearly stated that the applicant was considered by the DPC. It is not for the court to decide at this stage whether the applicant has been rejected rightly or wrongly. The only evidence the applicant wants to develop for his non-selection as Inspector (Ordinary Grade) is that the ACR of 1979 and 83 were not available. ACR for the year 1983 is immaterial. Regarding ACR of 1979, the applicant was also not found fit in subsequent year i.e. 1982 ~~he~~ was considered again by the DPC; So no malafide can be attached at this stage that the applicant was not selected because of incomplete ACRs for the year 1979.

7. The relief claimed by the applicant also is barred by limitation and cannot be considered after such a long period. Section 21 of the Administrative Tribunal Act, 1985 sub-Clause 2(b) prescribes the maximum period upto which the Tribunal can grant relief. The same is reproduced below:

"the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates."

8. In *A.S. Makashi & Ors. Vs. I.M. Menon and Ors.* (1982) 2 SCR page 69, the Hon'ble Supreme observed at page 100 as follows:

"In these circumstances, we consider that the High Court was wrong in over-ruling the preliminary objection raised by the respondents before it, that the writ petition should be dismissed on the preliminary ground of delay and laches, inasmuch as it seeks to disrupt the vested rights regarding the seniority, rank and promotions which had accrued to a large number of respondents during the period of eight years that had intervened between the passing of the impugned Resolution and the institution of the writ petition. We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 22, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition in so far as it related to the prayer for quashing the said Government Resolution should have been dismissed."

9. The matter has also been considered in *K.R. Mudgal Vs. R.P. Singh*, (1) 1987 ATLT page 129, where the Hon'ble Supreme Court laid down that the matters like one's position in the seniority list after having been settled for once should not be allowed to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet.

10. The matter has also been considered in a number of judgement* by this Tribunal.

*1. 1986 ATR (1) P.20, *R.N. Singhal Vs. Union of India*
2. 1987(1) ATR page 292, *Bimla Mukerji Vs. Union of India*
3. 1988(2) ATLT page 124, *Dr. K. Padmawati Vs. Union of India*

11. Having given careful consideration, it is made out from the own assertion of the applicant that he was considered by the D.P.C. but was rejected being physically unfit as well as not yet fit. Though, regarding physical unfit the applicant has put on record evidence to show that he was physically fit but regarding the other aspects of assessment by the DPC that he was not yet fit is a matter over which the Tribunal cannot exercise the appellate jurisdiction. Non-availability of AGR for the year 1979 by itself cannot be taken as a ground to give any benefit to the applicant after 10 years when he had already switched to another channel of promotion as Deputy Office Superintendent, Level I in 1982.

12. The learned counsel for the applicant also pressed that if the applicant was not physically fit, why he was put before the DPC for interview. In fact, even if it is taken for granted that the applicant was physically fit then the consideration on which the applicant has not been selected are evident in the assessment by the DPC in all these years 1979, 1980 and 1982 and it cannot be said that the DPC was prejudiced in any manner against the applicant. No malafide has been alleged against the DPC. The learned counsel for the applicant has referred to Ajay Hasia Vs. Khalid Mujib, AIR 1981 SC page 487. The constitutional Bench considered that the viva voce examination is a permissible test for selection of candidates for promotion to a College and it was held that either for admission to the college or even in the matter of public employment, the oral interview test as presently held should ^{not} be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high dignity, calibre and qualification. The above authority does not at all help the applicant as no malice

in fact or any law has been alleged against any of the members of the DPC.

13. Having considered all the facts and circumstances of the case, the applicant cannot get the reliefs prayed for in the application and the application is devoid of merit and is dismissed leaving the parties to bear their own costs.

Jomana

(J.P. Sharma)
Member (J)

Recd 21/12/90

(P.C. Jain)
Member (A)