

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

REGN NO. O.A. 1890/87

DATE OF DECISION: 12.1.1990

Shri C.P. Ratra Applicant.

Versus

Union of India & Others Respondents.

For the applicant Applicant in person.

For the Respondents Shri M.L. Verma, counsel.
Mrs Raj Km. Chopra, counsel.

CCRAM: The Hon'ble Mr. E.C. Mathur, Vice-Chairman(A).
The Hon'ble Mr. J.P. Sharma, Member(J).

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Mr. J.P. Sharma, Member(J))

The applicant who is working as Assistant Director (Plastics) in National Building Organisation assailed the promotion to the post of Editor in O.A. 780/86, which was decided on 14.9.87 by the following order:-

"In the facts and circumstances, without casting any aspersion on the bonafides 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 31.7.85 and also the impugned order of promotion dated 11th October, 1985. Since our order is entirely 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 Shri 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 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 Bery 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.

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Siddharti 1974 (1) SLR 597, the Supreme Court has held that in such cases non joinder of proper parties cannot be fatal. We further direct that a review Selection Committee comprising Chairman or a Member of the UPSC, a representative of the NED but excluding the Director, NED 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 31.7.85 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."

The applicant has desired the relief in para 9 of the application for restoration of his legal claim for promotion to the isolated post of Editor in respect of his eligibility, seniority, technical experience and fitness in tune with the recruitment rules and in accordance with the Hon'ble Tribunal's Judgement/Direction vide his earlier case No. OA 780/86 dated 14.9.87.

The applicant appeared in person and was heard at length. At the outset of the record, that the applicant challenged the selection by D.P.C. held on 31.7.85 in which the respondent Shri Sunil Bery was selected by promotion as Editor in National Building Organisation. By the order of that Bench, the Selection by D.P.C. on 31.7.85 was set aside and by the above quoted order and direction it was directed that a fresh selection shall be made of the Editor. The annexure attached to the application at page 9 (Annexure I) shows that the field of eligibility for the post of Editor is by promotion of Assistant Director, N.B.O, with

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4 years service in the grade (ii) Transfer/Deputation, Asstt. Engineer, CPWD, with 5 years service in the grade, suitable officer belonging to Central Information Service holding analogous post (iii) appointment on short term contract of suitable officers of the C.S.I.R. of I.S.I. holding analogous posts. All officers mentioned in the categories (i) to (iii) will be considered together for appointment to the post. If a departmental officer mentioned in category (i) is considered for the post, the post will be treated to have been filled by promotion.

The case of the applicant is that the selection by of Shri Sunil Bery who was selected/promotion in the D.P.C. meeting on 31.7.1985 has been quashed and, therefore, another D.P.C. should have met and selected Editor on the basis of the recruitment rules, but instead of following the rules or the instructions of the Tribunal, the respondents manipulated to regularise the appointment of Shri Sunil Bery to the same post. He said that according to the instructions issued by the Department of Personnel & Administrative Reforms in Office Memorandum No. 22012/1/77-Estt.(D) dated the 31st January, 1981, dealing with the Departmental Promotion Committees, it has been clearly stated that in the case of promotion no interviews should be held unless it has been specifically provided for in the recruitment rules for the post/services. Accordingly, wherever promotions are to be made by the method of selection by the DPC and administrative Ministries desire

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that interview should form part of the selection process, necessary provisions should be made in the recruitment rules for the posts in consultation with the Department of Personnel and the UPSC. The applicant stressed that according to the rules, mentioned in Annexure I, where the post of Editor is to be filled by promotion of Asstt. Director of the NBC, there is no provision for interview and it is prohibited by the Office Memorandum of the Department of Personnel dated 31.1.1981. By resorting to the method of interview, the respondents have violated the rules with a view to again disqualify the applicant and favour Shri Sunil Berry who, in fact, was again selected by the DPC in its subsequent meeting in December, 1987.

The applicant has challenged the mode and manner of selection undergone by the DPC alleging that it has not been in consonance with ^{the} directions in the judgment of the Tribunal in OA 780/86. In that judgment the Tribunal had directed that there should be one outside expert whereas the respondents called two experts on the DPC. The applicant has also made allegations that the Member of the UPSC who presided over the interview was biased against him as he refused to even have a look at the bundle of publications brought by the applicant at the time of his interview saying that it was not an interview but a personal talk. He said that this

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procedure of a 'personal talk' has not been envisaged in the relevant rules or in the directions given by the Tribunal.

It has been conceded by both the parties that the order and direction of the Tribunal in OA 780/86 has to be complied with. What the applicant desires is that selection should be by the D.P.C. on the same pattern as given out in Annexure-1 coupled with the direction of the Tribunal dated 14.9.87 of OA 780/86.

The learned counsel for the respondents have placed reliance on a number of authorities to prove the point that the Tribunal cannot enter into merit of selection which is the sole domain of the Selection Committee or the D.P.C. provided the rules framed are adhered to. It was pointed out by both the learned counsel for the respondents that the procedure was decided by the earlier orders of the Tribunal. The original case cannot be reopened at this stage and the order of the Tribunal specifically directed that "a Review Selection Committee comprising Chairman or a Member of the UPSC, a representative of the NBO, but excluding the Director NBO, and including an outside expert, should consider the cases of all the candidates who were considered by the Selection Committee on 31.7.85, and make a proper selection for the post of Editor". It was pointed out that according to Rules

(Annexure 1 to the application), all officers mentioned in Categories I to III would be considered together for appointment to the post and since the post of the Editor is not in direct line of promotion for any particular category, even if departmental officers are considered, to make a proper selection it would be necessary to interview the candidates to adjudge their suitability for the post of Editor. Merely because outside persons were not called for interview, though eligible, the criteria adopted by the UPSC cannot be illegal.

It was also said that there is ~~not~~^{much} distinction between a personal talk or an interview. The Selection Committee presided over by a Member of the UPSC met the candidates personally in order to evaluate their suitability and by no stress of imagination it can be said that a Member of the UPSC or outside experts could have been biased against the applicant or any other candidate.

The Tribunal had directed the Director of the NBO to be excluded from the Selection Committee and this order was complied with. Merely because two outside experts were called instead of one, the selection cannot be termed as void because there is no allegation that anyone of these outside experts had any bias against the applicant. In fact, the selection by the DPC assisted by two outside experts should even be more reliable.

It was also stated by the counsel for the
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respondents that the applicant actually appeared
before the UPSC, he is now estopped from claiming that
the DPC was biased against him. In this connection, the
case of Anoop Singh Vs. State of Punjab 1983 (1) SLJ 532
was cited. To this the applicant has replied that he had
gone to the interview under protest pointing out that he
would not get justice.

We have considered the pleadings and the arguments
on both sides. This Tribunal had ordered a fresh selection
and this has been done by the Selection Committee. It is
not really very material whether it is termed as DPC or
a Selection Committee as long as the persons comprising the
Committee are according to rules. We do not think that
by having two experts in the Committee, the proceedings
of the Committee have become invalid. Similarly, merely
because the applicant had shown some reservations about
the interview does not by itself make out a case for making
a recommendation for his promotion which is the sole
domain of the competent authority.

During arguments a statement was made by the applicant
at the Bar that Shri Sunil Bery who was appointed as
Editor on the basis of the recommendations made by the
Selection Committee ^{and} has resigned, the post of the Editor
is still vacant and that he should be promoted to this post.
If the post is vacant, it has only to be filled by a
fresh selection according to the extant rules at the time

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the vacancy arose. Without disturbing the selection made in December 1987 earlier, the respondents may take steps to fill up the vacancy caused by the resignation of Shri Bery and also consider the case of the applicant for promotion to the post of Editor along with other candidates according to rules as mentioned earlier. The application is disposed of accordingly. There will be no orders as to costs.

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

12.1.1990.

B. C. Mathur
(B. C. MATHUR)
VICE-CHAIRMAN.
12.1.1990.