

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 411/1987

Date of decision: 02.09.1992.

Shri B.K. Pandey

...Petitioner

Versus

Union of India & Others

...Respondents

Coram :-

The Hon'ble Mr. I.K. Rasgotra, Administrative Member
The Hon'ble Mr. J.P. Sharma, Judicial Member

For the petitioner Shri T.C. Aggarwal, Counsel.

For the respondents Shri P.P. Khurana, Counsel.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra, Member (A))

The petitioner, who was working in the Civil Construction Wing of the All India Radio as Junior Engineer w.e.f. 10.2.1975 was promoted on adhoc basis as Assistant Engineer w.e.f. 11.3.1985. It is his claim that he was promoted on the basis of a Departmental Promotion Committee (DPC for short) held during November, 1984. He was subsequently reverted vide order dated 20.11.1986 with immediate effect. The reversion is the grievance that constitutes the subject matter of this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985. The reliefs prayed for by the petitioner are:-

- i) That the impugned order of reversion dated 20.11.1986 be set aside and he should be deemed to have continued as Assistant Engineer w.e.f. 20.11.1986 with consequential benefits.
- ii) The adverse/critical remarks in the A.C.R. for the year 1985-86 be declared as based on caprice and malice and accordingly be expunged.

The learned counsel for the petitioner, Shri T.C. Aggarwal submitted that the petitioner was given adverse remarks in his annual confidential report for

the periods 1.4.1985 to 17.11.1985 and 18.11.1985 to 13.1.1986. These adverse remarks were communicated to the petitioner on 23.9.1986 and 25.9.1986 respectively for the two periods, referred to above. The petitioner represented against these adverse remarks on 19.11.1986 to the Chief Engineer, All India Radio which representation was rejected after due consideration by the said authority on 7.5.1987. The learned counsel firstly questioned the reversion of the petitioner, as, according to him, he was promoted after holding a DPC in November, 1984. Secondly, he assails his reversion, as the DPC held on 24.10.1986 took into consideration the adverse remarks when his representation was pending before the competent authority. The next point agitated by the learned counsel for the petitioner is that the Initiating Officer who wrote the reports for the said periods on the petitioner was not competent to do so, as he was holding only the current duties of the higher post. Finally he submitted that no report for the period 18.11.1985 to 13.1.1986 was due to be written, as the said period is less than 3 months.

2. The stand of the respondents on the other hand, as explained by Shri P.P. Khurana, learned counsel for the respondents is that the petitioner was appointed initially on adhoc basis as Assistant Engineer against the vacancy of a direct recruit. The induction at the level

of Assistant Engineer is 50% by promotion and 50% by direct recruitment. As the promotion quota was fully exhausted and the direct recruits were yet to come, the petitioner was promoted against a vacancy which fell in the direct recruit quota on purely adhoc basis. He was promoted on 11.3.1985 and reverted on 20.11.1986, after a direct recruit became available. In view of these facts the petitioner has no ground to have any grievance. Regarding the second point that report has been written in two parts, it has been explained that both the parts relate to the same year and the Reviewing Officer in both the cases is the Superintending Engineer. The point that the second part of the report is for less than three months is not, therefore, very material. As such, the process of initiating and reviewing of the confidential report cannot be found fault with.

3. We have considered the rival contentions carefully. As far as the first point regarding reversion is concerned, the petitioner admittedly was promoted on adhoc basis. If he was promoted in consequence of holding of a DPC in November, 1984, as claimed by him, the question of his being promoted on adhoc basis would not have ordinarily arisen. He was considered by the DPC for regular promotion only on 24.10.1986. In view

of these facts, we are not inclined to interfere with the promotion and reversion of the petitioner.

As far as the adverse remarks are concerned, we also find little substance in the argument that one of the parts of the reports relates to less than three months period. The first report covers the period from 1.4.1985 to 17.11.1985. Thereafter there was a change of the reporting officer and that gave rise to the writing of separate report for the second period which was initiated by the new incumbent of the post. Both the parts of the ACR pertain to the same year viz. 1.4.1985 to 13.1.1986 and they have been reviewed by the same Superintending Engineer, whose competency is not disputed. We are also not persuaded to accept that the officer who initiated the report was not competent to do so, as the said initiating officer was holding the additional charge of Executive Engineer and not the current charge. Our attention was drawn to respondents' instructions that the officers looking after the current charge of the higher posts cannot write or review the ACR. These conditions do not obtain in the present case and, therefore, we are not inclined to interfere with this aspect of the petition also.

4. The next point urged by the learned counsel for the petitioner is that the DPC considered his adverse ACRs on 24.10.1986 when his representation against the said adverse reports was rejected only

on 7.5.1987. This issue has been raised by the petitioner in the grounds vide paragraph 9.5 of the O.A. The respondents say that in the facts of the case this point has not been stated and nor any relief been claimed against the proceedings of the DPC. As such, this aspect is not part of the pleadings.

Keeping in view the totality of the circumstances in which the reversion has taken place, we are of the opinion that the ground that the adverse reports were taken into consideration by the DPC held on 24.10.1986 is not very germane to the main issue projected before us viz. the reversion of the petitioner. The petitioner has not challenged the proceedings of the DPC nor has claimed any relief on this ground specifically pointing out that the proceedings of the DPC were vitiated on account of the consideration of the adverse remarks in the ACR when a representation against them was pending. The petitioner was promoted against a direct recruit vacancy on adhoc basis and he was reverted on the ground that a direct recruit has become available to replace him. Even if the petitioner had been found suitable for appointment he could not have been appointed against the post which he was holding. He could have been found a berth in the promotion quota only and not in the direct recruit quota.

In the above facts and circumstances of the case, we do not find any merit in the O.A. and the same is dismissed. No costs.

J.P. Sharma
(J.P. Sharma)

Member(J)

I.K. Rasgotra
(I.K. Rasgotra)

Member(A)

September 2, 1992.

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