

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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Date of Decision: 23.4.93

OA 823/87

Dr. D.N. TUTOO

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).

HON'BLE SHRI S.R. ADIGE, MEMBER (A).

For the Applicant

... SH. ASHOK AGGARWAL.

For the Respondents

... SH. P.P. KHURANA.

J_U_D_G_E_M_E_N_T_

(DELIVERED BY HON'BLR SHRI S.R. ADIGE, MEMBER (A).)

This is an application dt. 8.6.87 u/s 19 of the Administrative Tribunals Act, 1985, filed by Shri D.N. Tutoo, Scientist, Defence Institute of Psychological Research, DRDO, New Delhi, praying for promotion from the grade of Scientist 'D' to 'E' w.e.f. 1.7.85, with all consequential benefits.

2. The applicant's case is that after holding various appointments at the level of Senior Scientific Officer-II and Senior Scientific Officer-I, he was appointed as Scientist 'D' in the DRDO in July, 1981. The D.R.D. Service Rules, 1969 regulate the service conditions of the officers in that organisation and the selection and appointment of the applicant as Scientist 'D' in July, 1981 was made under those rules.

Rule 8 of the above said Rules, which regulates the promotion from the one grade to the next higher grade, lays down that Assessment Board will evaluate the suitability of officers for promotion, and this Assessment Board is convened at suitable intervals. According to the scheme of promotion, officers promoted from one grade to the next higher grade are given in-situ promotion and for this purpose the required number of posts are upgraded. Officers who have completed five years regular service in the grade are eligible for promotion to the next higher grade provided that those who have rendered three years regular service in the grade and all the reports earned by them during this period are 'Outstanding', and those who have rendered four years regular service in the grade and all the reports earned by them during this period are 'Very Good' shall also be eligible for promotion. The applicant contends that having been hold the post of Scientist 'D' since July, 1981, he was looking forward for his promotion to the grade of Scientist 'E'. He admits that he did not satisfy the criteria of three years 'Outstanding' record and hence was not called before the Assessment Board after he completed three years service, but having satisfied the relevant condition of four years 'Very Good' reports, he was called for interview by the Assessment Board in the following year. The results of these selections (made effective from 1.7.85) were declared in June, 1986, but according to the applicant, the Assessment Board illegally

adopted certain criteria for promotions, depriving the applicant of his promotion that year. Under sub-rule (c) of Rule 8(2) of the DRDS Rules, the Assessment Board is required to take into consideration the qualifications, performance, merit, seniority etc. of the candidates, and the selection is to be made on the basis of the Confidential reports and interview. The Rules are silent as regards the proportion in which the variables stated above will count for determining the final merit, and according to the applicant, the illegality were committed by giving undue weightage to the interview, inasmuch as 70% marks were set apart from the same. According to the applicant, this far exceeds the 25% marks for interview which have been held to be reasonable by the Hon'ble Supreme Court for selection purposes. The applicant, ^{also} ~~however~~, contends that the Assessment Board, which met at Kanpur for the 1985 selections, was presided over by Prof. Sampat from IIT Kanpur but at the time the applicant was interviewed, Prof. Sampat had to be away and another person from the I.I.T. acted as Chairman in his place, which resulted in lack of uniformity in standards of selection, and was thus violative of Articles 14 and 16 of the Constitution.

3. The applicant admits however that he has subsequently been promoted in the year 1987.

4. The respondents have contested the application and stated that the selections are made by the Assessment Board

on the basis of the performance of the Scientists in the interview, taking into account their qualifications, performance, merit, seniority etc. On the basis of the applicant's performance, he was found 'Not yet fit' by the Assessment Board for 1985 and hence he was not promoted that year. The Assessment Board while considering the cases of the candidates in 1985 took fully into account the applicant's qualifications, performance, merit, seniority etc. that year, but did not find him fit for promotion. The respondents have also stated that the applicant was not the only one with 'Very Good' ACRs who was not found fit for promotion that year. In fact, according to the respondents, there were other candidates also with similar or better ACRs who also were not found fit for promotion that year. In fact, according to the respondents, the applicant was considered for promotion by the Assessment Board in 1985 and again in 1986 but was found 'Not yet fit' for promotion. He was ultimately promoted only in the year 1987. The respondents have also stated that reliance by the applicant on the pronouncement of the Hon'ble Supreme Court that not more than 25% marks should be set apart for the interview, is totally misplaced, as the same is applicable to Entrance Tests to the Medical and Engineering Colleges, and not to the instant case. Regarding the substitution of the Chairman of the Assessment Board, the respondents have stated that the Chairman of the Assessment Board asked for leave for some urgent official work of I.I.T. Kanpur and hence another

Chairman was appointed by the Govt. for that date, as it would have caused inconvenience to the other experts and the candidates who came for the interviews, and all other experts for Psychology discipline were the same.

5. We have heard Shri Ashok Aggarwal, learned counsel for the applicant, and SHRI P.P. Khurana, learned counsel for the respondents.

6. In support of his contention that the Assessment Board allocated its own weightage to the interview and ignored other criteria for selection/promotion as prescribed under Rules, Shri Aggarwal has cited the Supreme Court's judgement in the case of Ashok Kumar Yadav Vs. State of Haryana (AIR 1987 SC 454), in paragraph 25 of which the Hon'ble Supreme Court has drawn attention to the observations of Justice Chinappa Reddy in Leeladhar's case (AIR 1981 SC 1777) "where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater weight has perforce to be given to performance in the written examination" and has observed that it is for that reason that in Ajay Hasia's case this court took the view that the allocation of as high a percentage of marks as 33.3% to the viva voce test was excessive. That paragraph however went on further to state that as pointed out by the Justice Chinappa Reddy "in the case of service to which recruitment has necessarily to be made from persons of mature personality, interview

test may be the only way subject to basic and essential academic and professional requirements being satisfied". The Hon'ble Supreme Court, therefore, held that there could be no hard and fast rule regarding the precise weight to be given to the viva-voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made etc. This was a matter essentially to be determined by experts and the court did not possess the necessary equipment and it would not be right for the court to pronounce upon it, unless to use the words of Chinappa Reddy, J. in Leeladhar's case "exaggerated weight has been given with proven or obvious oblique motives". Under the circumstances, these rulings do not help the applicant, because it is not denied that the applicant have put in a number of years of service and possess fully developed mature personality. No allegations of oblique motives for malafide have been imputed upon the respondents.

7. Shri Aggarwal has also cited the cases of Vikram Singh Vs. Subordinate Services Selection Board, Haryana (AIR 1991 SC 1011), Mohinder Sain Garg Vs. State of Punjab (ATC 1991 16SC 495), and Ashok Vs. State of Karnataka (AIR 1992 SC 80). These rulings do not help the applicant either because all of them relate to the selection to Public

Services and not promotion, and moreover the selection has ^{AM} been confined in these cases to ^{fresh entrants} ~~pass graduates~~ and not to those who have already been put in a number of years of service.

In fact, in the case Vikram Singh Vs. Subordinate Services Selection Board, Haryana (supra) itself, the Hon'ble Supreme Court has clearly distinguished Leeladhar's case from the others and it is manifest that in the case before us, we have to be guided by the decision of the Hon'ble Supreme Court given in Leeladhar's case (supra).

8. Shri Khurana, on the other hand, have filed a copy of CAT Madras Bench decision dt. 31.3.89 in OAs 414/88, 551/88, 546/88, 545/88 and 302/88. All those applications have been heard together and they had been disposed of by a common order. The grievance of the applicants was identical with the grievance in the present case, inasmuch as they too had ^{AM} challenged the promotion policy laid down in the DRDS Rules, 1979, particularly with reference to the promotion from the cadre of Scientist 'D' to the cadre of Scientist 'E'. There ~~too~~ the applicant has alleged that the norms for promotion were not clearly laid down, excessive importance was given to the interview, low weightage were given to the qualifications etc. and the selection itself was arbitrary inasmuch as 50% for the total marks was set apart for the oral test. The Tribunal, in its judgement, after referring to the Hon'ble Supreme Court's judgement

in Leeladhar's case, and quoting the observations of Justice Shri O.Chinappa Reddy in that case held that;

"On a perusal of the records in this case it is seen that the process of interview is unique, in the sense that it is totally different from the normal interview held for the purpose of recruitment. The object of the interview here is for the purpose of assessing the candidate's work as given in the AGRs and as presented by him. Each Scientist, who is to be interviewed by the Assessment Board has to submit six copies of the proforma duly filled up, which contains his record of service, field of specialisation, training course attended, awards and other recognitions received, and list of publications/reports patents. Besides, a brief report of the work carried out/scientific achievements in the present grade is also to be submitted. There is the specific provision for the conduct of the so-called interview even in absentia, from which it is clear that what is contemplated is not an interview in its literal sense, of a formal meeting with, and questioning of, the Scientist. When this is the nature of the interview the allocation of 50% marks for the same can on no account be said to be excessive, so as to lead to arbitrariness.

The attack made by the applicants on the ground that before the promotions are made there is no assessment of the actual number of vacancies is devoid of merit, for, as far as possible the promotions are in situ. In other words all those Scientists who are found fit for promotion are promoted by upgrading the post in a particular grade, subject to a ceiling. This is only in the interest of the continuity of the projects in which the concerned Scientist is engaged, and in the interest of the Scientist himself.

It follows from what is stated above that when promotions are made on the strength of the Rules there is no foundation for the grievance based on seniority alone in the particular grade.

We dismiss these applications."

9. Before concluding, the question whether any discrimination was caused to the applicant owing to the fact that another person presided as Chairman of the Assessment Board in place of Prof. Sampat Kumar on the date the applicant was interviewed, may be referred to.

10. Shri Aggarwal has alleged that the appointment of Prof. Sampat Kumar as Chairman of the Assessment Board was struck down by this Tribunal and under the circumstances, the respondents are liable to prove that the alternate Chairman appointed by them was eligible to be so appointed and was in fact so appointed in accordance with the rules. In the counter-affidavit, the respondents have pointed out that in place of Prof. Sampat Kumar another Chairman was appointed by the Govt. on that date, as it would have caused inconvenience to the other experts as well as to the candidates who had come for interview at the Assessment Board, and all other experts for Psychology discipline were the same. The applicant has failed to establish how any prejudice ~~caused him~~ ^{was} ~~caused~~ ^{caused} to him by the appointment of an alternate Chairman by the Govt., and there is nothing to indicate that the said appointment was made in violation of any rule.

11. In view of what has been stated above, this application has no merit, and is accordingly dismissed. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

J.P. Sharma
(J.P. SHARMA) 23/4/9
MEMBER (J)