

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 925/1987.

DATE OF DECISION: May 12, 1988.

Shri D.C. Kasliwal Applicant.
V/s.
Union of India & Others .. Respondents.
CORAM: Hon'ble Mr. Justice K. S. Puttaswamy, Vice-Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A)
For the applicant Shri K. L. Bhatia, Counsel.
For the respondents Shri K. C. Mittal, Counsel.
(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGMENT

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 against his non-promotion to the post of Assistant Engineer (Civil) in the Delhi Milk Scheme under the Ministry of Agriculture, Government of India and has called in question the deliberations of the Departmental Promotion Committee meeting held on 30th May, 1986 for filling up the post of Assistant Engineer (Civil) in the Delhi Milk Scheme under the Ministry of Agriculture, Government of India.

2. The non-selection of the applicant is mainly challenged on the ground that the assessment made by the D.P.C. was not fair and objective in relation to the entries made in the C.R.s of the applicant and respondent No. 4 and further that the D.P.C. considered a few outsiders along with the departmental candidates. It has also been contended that the applicant had not been assigned his due seniority as Section Officer (Engineering).

3. The case of the respondents is that the applicant had only the right to be considered for

promotion and that the promotion was made as per the recommendations of the D.P.C. which considered the case of the applicant also along with the other eligible candidates.

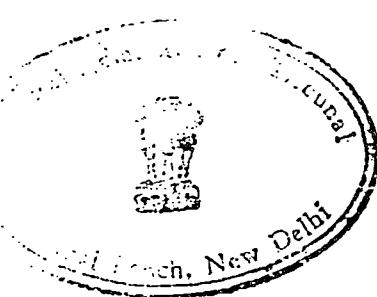
4. The applicant had initially joined the office of the Chief Settlement Commissioner under the Ministry of Rehabilitation, as a Section Officer on 28.1.1952 and on having been declared surplus from there, he was taken as a Section Officer (Engineering) in the Delhi Milk Scheme with effect from 28th July, 1971, whereas Respondent No.4 was directly recruited and joined as Section Officer (Engineering) in the Delhi Milk Scheme on 6.4.1962. As per the Recruitment Rules for the post of Assistant Engineer (Civil) framed under the proviso to Article 309 of the Constitution and notified on 17.1.1983 under the caption "The Delhi Milk Scheme Assistant Engineer (Civil) Recruitment Rules, 1983", the post of Assistant Engineer (Civil) is categorised as "Selection" and the method of recruitment under column 10 is shown as "By promotion / transfer on deputation failing both by direct recruitment". The requisite qualifications in case of recruitment by promotion / transfer on deputation are shown under column 11 of the Schedule to the Recruitment Rules. It is not disputed that the applicant as also the respondent No.4 fulfilled the eligibility criteria as prescribed under the rules and both were considered by the D.P.C. at its meeting held on 30.5.1986. The applicant claims that he was senior to respondent No.4 keeping in view his earlier service as Section Officer which he had rendered in the office of the Chief Settlement Commissioner. However, in the Provisional Seniority List which was issued vide Memorandum No.9-4/76-Estt. II, dated 13.8.76 respondent No.4 was shown as senior to the applicant. The

last para of the Memorandum reads as follows: -

"Factual errors and discrepancies, if any, duly supported by documentary proof where necessary, should be submitted to the office latest by 12.9.76 failing which the seniority will be treated as final. No objection will be entertained regarding principles of seniority."

It is contended by the learned counsel for the applicant that the applicant had represented against his position as shown in the Provisional Seniority List and the said representation was not disposed of and no reply was received by him. However, it is brought to our notice that the Final Seniority List of Section Officers in the Delhi Milk Scheme was issued vide Memorandum No. 9-4/76-Estt. (Spl), dated the 26th February, 83 and in the Final Seniority List also, the position of the applicant vis-a-vis respondent No. 4 remained unchanged. Where the promotion has to be made on the basis of 'Selection', seniority becomes crucial in the matter of determining the order of merit of persons who are given the same grading by the D.P.C. In the application before us and the reliefs claimed, the question of seniority has not been agitated. Be that as it may, the D.P.C. correctly proceeded on the basis of the seniority list as finalised by Memorandum dated 26.2.1983.

5. The learned counsel for the applicant also urged that the proceedings of the D.P.C. were vitiated inasmuch as a few outsiders were also considered along with the departmental candidates for selection. We find from a perusal of the minutes of the D.P.C. that although a few outside candidates belonging to other Departments were also considered, those found suitable were placed below the departmental candidates viz., respondent No. 4 and the applicant. The Recruitment Rules provide under column 10 the mode of recruitment as 'By promotion / transfer



on deputation, failing both by direct recruitment'. As such departmental candidates eligible for promotion are to be considered first and only if none is found suitable, a person on deputation can be appointed. There was nothing wrong in the simultaneous consideration of departmental candidates eligible for promotion as also those who were found fit for being appointed by transfer on deputation. In the present case, it is noticed that no prejudice has been caused to the departmental candidates inasmuch as respondent No.4 and the applicant were placed above those who were found suitable for being appointed by transfer on deputation. As such, the contention of the learned counsel for the applicant that the proceedings of the D.P.C. were vitiated on the ground of simultaneous consideration of the departmental candidates along with certain outsiders holds no ground and is accordingly rejected.

6. As regards the assessment made by the D.P.C., the same is reproduced below in respect of respondent No.4 and the applicant as indicated in para 9 of the minutes of the D.P.C.:

"9) The DPC assessed the suitability of the following incumbents for selection to the post of A.E. (Civil) & on the basis of the annual A.CRs for the years, 1981 to 1985, the following assessment was made by DPC.

S.No.	Name	Assessment on the basis of the ACRs for the years					OVERALL ASSESSMENT
		1981	1982	1983	1984	1985	
1.	Shri A.P.Gupta	Good	Average	V.Good	V.Good	V.Good	Very Good.
2.	Shri D.C.Kasliwal	Good	V.Good	V.Good	V.Good	V.Good	Very Good.
							XXXX
							XXXX

On the basis of the above assessment, the Departmental Promotion Committee recommended respondent No.4 for appointment to the post of Assistant Engineer (Civil).

7. We have perused the C.R. dossiers which have been produced before us and these have also been shown to the learned counsel for the applicant. We have no hesitation in holding that the assessment made by the D.P.C. on the basis of the entries made in the C.R.s of the applicant and respondent No.4 was fair and objective and cannot be considered as either biased or influenced by any extraneous considerations. The learned counsel for the applicant pointed out one or two instances where there was divergence of opinion in the assessment made by the Reporting Officer and the Reviewing Officer and he also stated that no reasons had been given in the A.C.R.s for such divergence. What we have to see is whether the assessment made either by the Reporting Officer or the Reviewing Officer was objective based on an honest assessment or it was influenced by any extraneous consideration. Any assessment has necessarily to be subjective to some extent and unless there are allegations of mala-fide, the entries made in the C.R.s cannot be questioned as suffering from any infirmity on ground of necessary reasons having not been given for reaching a particular conclusion in the matter of assessment or grading. The D.P.C. was also required to make an overall assessment keeping in view the entries recorded against the various columns. We are satisfied that the overall assessment as made by the D.P.C. satisfies the criteria of objectivity and fairness. The learned counsel for the applicant pleaded that the overall assessment of the applicant should have been rated as something above or more than "Very Good", even though he might not be "Outstanding". We are afraid that there is no such provision in the instructions issued by the Government for making assessment by the D.P.C. and if the D.P.C. were to resort to such a procedure, the same

would have been liable to be struck down on the ground of arbitrariness. Any grading which is not contemplated by any rule or instruction cannot be countenanced or stand the test of judicial scrutiny. In this connection, the learned counsel for the applicant also referred to the letter of appreciation issued by the Chairman, Delhi Milk Scheme on 20th May, 1987 ~~xxxxx~~ to the applicant and some earlier letters of commendation. In so far as the letter dated 20th May, 1987 is concerned, the ~~same~~ date when the was obviously issued much later than the meeting of the D.P.C. took place. In any case, any letter of appreciation or commendation can be taken cognizance of by the DPC only when it forms part of the C.R. dossier and not otherwise. It is pertinent to note that the officer who had issued the letter of appreciation on 20th May, 1987 also happened to be the Chairman of the meeting of the D.P.C. and as such he was supposed to be well acquainted with the merits of the applicant vis-a-vis respondent No.4. The learned counsel for the applicant also referred to the warning which was issued to respondent No.4 by a letter dated 16th April, 1986 prior to the meeting of the D.P.C., which is filed as Annexure RA-7 to the rejoinder. This warning issued to respondent No.4 was a non-recordable warning and it was stated in the warning itself that it would not form part of the record. As such, a simple non-recordable warning as distinct from 'Censure' or a 'recordable warning', cannot be taken cognizance of since it does not form part of the C.R. dossier.

8. The learned counsel for the applicant also referred to the judgment of the Jabalpur Bench of this Tribunal in Radha Ballabh Tiwari v. Union of India and Ors. (A.I.R. 1987 (1) C.A.T. 274) wherein it was held that the D.P.C. had made a mistake in the face of patent

facts in grading the petitioner's performance as 'Good' instead of 'Very Good' resulting in depriving the petitioner from promotion on the basis of application of the principle of merit-cum-seniority and other consequential benefits and affecting his seniority.

It was a case where the assessment made by the D.P.C. was questioned for good reasons and accepted by the Tribunal keeping in view the actual entries made in the C.R. In the present case under our consideration, we find that the D.P.C. had made an objective assessment strictly in conformity with the actual entries recorded in the C.R.s and, therefore, the ratio of the judgment relied upon by the learned counsel for the applicant does not hold good and is not applicable in the present case.

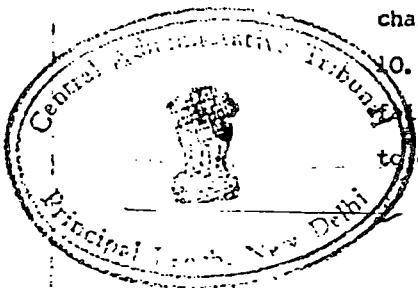
9. The learned counsel for the applicant also contended after inspection of the C.R. dossier of the applicant and that of respondent No.4 that in the A.C.R. of the applicant for the period from 1.1.1982 to 31.8.1982, the Reviewing Officer had recorded that "He is indeed an outstanding officer with proven merit and performance." and, therefore, the grading for the year 1982 by the DPC in the case of the applicant should have been 'Outstanding' instead of 'Very Good'. While we do not agree with the contention of the learned counsel keeping in view the cumulative effect of all the entries recorded by the Reporting Officer and the Reviewing Officer, even if for the sake of argument the contention of the learned counsel for the applicant were accepted and the assessment for the year 1982 is taken as 'Outstanding', the fact remains that for the year 1981, the applicant was graded as 'Good' and for the years 1983, 1984 and 1985, he was graded as 'Very Good' and his categorisation as 'Outstanding' in one year namely 1982 would not have altered his overall assessment from 'Very Good' to 'Outstanding'. Since both

the applicant and the respondent No.4 were graded as 'Very Good' in the overall assessment and the applicant was junior to respondent No.4, his position in the merit list of the panel formed by the D.P.C. would not ~~be~~ be changed.

10. In the light of the above, the application fails and is accordingly dismissed with no order as to costs.

(KAUSHAL KUMAR)
MEMBER (A)
12.5.1988.

(K.S. PUITASHWAMY)
VICE-CHAIRMAN
12.5.1988.



CERTIFIED TO BE TRUE COPY
Dated: 12.5.1988
Ante-Date: 12.5.1988
Serial No.: 9115186
Central Public Service Commission
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