

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.530/90

DATE OF DECISION: 4.2.1992.

SHRI J.S. DHILLON

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

HON'BLE MR. T.S. OBEROI, MEMBER (J)

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI B.S. MAINEE, COUNSEL

FOR THE RESPONDENTS

SHRI ARUN AGGARWAL, COUNSEL

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

Heard the learned counsel for both the parties.

The short issue in question is that the applicant was due for consideration for promotion to the post of Assistant Technical Officer in 1980 by the Departmental Promotion Committee (DPC) held on 16.12.1980. The applicant, however, was on deputation to Lybia from August, 1978 to August, 1981. His name was not considered by the DPC. The respondents inadvertently did not reckon that he was a

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graduate in Electornics. On his return from Lybia in 1981 he submitted a representation when the mistake was discovered and his name was considered by a review DPC held on 27.2.1989 to review the DPC held on 16.12.1980. This DPC, however, took into account his confidential reports on him for the years 1977-78 and 1978-79 which contained adverse entries and which according to the rules had not been communicated to him. He was graded as 'Good' and placed at srl. No.64 after assessment. Since the DPC had recommended a panel for 52 vacancies his name did not find place in the panel.

Aggrieved by the above the applicant filed a Civil Writ Petition No.1645 of 1985 in the Delhi High Court which on transfer under Section 29 of the Administrative Tribunals Act, 1985 was registered as TA-1155/85 and was disposed of by giving directions to the respondents to have the applicant reconsidered by a fresh review DPC, reviewing the proceedings by excluding the adverse remarks for the two years mentioned above and by taking into consideration the comments/observations on the performance of the applicant in Lybia by the Lybian Authorities.

We find that the review DPC in accordance with the Tribunal's directions was also held on 27.2.1989 which reviewed the proceedings of the DPC held on 5.10.1981. The directions of the Tribunal, however, do not appear to have been implemented correctly. What the Tribunal had directed was to review the proceedings of the DPC held on 16.12.1980 by excluding the confidential reports on him containing the adverse remarks and duly taking note of his performance in Lybia. In accordance with the rules the review DPC should have considered the applicant who was within the zone of consideration in 1980, keeping the gradings of the other

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officers graded in 1980 in tact and regrading the applicant taking into consideration his performance in Lybia and excluding the adverse entries in the confidential reports on him for the years 1977-78 and 1978-79.

The learned counsel for the respondents when questioned on this issue could not produce any additional record. We, therefore, are of the view that the directions of the Tribunal, as given in the judgement in TA -1155/85 have not been carried out properly and correctly.

The learned counsel for the respondents at the outset also raised the the plea regarding the maintainability of the O.A. According to him the applicant had not exercised the option for going back to the parent department, i.e., D.G.C.A. Accordingly, he was deemed to have opted for continuing in the National Airports Authority of India (NAAI). He submitted his resignation for absorption in NAAI on 22.2.1990, which according to the learned counsel was accepted although he was not able to precisely furnish the date on which the same was accepted. This O.A. was filed on 15.3.1990. The learned counsel also drew our attention to page 2A of the rejoinder where the applicant has stated that "although the applicant has submitted his resignation on 22.2.1990 but he has immediately <sup>sent a</sup> letter clearly indicating that his technical resignation may be pended till the decision of the petition filed in this Hon'ble Tribunal." According to the learned counsel the said letter was sent by the applicant on 27.6.90.

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The learned counsel for the applicant, however, on the other hand, submitted that the applicant's lien is still in the parent department, i.e. D.G.C.A. and that he has not claimed any relief from the NAAI.

We have considered the matter carefully. We are of the view that the service in the NAAI is in the continuation of the service in D.G.C.A. Even the resignation given by the applicant is only a technical resignation and the amounts due to him for the service rendered in the parent department, i.e. D.G.C.A have not been disbursed to him immediately after his rendering technical resignation. The technical resignation, therefore, cannot be deemed to have cut the umbilical cord with parent department. In that view of the matter the plea for non-maintainability of the O.A. is not tenable.

As far as the second aspect of convening a review DPC is concerned, we order and direct that the respondents shall convene a review DPC to review the proceedings of the DPC held on 16.12.1980 within the same parameters, as obtaining in 1980, in accordance with the rules on the subject and regrade the applicant and interpolate his name in the select list prepared by the DPC held on 16.12.1980, according to fresh grading. The review DPC held on 27.2.1989 to review the proceedings of the DPC held on 16.12.1980 and 5.10.1981 are held to be in contravention of the directions of the Tribunal and are accordingly quashed.

The above directions shall be carried out most expeditiously and preferably within 16 weeks from the date of communication of this order.

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The O.A. is disposed of with the above directions, with no order as to costs. A copy of this order may be furnished to the learned counsel for both the parties latest by 6.2.1992.

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(I.K. RASGORRA)

MEMBER (A)

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(T.S. OBEROI)

MEMBER (J)

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