

(6)

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.744/90

New Delhi this the 9th Day of August, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

S. Panchapakesan,
C/o Late Sh. A.M. Swaminathan,
Additional Secretary &
Financial Adviser, Ministry
of Steel and Mines,
Udyog Bhawan (Room NO.294),
New Delhi-110 011.Applicant

(By Advocate Sh. S.K. Verma, though none appeared)

Versus

1. The Comptroller & Auditor
General of India,
10, Bahadurshah Zafar Marg,
New Delhi-110 002.
2. Sh. M.Y. Priolkar,
Member, C.A.T.
New Bombay Bench,
Ist Floor, Central Govt. Offices Complex,
CBD, New Bombay-40014.
3. Sh. R. Venkatesan,
Secretary,
Cabinet Secretariat,
Rashtrapati Bhawan,
New Delhi.
4. Sh. A.C.Tiwari,
Addl. Deputy Comptroller
and Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi.Respondents

(By Senior Standing Counsel Sh. N.S. Mehta)

ORDER(ORAL)
Hon'ble Mr. N.V. Krishnan:-

Though this O.A. was called twice, neither the applicant nor his counsel was present. None was present for the applicant on 13.7.94 also when the case was on Board. In the circumstances, we have heard the learned counsel for the respondents and after perusal of the record this O.A. is being disposed of.

2. The applicant was appointed to the grade of Principal Accountant General w.e.f. 1.9.88 by the order dated 2.1.89 of the first respondent. By that order 5 officers, including the applicant, were promoted to that grade. The name of the applicant is at serial No.5 of that order, as he was the last person to be promoted, his date of promotion being 1.9.88. His grievance is that respondents 2-4, who are admittedly his juniors in the lower grade, have been promoted as Principal Accountant General from slightly earlier dates, i.e. w.e.f. 18.8.88, 22.8.88 and 31.8.88 respectively.

3. Aggrieved by this treatment he submitted a representation in this behalf on 28.2.89 (Annexure C). He expressed his apprehension that the DPC might not have had the opportunity to peruse all his CRs as he had been advised to pursue with the Reporting Officers to expedite their report for four periods from 17.9.85 to 31.12.87. He also expressed a feeling that he had an excellent record and should not have been superseded by three of his juniors, particularly when he had been promoted as Additional Secretary from 31.12.87.

4. This was considered by the first respondent and a reply was sent to him on 4.4.89 (Annexure D) by the Dy. Comptroller and Auditor General of India stating that his apprehensions about the character roll not being complete were unfounded and that the DPC considered the relative merits of all the officers and took a decision. Accordingly, his representation was rejected.

5. It is on this decision that this OA has been filed to quash the Annexure 'B' order dated 2.1.89 and the

Annexure D order dated 4.4.89 and also for a direction to the respondents to give his his rightful position in the seniority list, meaning thereby the Annexure 'B' order of promotion.

6. The main ground for seeking this prayer is that the DPC appeared to have been constituted by the first respondent who himself was the Chairman and two or three of his subordinates were appointed as members and no officer outside the Audit Department was taken as member of the DPC.

7. The learned counsel for the respondents points out that these matters are governed by the Indian Audit and Accounts Service Recruitment Rules, 1983 (Annexure P). Sub rule 4 of Rule 7 provides that, except in the case of promotion to post in the Senior Scale and Selection Grade of Junior Administrative Grade, where it will be in the order of seniority subject to the rejection of the unfit, all other promotions will be governed by selection on merits on the recommendations of the DPC constituted by Comptroller and Auditor General of India from time to time. Indeed, the expression 'DPC' has been defined in section 2(c) to mean a committee constituted to consider promotion and confirmation in the grade. The right to constitute the DPC has been given to the C&AG of India without any further qualification. The respondents have stated in reply to para 4(1) of the OA that the DPC consisted of the C&AG of India as the Chairman and the Dy. Controller Accountant General of India, a Secretary rank officer and the Addl. Deputy Controller General as the other members. It is contended that the rules do not require associating any outside officer as a member of the DPC.

8. It is stated that this Committee considered the merits of all the officers and three of the applicants juniors, who were found more suitable were given an earlier promotion to the posts.

9. We have carefully considered the matter. In our view when the applicant made a representation in the first instance on 28.2.89 (Annexure 'C'), he should have set out therein all the grounds on which he was seeking the revision of the impugned order. In the representation he has not raised any ground about the alleged defective composition of the DPC. In the ~~nor~~^{l. mal} circumstance, he should not be permitted to raise such a new ground at this stage.

10. Nevertheless, we have considered that ground on merits. We are satisfied that the recruitment rules at Annexure F, which are framed under Article 309 of the Constitution, do not envisage that a DPC should consist of any particular officer or officials. The composition of the DPC has been left to be decided by the Comptroller and Auditor General of India, obviously because of the higher status he enjoys under the Constitution. That being the case, when that authority has constituted a DPC for promotion, it cannot be assailed on the ground taken by the applicant viz. that no person outside the Audit Department was associated.

11. We find that the applicant has also tried to point out that the C.R. of the 4th respondent could not have been reviewed properly because that respondent was outside India during the period from 18.7.84 to 31.12.86.

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The respondents have stated that the standing instructions in this regard are that in such a case the available record should be seen and consideration should be given to the fact that the official was on deputation with the foreign employer. We are of the view that the fact that a person has been found fit to be sent on deputation to foreign employer itself justifies his relative merit. In the circumstances, we do not find any merit in this other ground also viz. that the CR of the 4th respondent has not been properly reviewed.

12. For the foregoing reasons, we are satisfied that the respondents cannot be faulted for taking the decision in regard to the promotion as in the impugned Annexure 'B' order. This O.A. lacks merits and is accordingly dismissed. No costs.

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(C.J. Roy)
Member (J)

'Sanju'

N.V. Krishnan
9.8.74
(N.V. Krishnan)
Vice-Chairman (A)