

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.147/2004

NEW DELHI THIS 30th July THE DAY OF 2004

HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Jastinder Singh S/o Late A S Sodhi
aged about 76 years,
R/o J-169, Saket, New Delhi-17
and retired as Development Officer (Chem), from DGT,
New Delhi

.....Applicant

(By Advocate: Shri S S Tiwari)

VERSUS

1. Union of India, through,
Secretary,
Department of Industrial Policy & Promotion,
Ministry of Commerce & Industry,
Udyog Bhawan, New Delhi
2. Joint Secretary,
Department of Industrial Policy & Promotion,
Ministry of Commerce & Industry,
Udyog Bhawan, New Delhi

.....Respondents

(By Advocate: Shri V S R Krishna)

O R D E R

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

A criminal case was registered against the applicant in 1986, while working as Development Officer. The applicant was placed under suspension on 30.4.1976. He retired while still under suspension on 31.10.86. He was convicted by the Session Court in the case. However, on appeal the Hon'ble High Court, by order 25.7.2000, set aside the judgement of the Session Court. The applicant was fully exonerated and the entire period of suspension was treated as on duty with full pay and allowances. The applicant filed an OA No. 747/2002 in the Tribunal wherein he prayed for directions to the respondents to hold the

-2-

review DPC to consider his promotion to the higher grade of AIA (Chemical) and IA (Chemical) and directions for payment of all consequential benefits including gratuity etc.

2. The Tribunal vide order dated 24.9.2002 partly allowed the OA directing to hold a Review DPC for vacancies in the grade of AIA(Chemical) which have arisen subsequent to 1978 and till date of applicant's retirement. In compliance with the directions of the Tribunal the impugned order dated 18.9.2003 had been passed wherein the applicant has been assessed as 'unfit' for promotion to the grade of Development Officer (Selection Grade), re-designated as Additional Industrial Adviser (Chemicals) in the then existing scale of pay of Rs. 1800-2000 revised to 4100-5300/- in the erstwhile Directorate General of Technical Development (DGTD).

3. The applicant has prayed that this impugned order dated 18.9.2003 be set aside and that the respondents be directed to reconsider him for promotion to AIA (Chemical) and IA (Chemical) from the date his juniors so promoted when he was under suspension w.e.f. 30.4.1976 to 31.10.1986 and all consequential benefits flowing from grant of reliefs including pay fixation, increments and backwages.

4. The main ground of the applicant is that the Review DPC ^{that} was held in compliance with the Tribunal's order is an eye wash as it is based on the earlier DPCs because the ACR folder of the applicant had been weeded out by the

d

respondents. The respondents should not have weeded out his ACRs in view of the order in OA No. 2061/1990 dated 3.5.1991 wherein it had been directed that:

"In the light of the foregoing, we see no infirmity in the decision of the respondents to give the applicant only provisional pension on the pay drawn by him in 1976 at the time of placing him under suspension. We, however, make it clear that in case the criminal proceedings end in his acquittal, he would be entitled to full pay and allowances during the period of suspension and that he would also be entitled to all consequential benefits. The application is disposed of on the above lines."

5. Further the applicant pointed out that the respondents agreed that he had been graded as "Good". However, he was not promoted as the bench mark for promotion of AIA (Chemical) is Very Good. The applicant pointed out that this was not correct as in the case of R C Bhattacharya , though junior to applicant and graded as "Good" was promoted by the DPC against the vacancy for the year 1981-82. This is apparent from the seniority list dated 04.9.1992 attached as RA-I. This shows Shri Bhattacharya as having been promoted w.e.f. 25.10.1983. Moreover, the applicant claims that no adverse remarks had ever been communicated to him as such he should have been promoted.

6. Respondents in their counter reply vehemently contested the averments of the applicant stating that as per the directions of the Tribunal a Review DPC was held which was chaired by a member of UPSC . The minutes of the DPC are detailed one and self speaking and contained full justifications for the recommendations. The respondents have placed before the DPC whatever information was available because the ACRs as per norms/instructions have

2

been weeded out after 5 years of retirement. There are no ACRs available thus review have to be carried out on available record, which was the DPC proceedings held on 19.6.81 for the vacancies of the year 1979, 80, 81 and 82 and the DPC held on 25.10.1983 for the vacancies for the year 1983. After opening of the sealed covers of the DPCs dated 19.6.81 and 25.10.83 it was revealed that the endorsement by the DPCs was "not yet fit for promotion". The respondents added that the averments of the applicant that those with benchmark "Good" have been promoted was denied as those with a "Good" grading were promoted only after they met the benchmark as "Very Good". In view of this factual position the respondents submitted that the present OA is misconceived and there was no genuine cause of action.

7. We have heard the counsel for the parties and also gone through the information/documents placed on record. We have also seen the Review DPC proceedings and find that it is based on the earlier DPCs recommendations dated 19.6.81 and 25.10.83. The relevant portion of the minutes of the DPC proceedings dated 16th September 2003 reads as under:

"2. The Committee were informed that the Ministry of Commerce & Industry (Department of Industrial Policy & Promotion) have confirmed that there is no character Roll Dossier of Shri Jastinder Singh. The said department have stated that for the period between 1976 and 1986, no Annual Confidential Reports were written as Shri Jastinder Singh was under suspension during the said period and that his C. R. Dossier for the period prior to 1976 has been weeded out by the Directorate General of Technical Development after the Officer's retirement in 1986. The Committee were further informed that the Department of Industrial Policy & Promotion have, however, furnished copies of the minutes of two earlier meeting of the

12

-5-

Departmental Promotion Committee held in the Commission's office on 19th June, 1981 and 25th October, 1983, in which Shri Jastinder Singh was considered and assessed. The Committee were also informed that the Department have stated that, as per the directions of the Hon'ble Central Administrative Tribunal, the available facts of the case are required to be placed before the Review Committee and the suitability of Shri Jastinder Singh, for promotion to the next higher grade of Additional Industrial Adviser (Chemicals) and also for Industrial Adviser (Chemicals) is to be assessed in accordance with the rules.

3. The Committee accordingly examined the records made available to them, i.e. the minutes of two Departmental Promotion Committee meetings held on 19th June, 1981, and 25th October, 1983, in respect of Shri Jastinder Singh, then Development Officer, in the erstwhile Directorate General of Technical Development. The Committee observed that the Departmental Promotion Committee, which met on 19th June, 1981, had assessed Shri Jastinder Singh for the vacancy-years 1979, 1980 and 1981/1982 and kept its recommendation in "Sealed Cover". The Committee observed that in the "Sealed Cover", the assessment of Shri Jastinder Singh was shown as "Not Yet Fit". The Committee further observed that the said Department have stated that the DPC which met on 25th October, 1983, had also assessed Shri Jastinder Singh for the vacancy year 1983. The Committee also observed that the said DPC which met on 25th October 1983, had also assessed Shri Jastinder Singh as "Not Yet Fit".

4. On the basis of the records placed before the Committee, as referred to above, the Committee assessed Shri Jastinder Singh as "Unfit" for promotion to the grade of Development Officer (Selection Grade) re-designated as Additional Industrial Adviser (Chemicals), in the then existing scale of pay of Rs. 1800-2000 revised to Rs.4100-5300/- in the erstwhile Directorate General of Technical Development.

-6-

8. From the above reading of the Minute of the DPC it is clear that the Review DPC had no other information available except minutes of above two DPCs. Hence they were not in a position to make an assessment which was different from that of the assessment made by the earlier DPCs. It was incorrect on the part of respondent to weed out, the ACRs of the applicant in the face of directions of the Tribunal in OA 2061/1990 dated 3.5.1991. The Tribunal had directed that the applicant would be entitled to all consequential benefits in case of acquittal in the criminal case. This would naturally have included the promotions as such the ACRs should not have been weeded out. Having weeded out the ACRs the averments of the respondents that "mere non availability of ACRs did not give the applicant a passport for being promoted to the next higher grade on the ground that there was nothing adverse. The absence of adverse entries in the acrs would not entitle the applicant for promotion as matter of right", is devoid of equity.

9. The applicant retired while under suspension and as such did not earn any ACRs during this period. However, he has been fully exonerated and the entire period of suspension treated on duty with full pay and allowances. He would, therefore, be eligible for consideration for promotion along with his juniors. With the weeding out of the ACRs a peculiar situation has arisen wherein the review DPC constituted in compliance with the Tribunal's directions had no ACRs to rely upon except the proceedings of earlier DPCs. We have gone through the proceedings of the DPC and we find that proceedings do not contain yearwise grading earned by candidates in the zone of consideration. The proceedings merely show the overall assessment. In the case of the applicant he has been shown

-7-

as being in sealed cover for the vacancies for the year 1979-80 -81 - 82. Similarly, in the DCP minutes held on 25.10.83 he has been shown as "not yet fit". In both these DPC proceedings the grading of the applicant are not available. Even on opening of the sealed cover the endorsement is that the applicant has been found "not yet fit" for promotion and no mention of grading. However, from the averments of the respondents it is clear that the applicant had a grading of "Good" which The respondents did not disclose ~~this~~ to the review DPC in the covering note. The respondents have made an averment that the benchmark of Very Good has been fixed as per guide-lines of the government and cannot be relaxed at the discretion of the DPC. They pleaded that juniors mentioned by the applicant were promoted only after they achieved the prescribed bench mark of "Very Good". However, on going through the DPC proceedings dated 16.9.81 we find that Shri R C Bhattacharya was promoted with a grading of "Good". The relevant extracts are as under:

Annexure-I to the minutes of the DPC Meeting dated 19.6.81

Officers assessed for the vacancy for the year 1979

<u>S.No.</u>	<u>Name</u>	<u>Assessment</u>
	S. Shri	
1.	K D Jain	Very Good.
2.	D C Patwardhan	Good.

d

-8-

- | | | |
|----|------------------|------------------|
| 3. | C D Anand | Very Good. |
| 4. | Jastinder Singh | In sealed cover. |
| 5. | R C Bhattacharya | Good |

Officers assessed for vacancies for the year 1980

- | | | |
|----|------------------|------------------|
| 1. | D C Patwardhan | Good |
| 2. | C D Anand | Very Good. |
| 3. | Jastinder Singh | In sealed cover. |
| 4. | R C Bhattacharya | Good. |
| 5. | A K Das | Very Good. |
| 6. | A K Mandal | Very Good. |
| 7. | M P Singh | Very Good. |
| 8. | V B Saxena | Very Good. |

Officers assessed for vacancies for the year 1981/82

- | | | |
|----|------------------|-----------------|
| 1. | D C Patwardhan | Good |
| 2. | Jastinder Singh | In sealed cover |
| 3. | R C Bhattacharya | Good |
| 4. | A K Mandal | Very Good |
| 5. | M P Singh | Very Good |
| 6. | V B Saxena | Very Good. |

Annexure-II to the minutes of the DPC Meeting dated 19.6.81Officers assessed for the vacancy for the year 1979Panel for the year 1979

1. Shri K D Jain

Panel for the year 1980

1. Shri C D Anand
2. Shri A K Das

Panel for the year 1981/82

1. Shri A K Mandal
2. Shri M P Singh
3. V B Saxena
4. D C Patwardhan
5. R C Bhattacharya

Consolidated Panel

1. Shri K D Jain
2. Shri C D Anand
3. Shri A K Das
4. Shri A K Mandal
5. Shri M P Singh
6. Shri V B Saxena
7. Shri D C Patwardhan
8. Shri R C Bhattacharya

-9-

10. We find that Shri R C Bhattacharya who is junior to the applicant with a grading of 'Good' (Annexure A-1 reproduced in para 9 above), has been placed at Sl No.5 for the panel of 1981-1982 and in the consolidated panel at Sr No.8. It is therefore clear that the averments of the respondents that juniors mentioned by the applicant were promoted only after they achieved the benchmark of 'Very Good', is incorrect. The respondents did not disclose to the Review DPC that the grading of applicant was 'Good' in the covering note. With a grading of 'Good' the applicant is eligible for placement at S No.5 in the panel for the year 1981-82 and in the consolidated panel at Sr No.8 and for promotion to AIA (Chemical) on the date his junior Shri R C Bhattacharya was promoted i.e. w.e. f. 25.7.1983.

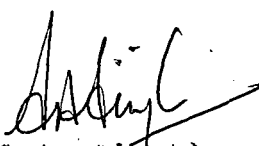
11. For the vacancies of the year 1981-82, the name of the applicant was placed in sealed cover and on opening of the sealed cover it has been revealed that the assessment of the Departmental Promotion Committee was "Not yet fit for promotion". There is no mention regarding his overall assessment or grading. The Tribunal in OA 2061/1990(supra) has already directed that in case of ~~his~~ acquittal of the applicant he would be entitled to all consequential benefits. The respondents have stated that he had 'Good' grading. They have, however, weeded out his CR Dossier after his retirement, which they should not have done in view of the Tribunal's direction in OA 2061/1990. Therefore, the benefit of absence of ACR dossier must ^{go to} to the applicant, and his case has to be considered similar to the case of his junior Shri R C Bhattacharya.


d

-10-

12. In view of the above we set aside the impugned order dated 18.9.2003 with following directions:

- 1) The applicant should be placed in the panel for the year 1981-82 below D C Patwardhan and above R C Bhattacharya by creating a supernuary post so as not to disturb the promotion of R C Bhattacharya at this late date.
- 2) The applicant will be considered to have been promoted to the post of AIA (Chemical) w.e.f. 25.10.1983 i.e. the date when his junior Shri R C Bhattacharya was promoted.
- 3) The applicant will be eligible for further promotion in the grade of IA (Chemicals) from the date of promotion of any person junior to the applicant.
- 4) He will also be eligible for all consequential benefits including pay fixation, increments, back-wages and re-fixation of pension as per rules and law.
- 5) These directions should be implemented in six months from the date of receipt of certified copy of this order.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

Patwal/