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Central Administrative Tribunal
Principal Bench

OA No. 2760/2004

New Delhi, this the 25th day of July, 2008

Hon'ble Mr. Justice V. K. Bali, Chairman
Hon'ble Mr. L. K. Joshi, Vice Chairman(A)

K. C. Yadav
S/o late Sh. S.P. Yadav
Working as Deputy Director,
National Power Training Institute (NR)
Badarpur, New Delhi – 110 044.

...Applicant

(By Advocate: Ms. Harvinder Oberoi)

Versus

Union of India through:

1. Secretary (Power),
Ministry of Power,
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
2. Director General,
National Power Training Institute,
Sector 33, Faridabad – 121 003.
3. Director (Finance & Admn.)
National Power Training Institute,
Sector 33, Faridabad – 121 003.
4. Principal Director,
National Power Training Institute,
Sector 33, Faridabad – 121 003.
5. Sh. J.S.S. Rao,
Director,
National Power Training Institute,
Sector 33, Faridabad – 121 003.
6. Secretary,
Department of Personnel & Training,
North Block, Central Secretariat,
New Delhi- 110 001.

...Respondents

(By Advocate: Shri M.M. Sudan)

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ORDER

Justice V.K. Bali, Chairman:

K.C. Yadav, holding the post of Deputy Director in National Power Training Institute (for short, NPTI) at the relevant time when present Original Application was filed under Section 19 of the Administrative Tribunals Act, 1985, and who has since resigned from the job, seeks to quash and set aside order dated 08.09.2004 vide which, pursuant to direction given by this Tribunal in OA No. 2587/2003, earlier filed by the applicant and decided on 03.08.2004, the respondents were directed to convene a review DPC and re-consider the promotions made on 28.03.2002 in the grade of Director (Tech./Faculty) in the pay scale of Rs.12,000-16500 in the light of extant rules applicable to NPTI and pursuant to which the respondents, on recommendation of the DPC, promoted S/Shri J.S.S. Rao and A.G. Vinchurkar in the grade of Director (Tech./Faculty) with retrospective effect from 28.03.2002. In consequence of setting aside of order dated 08.09.2004, the applicant further prays for direction to be issued to the respondents to hold the review DPC in compliance of DOP&T guidelines on the subject including latest O.M. F.No. 35034/7/97-Estt (D) dated 08.02.2002.

2. Brief facts, as projected in the Application for the reliefs as indicated above, reveal that the applicant joined NPTI as Assistant Director in the year 1982 and was promoted to the post of Deputy Director in 1989 and had been working on the said post till such

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time he resigned. Next higher ³ post in the hierarchy is that of Director, which is Group 'A' post, and promotion to that post is to be made by promotion, failing which by deputation/transfer and failing both by direct recruitment (including short term contract). As per seniority list of Deputy Directors as on 31.03.2001, the applicant is at serial no. 3 whereas Sh. J.S.S. Rao, fifth respondent arrayed in the Application, is at serial no. 7. It is the case of the applicant that the DPC convened for the post of Director on 28.03.2002 for vacancies of the year 2001-02 was in total violation of DPC guidelines issued by DOP&T from time to time. The vacancies in respect of which a panel is to be prepared by DPC should be estimated as accurately as possible and for this purpose the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long term promotion and deputation or from creation of additional posts on a long term, and in cases where there has been delay in holding DPC for a year or more, vacancies should be indicated year-wise separately. It is the case of the applicant that since the respondents follow financial year from April to March every year, DPC should have been held for the clear vacancy of 2001-02 in April/May, 2001. It is further the case of the applicant that there was only one clear vacancy arising due to the superannuation of Shri D.K. Chowdhary, Director, NPTI (ER) Durgapur on 31.10.2001.

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However, the DPC was intentionally delayed to favour respondent no. 5, who is at serial no. 7 in the seniority list. On 28.03.2002, DPC was held for two vacancies. As per instructions of DOP&T, DPC should be held in advance to avoid delay in filling up of posts whereas the respondents have done the opposite. If the DPC had been held on schedule then it would have been held on 1st April or May 2001 for only one clear vacancy of the year 2001-02 (due to retirement of D.K. Chowdhry on superannuation on 31.10.2001) and, therefore, the zone of consideration would have been only upto serial no. 5 for one clear vacancy. However, the DPC was intentionally delayed and was held for two vacancies, the second vacancy being unclear vacancy arising only after compulsory retirement of Shri Ata-ur-Rehman, Director NPTI (NR) on medical grounds and even when his case of retirement was *sub judice*, the said vacancy remained unclear till 17.07.2002, when the above matter of Shri Ata-ur-Rehman was decided by this Tribunal. It is thus the case of the applicant that DPC held on 28.03.2002 for two vacancies was illegal. It is further the case of the applicant that the DPC also failed to prepare year-wise panels in violation of DPC guidelines issued from time to time. For the year 2001-02 the actual number of vacancies would have been determined on 01.04.2001 (i.e. before the prescribed date of DPC 1st April or May), which could never have been more than one for vacancy year 2001-02. For any other vacancy arising due to death,

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voluntary retirement or resignation etc. a second DPC has been prescribed by DOPT. The second vacancy arose due to compulsory retirement of Sh. Ata-ur-Rehman on medical grounds in 2002. Hence, second DPC should have been convened instead of delaying the first DPC for almost a year, or the select list or panel prepared by the first DPC would have been used for making promotion against such vacancies, which are not foreseen. It is the case of the applicant that promotion of Shri A.G. Vinchurkar, who is at serial no. 1 of the seniority list, against the vacancy of Shri Ata-ur-Rehman on provisional basis only goes to show that the vacancy in question was not clear. Fifth respondent was promoted on 28.03.2002 against the only clear vacancy whereas the senior-most Deputy Director had been promoted provisionally against the unclear vacancy. It is further the case of the applicant that the respondents have been following Government of India's instructions issued by DOP&T on promotions/DPC etc. contained in OMs dated 10.03.1989, 10.04.1989 and 27.03.1997. As per instructions contained in O.Ms, referred to above for promotions upto and excluding the level in the pay scale of Rs.12,000-16,500 (excepting promotion to Group 'A' posts/services from the lower group), if the mode happens to be selection-cum-seniority then the benchmark prescribed is 'Good' and officers obtaining the said benchmark are arranged in the select panel in order of their seniority in lower feeder grade. Thus, there is no supersession

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among those who meet the said benchmark. The aforementioned guidelines, which permit supersession in selection promotion (selection by merit), have been reviewed by the Government and after comprehensive/extensive examination of relevant issues, it has been decided that there should be no supersession in the matter of selection (merit) promotion at any level. In keeping with the said decision, the revised promotion norms/guidelines, in partial modifications (to the extent relevant for the purpose of these instructions) of all existing instructions on the subject were circulated by DOP&T OM dated 08.02.2002. As the above revised guidelines came into effect from 08.02.2002, the review DPC, which was convened on 08.09.2004, it is the case of the applicant, has illegally violated the above revised guidelines. On 28.03.2002 the applicant, along with two other superseded officers was re-designated as Senior Deputy Director and was granted a special monthly allowance @ Rs.500/-. He filed an appeal to respondent no. 1, which was not decided within the time limit. Aggrieved thus, the applicant filed OA No. 2886/2002 challenging the promotion of respondent no. 5 in superceding him. This Tribunal disposed of the aforesaid OA with direction to the respondents to decide the appeal of the applicant within a period of four months in accordance with the law including DOPT OM dated 08.02.2002. However, the appeal of the applicant was rejected by respondent no. 1, vide order dated 22.05.2003.

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3. Aggrieved once again the applicant filed OA No. 2587/2003 challenging order dated 22.05.2003, which was allowed on the primary ground that the constitution of DPC was not as per rules. While considering the contention of the applicant with regard to improper constitution of the DPC, this Bench, while disposing of the OA, observed as follows:-

“13. It is clear that all members in the DPC should be officers who are at least one step above the post in which the promotion/confirmation is to be made. The post of the Director is in the scale of Rs.12,000-16000 which is corresponding to the earlier scale of Rs.3700-5000. Therefore, necessarily, the person concerned should have been a step higher. Unfortunately, one of the members who was also to be taken as expert was only in the scale of Rs.12000-16000 which is not a step higher and, therefore, inadvertent mistake has crept in. In face of the aforesaid, we have no hesitation, therefore, in concluding that the constitution of the DPC was not valid. Thus, following the ratio of the Supreme Court in the case of U.D. DWIVEDI (supra), it must follow that the impugned orders cannot be sustained and are liable to be quashed.”

Pursuant to direction issued by this Tribunal, the respondents held review DPC on 08.09.2004 and reiterated the result dated 28.03.2003 of the DPC.

4. Even though number of grounds have been taken in challenging the impugned order dated 08.09.2004 (Annexure A-1), all that has been urged in support of present Original Application during the course of arguments is that the very fact that in the

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impugned order it has been mentioned that the DPC reiterated the proceedings of earlier DPC dated 28.03.2003, would mean that the review DPC has simply followed the decision taken by original DPC without applying its mind and that in any case the latest instructions governing promotions on the basis of benchmark, which clearly stipulated that no supersession will be made if the concerned employee may have obtained the requisite benchmark, were ignored, and those who were graded 'outstanding' were preferred or given precedence over those who had obtained the benchmark which was 'very good', and that being so, the matter needs to be re-considered by constituting yet another DPC to consider the promotion on the basis of instructions governing promotion in vogue at the relevant time.

5. Pursuant to notice issued by this Tribunal, respondents have entered appearance and by filing counter reply contested the cause of the applicant.

6. We may, however, make a mention of only such averments made in the counter reply that may be relevant in the context of two-fold contentions raised by learned counsel, as noted above. It has, *inter alia*, been pleaded that DPC for promotion to the grade of Director was convened on 28.03.2002 as per DOPT instructions/guidelines as applicable to NPTI on the date of occurrence of two vacancies i.e. 31.10.2001 (on retirement on

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superannuation of Shri D.K. Chowdhary, Director) and 16.01.2002 (on retirement on health grounds of Shri Ata-ur-Rehman, Director on the basis of Report of duly constituted Medical Board of Government Hospital – Dr. Ram Manohar Lohia Hospital) during the recruitment year 2001-02. As both the vacancies occurred during the year 2001-02 and DPC was held on 28.03.2002, there was no need at all to prepare year-wise panels. Shri A.G. Vinchurkar's provisional promotion, it is pleaded, cannot be construed to mean that the vacancy occurred due to retirement on medical ground of Ata-ur-Rehman was not a clear vacancy. His promotion had to be stipulated as 'provisional' due to pendency of the case filed by Sh. Rehman in this Tribunal in terms of the provisions of DOPT's O.M. dated 30.03.1988 which lays down "in case disputes are pending before a Court/Tribunal, unless there is an injunction/stay order against making regular promotions, the Appointing Authority may convene the DPC and make promotions. However, while issuing the orders in such cases, it should be stipulated that these promotions are provisional and subject to the final decision of the Court/Tribunal." On the date of DPC, there was no stay order by this Tribunal against holding DPC for filling up two posts of Director in NPTI. Retirement of Ata-ur-Rehman on 16.01.2002 was in fact upheld by this Tribunal, and the case was finally disposed of on 17.07.2002 without affecting, in any way, his date

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of retirement i.e. 16.01.2002¹⁰ and Shri A.G. Vinchurkar was regularized as Director w.e.f. 28.03.2002. It is then pleaded that as per DOPT guidelines for promotion prior to 08.02.2002, officers who were graded as 'Outstanding' would rank *en-bloc* senior to those who were graded as 'Very Good' and placed in the select panel accordingly upto the number of vacancies. Based on recorded performance, J.S.S. Rao, fifth respondent, was the only officer who was graded as 'Outstanding' by the DPC and, as such, was placed on the top followed by A.G. Vinchurkar (the senior-most Deputy Director) who was graded as 'Very Good', in terms of the rules applicable to the employees of NPTI on the date of occurrence of vacancies i.e. 31.10.2001 and 16.01.2002 (both prior to the amendment which came into force on 08.02.2002). It is then pleaded that the guidelines of DOPT are not automatically applicable to the respondent-Institute and the composition of DPC is done as per the rules of the Institute. It is then pleaded that the applicant, who was at serial no. 3 in the seniority list, could not, in any event, have been promoted as there were only two vacancies and even if the mode of promotion was seniority alone, the applicant could not be promoted.

7. Learned counsel defending the respondents contends that the mere fact that the review DPC reiterated the decision taken by the original DPC would not mean that the review DPC has not applied its mind to the entire facts of the case, it may be different

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matter that on careful consideration it arrived at the same conclusion, which was arrived at by the original DPC. He further contends that both the vacancies had occurred prior to occurrence of the vacancies. He further contends that even if the amended OM that came into force on 08.02.2002 was to apply, the applicant would not be promoted in any case as he was at serial no. 3 of the seniority list and the first two candidates in the seniority list had the required benchmark. The applicant being at serial no. 3, even if the amended instructions dated 08.02.2002 are applied, would not in any case be promoted. He also contends that the respondent-Institution is engaged in specialized work and wanted to adhere to the earlier guidelines so as to ensure complete efficiency and thus desired to select the best persons. Even though it is not pleaded but during the course of arguments, it is urged that the respondent-Institute had sought exemption in the guidelines contained in Memo dated 08.02.2002, which were rectified by the Government.

8. We have heard learned counsel for the parties and with their assistance examined the records of the case.

9. From the pleadings of the parties and accompanying documents as also perusal of minutes of meeting of the review DPC held on 08.09.2004 pursuant to direction of this Tribunal, whereas it may appear that the decision taken by original DPC has been reiterated but it cannot be said that review DPC did not

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apply its mind to the facts of the case. In the minutes of the review DPC meeting, after referring to the selection made by original DPC and history of the case culminating into order passed by this Tribunal, it has been observed as follows:-

“After careful scrutiny of the service records of the above officers in the zone of consideration with reference in particular to their Confidential Reports for the relevant period and rules on the subject as applicable to the NPTI, the Review DPC found the proceedings of the earlier DPC dated 28.3.2002 in order. The Review DPC particularly looked into the candidature of Shri K.C. Yadav who had filed an Application in the Central Administrative Tribunal. It has been found that as per the extant rules applicable to NPTI, Shri K.C. Yadav had no legitimate claim for the post of Director in terms of merit as-well-as seniority.”

10. The service records of eight officers mentioned in earlier part of the minutes of the meeting, who were in the zone of consideration, were gone into, and in particular, with reference to confidential reports for the concerned period. The rules too were examined. It cannot thus be said, as is the contention of learned counsel representing the applicant, that it was simple reiteration of the decision taken by original DPC. However, there being no change in the circumstances whatsoever, either with regard to service particulars of the eligible persons or confidential reports, if the decision of the review DPC was reiteration of the decision of earlier DPC, no grouse on that count can be made. During the course of arguments it remained undisputed that consideration

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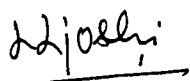
could be only of eight eligible persons and they alone would come in the zone of consideration. The applicant was at serial no. 3 and his case, as per records, was also considered. It is not in dispute that all the candidates under consideration and particularly those mentioned at serial nos. 1, 2 and 3 (applicant herein) as also Sh. J.S.S. Rao at serial no. 7 in the seniority list, were assessed 'Very Good' or above. It is only Shri J.S.S. Rao, who was graded as 'Outstanding'.

11. We would not go into applicability of the amended or un-amended instructions dealing with promotion as, surely, in the situation, as mentioned above, if Shri J.S.S. Rao was not to be promoted, the applicant in any case would not have been found suitable for promotion to the post of Director. In that event, Sh. A.G. Vinchurkar (serial no. 1) and Shri S. Viswanatha (serial no. 2) would have been promoted. The only difference in the amended and un-amended instructions, conceded during the course of arguments, is that whereas, as per un-amended instructions the DPC could give precedence to a person who was graded 'Outstanding' as compared to those who were graded 'Very Good' or 'Good', the element of supersession has been done away with as per amended instructions and all those who, thus, are graded the benchmark required for promotion had to be promoted as per their seniority. If that method of promotion was to be followed, as mentioned above, the applicant would not be promoted. In the

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circumstances, as mentioned above, we need not go into the question as to whether the instructions that were in vogue when vacancies arose, would govern the field, or the instructions that were in vogue when the DPC met would govern promotion. We may, however, mention that during the course of arguments, learned counsel representing the respondents brought to our notice that the Governing Council of NPTI in its 13th meeting held on 31.05.2002 under Item No. 6(i) had sought exemption from the revised guidelines contained in DOPT OM dated 08.02.2002 and the Government of India has granted such exemption vide letter dated 07.02.2005, copy of which was handed over to us during the course of arguments and the same has been taken on record. We need not go into the question whether the NPTI could seek exemption from the guidelines contained in OM dated 08.02.2002 and/or for that matter, Government has power to exempt the NPTI from such instructions, as the same would not make any difference in the result of this case. As mentioned above, even if amended instructions doing away with supersession were to be applied, the applicant would not be promoted.

12. Finding no merit in this Original Application, we dismiss the same, leaving, however, the parties to bear their own costs.



(L.K. Joshi)
Vice Chairman (A)

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(V.K. Bali)
Chairman