

Central Administrative Tribunal, Principal Bench

O.A. No. 2859/2004

New Delhi this the 13th of September, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. M.K. Mishra, Member (A)

Shri Surender Singh
S/o Shri Jaipal Singh
D'Man-I (C), DND/SDG,
West Block-V, R.K. Puram,
New Delhi.

...Applicant

By Advocate: Shri Tania Singh.

Versus

1. Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Chief of Naval Staff (for Assistant Chief of Personnel),
Integrated Headquarter/MOD (Navy),
C'Wing, Sena Bhawan,
New Delhi.
3. The Chief of Naval Staff (for Principal Director Civilian Personnel)
Integrated Headquarter/MOD (Navy),
D'Wing, Sena Bhawan,
New Delhi.
4. The Chief of Naval Staff (for joint Director Civilian Personnel)
Integrated Headquarter/MOD (Navy),
D'Wing, Sena Bhawan,
New Delhi.

....Respondents

By Advocate: Shri Rajeev Kumar, proxy counsel for Shri J.B. Mudgil, counsel for the
Respondents.

ORDER

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The present OA is filed for a direction to the respondents to grant the applicant promotion as Junior Design Officer (Construction) (JDO (C)) with effect from 31.10.2003, the date of the panel formed for the calendar year 2002-03 and the date on which the applicant had qualified for promotion, with consequential benefits.

2. Briefly, the allegations in the OA are that the applicant joined the respondent Navy as Draftsman (Construction) on 23.11.1987. In due course, he became Senior Draughtsman which was redesignated as Draughtsman Grade-I (Construction). He qualified the Departmental Qualifying Examination for promotion in the year 2002 and

became eligible for promotion with effect from 1.1.2002. In September, 2002 a Departmental Promotion Committee (DPC) was held for promotion of Draughtsman Grade-I (Construction) to the post of Junior Design Officer (Construction) against three vacancies, 50% of which were unreserved. As no candidate of reserved vacancy was available, one officer of unreserved category was promoted as JDO (C) in November, 2002. A DPC recommended promotion of six JDO (C) to the post of Senior Design Officer Grade-I (Construction) on 17.3.2003 making six vacancies available for promotion to the post of JDO (C). In October, 2003 a fresh DPC was held for promotion to the post of JDO (C) against 8 vacancies out of which six vacancies were created in March, 2003, two were carried forward and three were anticipated in 2002-03. On 31.10.2003, a panel for promotion to the post of JDO (C) was recommended which was of unreserved category as there was no eligible/suitable candidate in reserved category. Para 6.4.2 of the Memo No.22022/5/86-Estt. (D) dated 10.4.1989 prescribed the procedure for filling up the vacancies which had arisen during a vacancy year in which DPC had already been held. It provided that, in case it was not a case of wrong calculation and reporting of the vacancies placed before the DPC, a separate panel for those vacancies which had occurred after the DPC meeting during that vacancy year would be prepared and would be considered in the next DPC meeting. But the vacancies which were created in March, 2003 were clubbed with the existing and anticipated vacancies for the year 2003-04 and were placed before the DPC held in October, 2003. As a consequence in the panel recommended by the DPC on 31.10.2003 the applicant was shown at S.No.7. Although if the year-wise panel was considered as per the aforementioned rules, he would have been placed at S.No.4 and would have been promoted to the post of JDO (C). His repeated representations for redressal of grievance have not borne any fruit. Hence the OA.

3. The respondent in the counter-reply refuted the claim of the applicant. Besides raising preliminary objection that the OA is bad for non-joinder of parties and that the persons who would be adversely affected by an order passed in favour of the applicant were necessary parties and further that the applicant has not challenged the cancellation of the promotion panel for the year 2003-04 in which his name also figured and for this reason, the OA deserves to be dismissed. The respondents have repudiated the claim of

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the applicant that he would have been promoted to the post of JDO (C) on 31.10.2003. They also controverted that six vacancies were created in the post of JDO's (C) on account of promotion of JDOs (C) to the higher post on 17.3.2003. According to the respondents out of the panel of six persons who were accommodated for promotion by the DPC on 17.3.2003, only 4 had joined the higher post, while the remaining two had joined the promoted post in April, 2003. Accordingly, only 4 vacancies became available for promotion in March, 2003. It has also been denied that as per the extant rules, a separate year-wise panel for the vacancies which were created in March, 2003 was to be prepared for consideration by the DPC which was held in October, 2003. The respondent contended that under rules, separate year-wise panel is to be prepared only when the DPC has not been held for a number of years. Further case of the respondents is that all six empanelled officers were senior to the applicant as Chief Draughtsman/Draughtsman Grade-I (feeder cadre) and eligible for promotion on the crucial date of eligibility, i.e., on 1.1.2003. Every year a large number of candidates appear in the Departmental Qualifying Examination and qualify but this alone would not give them right to consideration ahead of those seniors who qualify at a later date but became eligible on a crucial date. The crucial date for determining the eligibility was 1.1.2003 for the vacancy year 2003-04 and as per the SRO, condition of eligibility is length of service and that qualifying in DQE, ignoring the claim of the seniors of the applicant merely on the ground of passing the DQE later than their juniors, would amount to denial of natural justice to the seniors. DOP&T OM dated 25.3.1996 also provided for relaxation in qualifying/eligibility service for seniors when their juniors having the qualifying services were considered for promotion. It is stated that the DPC held in September, 2002 for vacancy year 2002-03 had considered promotion on three existing vacancies. All these vacancies were of reserved category. At that time 4 vacancies which arose on 17.3.2003, could not be foreseen. If all the vacancies arising in a vacancy year are reserved, 50% of these posts may be filled up by unreserved category. Applying this rule one unreserved category candidate Shri Abhimanyu Kumar was empanelled for promotion and as per the eligibility of the applicant he was at S.No. 5 in this DPC. Even if 4 vacancies could have been anticipated to occur in 2002-03 and considered by the DPC held in September, 2002, the applicant would still have not found a place in the panel. There would have

been a total of 7 vacancies in the year 2002-03 out of which 4 vacancies were reserved for SC/ST. Only three vacancies would have been filled by unreserved candidate and since the applicant being a unreserved candidate stood at S.No.5 of the eligible candidates, he would not have been empanelled. Other allegations have also been controverted.

4. In the rejoinder the applicant has reaffirmed the allegations.

5. We have heard the learned counsel for the parties and have perused the record.

6. The grievance of the applicant, in short, is that he was eligible for consideration for promotion to the post of JDO (C) on 1.1.2002 against vacancies which occurred during the vacancy year 2002-03. A DPC meeting was held in September, 2002 and one person was empanelled and was given promotion in unreserved category. But, according to the applicant, six more vacancies became available on 17.3.2003 when same number of persons were promoted from the post of JDO (C) to the higher posts. According to him as per the DOP&T OM dated 10.4.1989 in such an eventuality a separate year-wise list should have been prepared. Since second DPC for the vacancy year 2002-03 was not held, a separate year-wise panel for the year 2002-03 should have been prepared and placed before the DPC which was held in October, 2003 and the vacancies which became available in the post of JDO (C) in March, 2003 should not have been clubbed with the vacancies existing or anticipated for the year 2003-04. As a result, it is submitted, the applicant was deprived of empanelment at S.No.4 and being appointed to the post of JDO (C) in the panel recommended by the DPC on 31.10.2003.

7. The question arises firstly how many vacancies were created during the vacancy year 2002-03 after the DPC meeting held in September, 2002 and secondly what is the procedure for filling up those vacancies.

8. Admittedly, the vacancy year is from 1st April to the 30th March of the following year and the crucial date/cut-off date for determining the eligibility of the officers for promotion in the case of financial year based vacancy year would be 1st January immediately preceding such vacancy year as per OM No.22011/3/98-Estt.(D) dated 14.3.2003 issued by the DOP&T (Annexure R-3). The crucial date in the present case was 1.1.2002 for the vacancy year of 2002-03 and 1.1.2003 for the year 2003-04 which are the relevant vacancy years.

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9. First question is how many vacancies were created in the cadre of JDO (C) in March, 2003. They were 6 or 4. Admittedly, six JDOs were empanelled for promotion as per recommendation of the DPC held on 17.3.2003. But out of them only 4 had joined the higher promotional post in the month of March, 2003. Remaining two had joined the higher post of promotion only in April, 2004. As such, only 4 vacancies were created before 31.3.2003 and not six.

10. The applicant has referred to DOP&T's OM No. 46011/4/82-Estt.(SCT) dated 15.3.1982, Annexure R-I to support his claim that all the six vacancies shall be deemed to have been created in March, 2003, i.e., in the vacancy year of 2002-03 since the panel of six JDOs was recommended on 17.3.2003. OM dated 15.3.1982 does not advance the applicant's arguments. It will be apt to reproduce it as under:-

“ Department of Personnel & A.R. OM No. 46011/4/82.Estt.(SCT) dated 15.3.1982 to all Ministries/Departments.

Subject: Calculation of recruitment year in cases of promotions where the panel prepared by DPC spreads into two calendar years.

The undersigned is directed to the subject mentioned above and to say that clarifications have been sought from this Department as to what would be the recruitment year in cases of promotion when the panel prepared by the DPC spreads into more than one calendar year. The matter has been examined in this Department and it has been decided that the first recruitment which is made from the Select List prepared by the DPC should be the recruitment year for the purpose of promotion in cases where the DPC select list might have been prepared in one year, but appointment from it made in the next year. It is also possible that the first appointment is made in a year but other appointment from the same select list continues, and spills over, to the next calendar year. In such cases, the year where the first appointment is made from the select list will be the recruitment year in so far as that DPC panel is concerned, for purpose of reckoning reservation, carry forward, recruitment year etc. For example, if a DPC has been held in the month of September, 1981 for preparing a select list for vacancies taking into account anticipated vacancies of 1982 also, the actual appointments spill over to 1982 and if the first promotion is from the select list made in November, 1981, then 1981 will be the recruitment year for this purpose. If, however, the first promotion from the select list though prepared in September, 1981 is made in January, 1982, then 1982 will be the recruitment year for this purpose.

Ministry of Finance etc. are requested to bring the content of this OM to the notice of all their attached and subordinate offices”.

11. It would be clear from the above OM dated 15.3.1982 that it related to the calculation of the recruitment year in cases of promotion where the panel prepared by the DPC spread into two calendar years. The promotion was in the cadre of JDO (C), as such, even though two out of six persons who were empanelled for promotion had joined

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the promoted post in April, 2003, their recruitment/promotion would be counted pertaining to the year 2002-03. The OM does not apply to the feeder cadre of the post of JDO (C) for their promotion. The eligible feeder cadre of officers would be considered for promotion only against the vacancies which had actually occurred. Since only 4 empanelled persons had vacated the post of JDO (C) in 2002-03 only four vacancies became available. The remaining two vacancies were created in April, 2003, i.e., in next vacancy year of 2003-04 so far as it related to the post of JDO (C). As a result it is held that only 4 more vacancies were created in the month of March, 2003, i.e., during the vacancy year 2002-03 after the DPC for that vacancy year was held in September, 2002 which could not have been anticipated when DPC was convened.

12. The next crucial question as to what is the procedure for filling up the vacancies which were created in March, 2003. Both the parties rely upon the guidelines on Departmental Promotion Committee circulated vide OM No.22011/5/86-Estt.(D) dated 10.4.1989 issued by the DOP&T. A copy thereof has been placed on record as Annexure-7. The relevant provision is at page 68 which is extracted below:-

“Preparation Year-wise by Panels DPC – they have not met for number of years:-

6.4.1 Where for reasons beyond control, the DPC could not be held in an year(s), even though the vacancies arose during that year (or years), the first DPC that meets there after should follow the following procedure:

- (i) Determine the actual number of regular vacancies that arose in each of the previous year (s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.
- (ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.
- (iii) Prepare a ‘Select list’ by placing the select list of the earlier year above the one for the next year and so on;

6.4.2 Where a DPC has already been held in a year further vacancies arise during the same year due to death, resignation, voluntary retirement etc., or because the vacancies were not intimated to the DPC due to error or omission on the part of the Department concerned, the following procedure should be followed:-

- (i) Vacancies due to death, voluntary retirement, new creations etc., clearly belonging to the category which could not be foreseen at the time of placing facts and material before the DPC. In such cases, another meeting of the DPC should be held for drawing up a panel for these vacancies as these vacancies could not be anticipated at the time of holding the earlier DPC. If for any reason, the DPC cannot meet for the second time, the procedure of drawing up of year-wise panels may be followed when it meets next for preparing panels in respect of vacancies that arise in subsequent year (s).

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(ii) In the second type of cases of non-reporting of vacancies due to error or omission (i.e. though the vacancies were there at the time of holding of DPC meeting, they were not reported to it) results in injustice to the officers concerned by artificially restricting the zone of consideration. The wrong done cannot be rectified by holding a second DPC or preparing an year-wise panel. In all such cases, a review DPC should be held _____ total vacancies of the year".

13. Para 6.4.1 requires preparation of year-wise panels of eligible persons for filling up vacancies which arose in that year where the DPC could not be held in that year. It is not a case here. A DPC was held in this case in September, 2002 for filling vacancies which had arisen or anticipated in the vacancy year 2002-03. But 4 more vacancies which could not be anticipated and placed before the DPC in September, 2002 arose in March, 2003. For filling up these vacancies procedure is laid down in Para 6.4.2. Para 6.4.2 aforementioned visualize two categories of further vacancies which arise during the same vacancy year: (i) due to death, resignation, voluntary retirement and creation etc. and (ii) the cases of non-reporting of vacancies due to error or omission (i.e. though the vacancies were there at the time of holding of DPC meeting, they were not reported to it).

14. It is now well settled that for promotion year-wise vacancies are to be calculated and panel for consideration of the DPC prepared and placed before the DPC. The creation of 4 vacancies in the month of March, 2003 would fall in the first category. It could not have been anticipated when the DPC meeting was held in September, 2002. They were caused by promotion of JDO (C) officer to the higher post. As per the DPC guide-lines, if it is a case falling in second category, the holding of a review DPC is mandatory. But if the vacancies fall in the first category and a second DPC could not be held within the vacancy year, which, in fact has not been held in the vacancy year 200-03, the proper procedure provided by sub-para (i) of para 6.4.2. of the guidelines is the drawing up of a separate panel of the vacancies and placing it for consideration before the next DPC for recommendation for filling up those vacancies. Such vacancies cannot be merged or clubbed with the vacancy which had arisen during the subsequent vacancy year. The contention of the respondent in the counter-reply that as per these guide-lines the separate year-wise panels is to be prepared only when the DPC had not met for a number of years, to our view is devoid of any force. The guide-lines for the DPC clearly spelt out that in respect of the vacancies which had occurred in March, 2003, i.e., during the vacancy year of 2002-03 and for which second DPC was not held, a separate panel for the vacancy

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year 2002-03 was a must and it was required to be considered by the DPC for empanelment of the officers for promotion out of those who were eligible for being considered for promotion during the vacancy year of 2002-03, i.e., who were eligible on the crucial date, 1.1.2002. The officers who became eligible on 1.1.2003, including those who could not be empanelled for promotion during the vacancy year of 2002-03 were not to be considered for promotion against the panel prepared for remaining vacancies of the vacancy year of 2002-03.

15. As regards the vacancies which had arisen during the vacancy year 2003-04, i.e., between 1.4.2003 and 31.3.2004 all those officers who became eligible, after qualifying DQE as on 1.1.2003, would be considered. As submitted by the respondents if some officers senior to those, who had qualified and were eligible as on 1.1.2002, had also qualified DQE subsequently but were eligible for consideration for promotion as on 1.1.2003, the crucial date for the vacancy year for determining the eligibility for promotion for the vacancy year 2003-04, would have to be considered in order of their seniority for filling up vacancies which occurred during the vacancy year 2003-04. . The seniority is certainly not to be determined on the basis of the date on which these officers had qualified the DQE. Result is that the seniors who qualified DQE after their juniors, in the subsequent DQE, would also be considered for promotion along with the juniors who had already qualified DQE, for the relevant vacancy year as on 1st January of the year preceding the vacancy year. To further elucidate if it is stated that the senior officers along with junior officers, both of whom had qualified the DQE prior to 1.1.2003 would be considered, in order of their seniority of course, for their promotion against the vacancies which had arisen during the vacancy year 2003-04.


16. The procedure which the respondents had adopted is clearly not in consonance with the guide-lines laid down by the DOP&T for the DPC meeting reproduced above. Accordingly, it is vitiated and unsustainable.

17. Since the applicants' prayer in this OA is for his promotion to the post of JDO (C) and his challenge was to the procedure followed by the respondents in holding DPC in October, 2003, the persons who were empanelled and promoted were not necessary party to the present proceeding nor was the cancellation of the promotion panel for year 2003-04 becomes relevant. The preliminary objection of the respondents are not tenable.

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18. The result is that the OA is disposed off with the following directions:-

- (i) The respondents shall prepare a separate panel for the 4 vacancies which had arisen in March, 2003, i.e., during the vacancy year 2002-03 and shall place this panel before the review DPC to be convened for reviewing the recommendations of the DPC held in October, 2003.
- (ii) All those who were eligible for consideration for promotion against the vacancies of vacancy year 2002-03 shall be considered by the review DPC for their promotion and if recommended, shall be given their promotions accordingly with all consequential benefits.
- (iii) All those officers who have already been promoted pursuant to their empanelment in the DPC which was held on 31.10.2003 would unless it becomes absolutely necessary as consequence of the recommendation of the Review DPC, shall not be reverted.
- (iv) This order shall be implemented within 4 months from the date on which the copy of the order is received.


(M.K. Mishra)
Member (A)


(M.A. Khan)
Vice Chairman (J)

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