

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1456 of 1992

25

NEW DELHI, THIS THE 41st DAY OF DECEMBER, 1997.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.S.P.BISWAS, MEMBER(A)

Shri L.P.Nirmal,
S/o Shri Baboo Ram,
Asstt. Supdt.
Central Jail, Tihar,
New Delhi.

Applicant

(BY ADVOCATE SHRI G.D.GUPTA)

vs.

1. Delhi Administration through
the Chief Secretary,
5, Sham Nath Marg,
Delhi-110006.
2. Inspector General of Prison,
Central Jail, Tihar,
New Delhi-64.
3. Shri R.D.Behot,
Asstt. Supdt.
Central Jail, Tihar,
New Delhi. ..

Respondents

(RESPONDENTS 1 & 2 BY ADVOCATE SHRI RAJINDER PANDITA &
RESPONDENT NO.3 BY ADVOCATE SHRI S.C.LUTHRA)

ORDER

JUSTICE K.M.AGARWAL:

By this application under Section 19 of the
Administrative Tribunals Act, 1985, the applicant wants
a direction for review D.P.C. after quashing the
earlier D.P.C.recommendations dated 5.5.1992 and
consequent promotion of 3rd respondent Shri R.D.Behot
to the post of Deputy Superintendent II by order dated
15.5.1992.

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26

2. Briefly stated, the applicant and the 3rd respondent appear to be members of Scheduled Caste community. Both of them were simultaneously selected and appointed to the post of Assistant Superintendent. The applicant joined the services on 3.7.1982, whereas the 3rd respondent joined on 30.7.1982. The strength of the next higher selection post of Deputy Superintendent II, (in short, "DS II"), was increased from 2 to 9 with effect from 16.3.1986 (See Annexure A-1). Out of the 9 posts, 6 were ear-marked for General Category, 2 for Scheduled Caste and 1 for Scheduled Tribe. One out of the two posts for Scheduled Caste went to one Shri Mahabir Singh pursuant to D.P.C. held in 1987. The other post was filled by transfer of service of an employee of Delhi Administration on deputation. It appears that on a vacancy being created on repatriation of the deputationist, D.P.C. was held on 5.5.1992. The applicant complains that though he was senior to the 3rd respondent, he was not considered by the D.P.C. and that only the name of 3rd respondent was considered and recommended for promotion to the post of DS II. Pursuant to this recommendation, the 3rd respondent was promoted to the said post by the impugned order dated 15.5.1992. The applicant has, therefore, filed the present O.A. for the said reliefs.

3. The respondents have denied the claim of the applicant by filing returns.

4. The learned counsel for the applicant submitted that the applicant was senior to the respondent No.3 and had better meritorious service

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21

record for promotion to the post of DS II, but he was not considered by the D.P.C. It was argued that if disciplinary proceedings were pending or contemplated against the applicant, a sealed cover procedure ought to have been followed by the D.P.C. The 3rd respondent was also facing disciplinary proceedings and, therefore, his name also could not be recommended by the D.P.C. The learned counsel further argued that the vacancy arose in 1986 and, therefore, so long as the vacancy was not filled up, D.P.C. ought to have been held every year. If it were so done, the applicant had better chances of selection than those of his junior, the 3rd respondent. The learned counsel for the applicant relied on certain provisions of the Jail Manual, which could not be produced before us, besides relying on the decision of the Principal Bench Bench in S.N.Sharma & ors. v. Union of India & ors., A.T.R. para 1988(2) C.A.T. 450; and 6.4.1 of Part III of Swamy's Manual on Establishment and Administration, page 647 (4th Edition) in support of his contentions.

5. After considering the rival contentions and perusing the record, we are of the view that the applicant cannot be considered senior to the respondent No.3 only on the basis of their respective dates of joining the post of Assistant Superintendent. Jail Manual was not produced before us and the contents of paragraph 2 of the application dated 15.4.1997 registered as M.A. No.955/97 do not persuade us to hold that what is contended on behalf of the applicant is correct. The applicant has not disputed that consequent upon the selection made by the Staff Selection

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Board on 25.5.1982, he obtained medical fitness certificate on 3.7.1982, whereas the 3rd respondent obtained such a certificate on 30.7.1982 and accordingly they were given appointment letters on 3.7.1982 and 30.7.1982. However, on this basis alone, inter se seniority cannot be determined. For determination of such seniority, the date of selection and the placement of a candidate in the Select List assume importance. Both the applicant and the 3rd respondent were selected on one and the same day and it appears that the name of 3rd respondent was placed above the name of the applicant in the Select List. If on that basis, the 3rd respondent was shown senior to the applicant in the Seniority List (Annexure A-32-A), the applicant cannot have a reasonable grievance. In spite of this, if the post was a selection post and the applicant was eligible for the same, his name ought to have been considered by the D.P.C. as and when the meeting was held and if he was excluded from such consideration, we are of the view that he can be said to have made out a case for review D.P.C. and, therefore, it is necessary to see, if he was or was not considered by the D.P.C. in 1992 when the 3rd respondent was considered for the post of DS II.

6. Though the applicant has alleged that he was not considered by the D.P.C., the official respondents have not specifically denied the allegation, but asserted in reply to paragraph 4.50 of the application that:

"In reply to para 4.50, it is submitted that Shri R.D. Behot was senior to the applicant and the DPC found him fit for promotion to the post

Yours

29

of Deputy Superintendent-II. Hence, the placing of the case of the applicant in sealed cover since he is facing disciplinary proceedings does not arise as there is only one clear vacancy for SC category."

Since DS II was a selection post, seniority alone could not form the basis for promotion of the 3rd respondent to that post, or for recommendation of the D.P.C. solely on that basis for promoting him to that post. If the applicant was facing some departmental enquiry, ^{procedure} sealed cover/ ought to have been adopted in his case by the D.P.C.. We are, therefore, of the view that the application deserves to be allowed on this ground.

7. We do not find any merit in other grounds urged on behalf of the applicant. In column 11 of the Recruitment Rules filed as Annexure A-33, five years' regular service in the feeder grade was essential. As per his own showing, the applicant was appointed on 3.7.1982 against the post of an Assistant Superintendent. As per service rules, he must have been on probation for a period of one or two years. He could not, therefore, be treated to have 5 years regular ^{meeting} service to his credit on the date of the D.P.C. held in 1987. Each year vacancy is required to be considered separately, but the rules do not contemplate that the materials available or service records of an employee for the years preceding the date of vacancy alone should be considered. If the applicant was eligible for the vacancy of the year 1986 or 1987, the 3rd respondent was also eligible and, therefore, both of them were eligible for consideration as and when the ^{on} D.P.C. meeting was held for filling up the vacancy. For

these reasons, we find no merit in other contentions of the learned counsel for the applicant.

30

8. In the result and for the reasons stated in paragraph 6 of this order, this application succeeds and it is hereby allowed. The recommendations of the D.P.C. dated 5.5.1992 and the consequent promotion order dated 15.5.1992 in favour of the 3rd respondent to the post of Deputy Superintendent II are quashed and the official respondents are directed to hold a review D.P.C. and to consider both the names of the 3rd respondent and the applicant simultaneously for the said post of DS II within a period of 4 months from the date of receipt of a copy of this order. No costs.


(K.M. Agarwal)
Chairman


(S.P. Biswas)
Member (A)

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