

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.2437/92

New Delhi, This the 24th Day of November 1994

Hon'ble Shri Justice S.C.Mathur, Chairman

Hon'ble Shri P.T.Thiruvenkadam, Member(A)

Shri K P Dohare
Addl. Industrial Adviser (Retd)
B-2/63, Paschim Vihar
New Delhi 110063.

...Applicant

By Applicant in person

Versus

Union of India Through

1. Secretary (TD) & D.G. (TD)
Directorate General of Technical Development
Udyog Bhavan, New Delhi 110011.

2. Secretary
Ministry of Industry
Government of India
Udyog Bhavan
New Delhi 110011.

3. Secretary
Union Public Service Commission
Dholpur House
New Delhi 110011.

4. Shri P.R. Latey
Retired Secretary, TD & DG (TD)
through Secretary (TD) DG (TD)
Directorate General of Tech. Development
Udyog Bhavan, New Delhi 110011.

5. Shri M.S.Grover
Deputy Director General
Directorate General of Tech. Development
Udyog Bhavan, New Delhi 110011.

...Respondents

By Shri V S R Krishna, Advocate

ORDER

Hon'ble Shri P.T.Thiruvenkadam, Member(A)

The applicant had filed OA 2464/89 in this Bench of the Tribunal and an order was passed on 8.6.90 upholding the ^{penalty} of censure to the applicant by the order of President dated 7.12.88 based on the memo of charge sheet issued on 12.5.86.

The respondents were however directed to convene a review DPC to consider the suitability ^{for} promotion

of the applicant as Addl. Industrial Adviser (Chemical) against vacancies which occurred in 1986 for which he had been found suitable by the DPC convened on 1.4.87, but had been kept under sealed cover.

2. Since there was some delay in the implementation of the above orders the applicant filed CCP No.124/91. By the time the CCP was disposed of on 30.1.92 the respondents had convened the review DPC as ordered in OA 2464/89. But the said review DPC did not recommend the name of the applicant for inclusion in the panel for the year 1986. It was mentioned in the final disposal of the CCP that it was open to the aggrieved party to seek proper relief in accordance with law. Accordingly this OA 2437/92 has been filed with the following prayers:-

(i) confirm the applicant in the post of Development Officer (Chemicals) from the date his junior was confirmed.

(ii) promote the applicant in the post of Additional Industrial Adviser from the date his junior Shri P.V. Mahta was promoted, and

(iii) consequential benefits

In other words, the main challenge in this OA is with regard to the non recommendation of the applicant's case for promotion by the review DPC held on 17.1.92. The other relief namely confirmation in the post of Development Officer (Chemicals) does not flow out of the orders passed in the contempt petition referred above. All the same we note the reply of the respondents that the applicant had already retired on 30.7.90 and as per latest instructions dated 28.3.88 confirmation has to be made only once in the service of the official which will be in the entry grade. The respondents have

also stated that the applicant had already been confirmed in the post of Asst. Development Adviser (Chemicals) the post on which he was initially appointed. In view of this confirmation we do not propose to engage ourselves in discussing the first relief.

3. The applicant argued his case in person and mentioned that he was found fit for the inclusion in the panel against 1986 vacancies when the DPC was convened in the year 1987. At that time his promotion was not granted in view of the charge memo served to him in the year 1985. The review DPC which had been convened based on the orders of this Tribunal has been unfair to him in not arriving at the same recommendation as arrived at by the 1987 DPC. The stand of the respondents is that the recommendation of the review DPC which is presided over by a Member of the UPSC cannot be questioned. The review DPC had taken into account the relevant records including the circumstances which led to the penalty imposed on him. The charge-sheet issued in 1985 did not result in exoneration and hence for consideration against the 1986 vacancies the records to be taken into account included the grounds leading to the penalty. We see no reason to find fault with the approach of the respondents.

4. It was then argued that review DPC should have included a reserved community Member since the applicant belongs to SC community. The respondents referred to Annexure I to the reply containing the rules for forming the DPC. We note that the relevant DPC should comprise the following:

"Additional Industrial Adviser (Chemicals)
1. Group A DPC (for considering promotion):-

(i) Chairman/Member Union Public Service Commission - Chairman

(ii) Secretary(Technical Development) - Member
(iii) Secretary(Industrial Development)-Member
(iv) Secretary(Petroleum and Chemical - Member"

Thus the rules only provide for the incumbents of the posts by designation and do not provide specifically for a SC/ST Member. Even on questioning, the applicant was not in a position to show us any rule stipulating that the DPC for the post of Additional Industrial Adviser(Chemicals) there has to necessarily include a SC/ST Member.

5. The applicant then referred to certain allegations against the then Industrial Adviser and the then Head of department and mentioned that they were biased against him. We note that these persons were not the members of the DPC and there is no need for us to go into the aspect of bias.

6. A number of citations were referred to bring out that confirmation cannot be denied and the award of censure alongwith denial of promotion amounts to double jeopardy etc. All these citations are irrelevant to the disposal of this OA. Review DPC has been constituted as per the orders of this Tribunal and such action which resulted in the denial of the promotion to the applicant against the 1986 vacancies cannot be faulted. It is admitted that the applicant was subsequently promoted and retired as Additional Industrial Adviser(Chemicals) on 30.7.90.

7. In the circumstances the OA is dismissed.
There shall be no order as to costs.

P.T.Thiruvenkadam

(P.T.Thiruvenkadam)
Member(A)
24 Nov 94

LCP

S.C.Mathur
(S.C.Mathur)

Chairman
24 Nov 94