

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(21)

O.A. No. 3092/92

Decided on 27.7.1998

Shri S.K. Vaid,
(By Advocate: Shri B.T. Kaul)

Applicant

Vs.

Central Electricity Authority & Anr. Respondents
(By Advocate: Shri R.V. Sinha)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? Yes

Adige
(S.R. ADIGE)
Vice Chairman (A)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

22

O. A. No. 3092 of 1992

New Delhi: this the 27th day of July, 1998.

HON'BLE MR. S. B. ADIGE, VICE CHAIRMAN (A).

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

Shri S.K. Vaid,
S/o Shri Late B.N. Vaid,
R/o G-159, Vikaspuri,
New Delhi

Working as Asstt. Director (Engineering Grade II)

.....Applicant.

(By Advocate: Shri B.T.Kaul)

Versus

1. Central Electricity Authority
through
its Chairman,
Sewa Bhawan,
R.K.Puram,
New Delhi-066.
2. Union of India
through
the Secretary,
Department of Power,
Ministry of Energy & Non-Conventional
Energy Sources,
Sharam Shakti Bhawan,
Rafi Marg,
New Delhi - 01

... Respondents.

(By Advocate: Shri R. V. Sinha)

JUDGMENT

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant challenges his non-promotion as Asstt. Director, Grade I in 1991 and 1992.

2. We have heard applicant's counsel Shri B.T. Kaul and respondents' counsel Shri R.V. Simha.

3. Admittedly as per Rule 7(5) C.P.E. (Group 'A') Service Rules, 1990 (Annexure-AI) the promotions are to be made by selection on the basis of merit.

with due regard to seniority and it is also not denied that applicant's case was considered for both the years. Guidelines regarding the manner in which the selections are to be held are contained in D P & T's Consolidated Instructions dated 10.4.89 (Annexure-I to reply), para 6.3.1 of which is extremely relevant.

4. Respondents have stated in their reply that they have strictly followed the contents of aforesaid para 6.3.1 and while admittedly applicant was quite senior, he was not included in the panel by the OPC on the basis of the comparative merit of the officers in the zone of consideration.

5. In rejoinder, applicant asserts that respondents were bound to consider not only the CRs of the officers falling within the consideration zone but also to give due regard to seniority in terms of the RRs. Shri Kaul has also relied upon the Hon'ble Supreme Court's judgment UOI Vs. M.L. Kapoor & Ors. 1973(2) SCC 836.

6. Admittedly the post of Asst. Director Gr.I is a Group 'A' post. Aforesaid para 6.3.1 (1) lays down the manner in which promotions are to be made to Group 'A' posts from lower groups. This provides that the Bench Mark should be 'good' but officers graded as Outstanding would rank en bloc senior to those graded as 'very good' and officers graded as 'very good' would rank en bloc senior to those graded as good and placed in the select panel accordingly upto the number of vacancies, officers with the same grade maintaining their inter se seniority

(2A)

in the feeder post. In our view the action by respondents in making the promotions in accordance with aforesaid para 6.3.1 (1) is fully in consonance with aforesaid Rule 7(5).

7. In so far as Capoor's case (Supra) is concerned, Shri Kaul has laid emphasis on para 22 of that judgment in which while discussing the provisions of Regulation 5 (2) IPS (Appointment by Promotion) Regulations, 1955 the Hon'ble Supreme Court had observed that

"the required number has to be selected by a comparison of merits of all the eligible candidates of each year but in making the selection, seniority must play its due role. Seniority would however only be one of the several factors affecting assessment of merit as comparative experience in service would be. There could be a certain number of marks allotted, for purposes of facilitating evaluation, to each year of experience gained in service."

8. Rule 5(2) of the IPS (Appointment by Promotion) Regulations, 1955 lays down that selection for inclusion would be based on merit and suitability with due regard to seniority.

9. We have considered the matter carefully. In our view the contents of para 6.3.1 of Respondents' OM dated 10.4.89 are fully in accordance with Rule 7(5) OPE (Group 'A') Service Rules, 1990 in making as much as while/selection on the basis of merit due regard is also paid to the seniority. Indeed we find the contents of para 6.3.1 which forms the basis of Respondents' action, is in no way inconsistent with the ratio of judgment in Capoor's case (Supra) because while making selections by

25

comparing the merit of the eligible candidates falling within the zone of consideration, seniority is also allowed to play its due role. Merely because the respondents' OM dated 10.4.89 does not contemplate allotment of marks for purposes of facilitating evaluation, does not ~~simply~~ ^{simply/that} in the instant case ~~it~~ that due regard was not paid to the seniority, or that seniority was not allowed to play its due role. Furthermore Respondents' OM dated 10.4.89 has itself not been impugned.

10. It is not denied that the DPC was held by the competent authority, and no malafide has been alleged against any of the members. We also cannot substitute our own assessment in place of that made by DPC.

11. Under the circumstances, we see no reason to interfere in this OA.

12. During hearing Shri Kaul has stated that the applicant had subsequently been promoted by orders issued sometime in 1997 w.e.f. 1993-94, but he had not received the benefits flowing from his retrospective promotion. If so it is open to applicant to agitate separately for the same in accordance with law, if so advised.

13. Subject to para 12 above the OA is dismissed. No costs.

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)

MEMBER(J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN(A).

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