

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

28

D.A. No.1450/93~~XXX~~

Date of Decision: 1.9.99~~1998~~

Shri K.B. Shukla

...Applicant

(By Advocate Shri A.K. Behera)

Versus

Union of India ~~XXX~~ ...Respondents

(By Advocate Shri N.S. Mehta)

CORAM:

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VC (J)

HON'BLE ~~XXX~~/MRS. SHANTA SHAstry, MEMBER (A)

1. TO BE REFERRED TO THE REPORTER OR NOT? ~~YES~~

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER
BENCHES OF THE TRIBUNAL? No


(V. Rajagopala Reddy)
Vice-Chairman (J)

Cases referred: -

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1450/93

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New Delhi this the 1st day of September, 1999.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mrs. Shanta Shastry, Member (A)

K.B. Shukla,
S/o Late Shri C.L. Shukla,
R/o 10/15, Probyn Road,
Delhi-110054

...Applicant

(By Advocate Shri A.K. Behera)

-Versus-

Union of India through the
Secretary,
Ministry of Home Affairs,
Govt. of India, North Block,
New Delhi.

...Respondents

(By Advocate Shri N.S. Mehta)

O R D E R

By Reddy, J.

The applicant was appointed to the erstwhile Delhi-Himachal Public Civil Service (DHPCS for short) and was appointed to Grade II of the DHPCS during 1962. He was later appointed to Indian Administrative Service (IAS) in September, 1980. He was assigned the year of allotment in 1976 batch. The applicant was assigned the seniority on the basis of his year of allotment. He was later promoted to the Junior Administrative Grade of the IAS in the year 1986. Under Rule 3 (2A) of the IAS (Pay) Rules, 1954 (hereinafter referred to as the Pay Rules) an officer of the IAS becomes eligible to the selection grade on completion of 13 years of service. Having completed 13 years of service the applicant became eligible for the selection grade

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in the year 1990. The applicant submits that he was never subjected to any disciplinary or criminal proceedings.

2. A Screening Committee met to grant selection grade to the IAS of 1964 batch. By an order dated 30.5.90 the Screening Committee granted the selection grade to nine officers of the 1976 batch. The applicant was, however, not granted the selection grade. The applicant submits that officers junior to him, namely, I.J. Talwar, Bansi Dhar, V.P. Suri and R.K. Bhatia were appointed to selection grade and the Screening Committee has not assigned any reason for denying the same to him. The applicant, therefore, submitted a representation dated 16.7.90 to Secretary, Govt. of India, Ministry of Home Affairs, complaining of the illegal action of the Screening Committee. In its reply dated 23.6.92 the Government stated that the Screening Committee found the applicant unfit for promotion to the selection grade of IAS. The applicant was, however, informed that his case was further reviewed in March, 1992 and the applicant was onceagain not recommended for the selection grade. The applicant thereafter submitted a memorial to the President of India, but having received no reply he filed the present OA.

3. It is the contention of the learned counsel for the applicant that the service record of the applicant being very good throughout, and having never received any adverse remarks in his entire career and having never subjected to any disciplinary proceedings, there was no reason for finding him unfit

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for the selection grade. He further contended that the selection of his juniors is violative of Articles 14 and 16 of the Constitution of India and contrary to rule 3(2-A) of the Pay Rules.

4. In the counter-affidavit it was averred that the Screening Committee which met in 1990 assessed the applicant's suitability for appointment to selection grade by evaluating his character rolls and the Committee found him unfit for promotion. Even in the meeting held in 1992 he was again found not fit to be recommended. It was further averred that in the meeting held for the next year on 6.8.92 the recommendations were placed in a sealed cover, as a chargesheet has already been issued to the applicant in connection with a disciplinary case.

5. The OA was subsequently amended. The case of the applicant in the amended OA is that the documents filed by the respondents in the OA revealed that the only reason given by the Screening Committee for not finding the applicant suitable for granting the Selection Grade was that the applicant had not completed the prescribed tenure in the difficult areas (hard areas) and on that ground alone the applicant was found 'unfit' in 1990 as well as in 1992. It is contended by the learned counsel for the applicant that it was not a valid requirement under the Rules for denying the selection grade. It is also contended that while he was posted in Arunachal Pradesh, a difficult area, he was transferred to Delhi after he completed 1-1/2 years tenure and it was not at his request. He also submits that posting and transfers are not in the

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hands of the applicant. In reply to this amended OA a further counter was filed refuting the allegation. The relevant portion of the counter reads as follows:

"The Committee was informed of the guidelines issued by the Ministry of Finance while considering the case of the 1976 batch IAS officers for promotion to Selection Grade. The Committee was also informed that the applicant had rendered 1-1/2 years service in Arunachal Pradesh. The Committee assessed the suitability of all the officers for the appointment of the Selection Grade by evaluating their character rolls as a whole and general assessment of their work. After assessing his overall performance in service, the Committee found the applicant 'unfit' for promotion to Selection Grade.

Para 4.12

It is submitted that the applicant was posted in Arunachal Pradesh from March, 87 to September, 88. In October, 87 two complaints were received against him by the Government of Arunachal Pradesh. The complaints were got inquired into by the Government of Arunachal Pradesh. The explanation of the applicant was also obtained in the matter. After taking into consideration the evidences adduced during the inquiry and the explanation submitted by the applicant, the case was closed after administering a simple warning. In the meantime in view of the allegations made against him, the applicant was transferred from Arunachal Pradesh to Delhi.

Para 4.13 to 4.15

The averments made in these paras are denied. The recommendation of the Screening Committee that the applicant was not found fit for promotion to Selection Grade was not on the basis of the fact that he had not completed his hard area posting. In fact, the Committee evaluated his character rolls as a whole and general **assessment** of his work. After evaluation, **the** Committee ~~assessed~~ him as 'unfit' for promotion to Selection Grade."

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6. The learned counsel for the respondents, therefore, submits that on an overall evaluation of the character rolls and on a general assessment of his work he was found unfit for promotion to selection grade and not on the ground that he had not completed his specified tenure in difficult areas.

7. The only question, therefore, that emerges from the above pleadings and rival contentions is whether the action of the Screening Committee, which met in January, 1990 and during 1992 in not recommending the applicant for the Selection Grade is in accordance with the Rule 3 of the Pay Rules. Rule 3 (1) speaks of Payment of Scale admissible to the members of the service. Rule 3 (2) (1) deals with the payment in the Selection Grade to a member of the service. It says that the members of service is entitled for the pay in the Selection Grade only on appointment to that grade. Other sub rules are not necessary for our purpose. Rule 2-A speaks of mode of appointment to the selection grade, which reads as follows:

"2(A) Appointment to the Selection Grade and to posts carrying pay above the time scale of pay in the Indian Administrative Service shall be made by selection on merit with due regard to seniority.

Provided that no members of the Service shall be eligible for appointment to the Selection Grade unless he has entered the fourteenth year of Service calculated from the year of allotment assigned to him under rule 3 of the Indian Administrative Service (Regulation of Seniority) Rules, 1954 or under regulation 3 of the Indian Administrative Service (Seniority of Special Recruits) Regulations, 1960, as the case may be."

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8. A bare reading of the rule makes it clear that the appointment to selection grade is by "selection on merit with due regard to seniority". The qualifying service for such appointment is 14 years calculated from the year of allotment assigned to the member of the service. It is not in dispute that the Screening Committee which met on 6.4.90 considered the applicant but recommended the applicant's juniors, namely, I.J. Talwar, V.P. Suri, Bansi Dhar and R.K. Bhatia for selection grade but the applicant was superseded. In the counter-affidavit filed in reply to the OA as well as to the amended OA the only reason given was that in the meeting of the Selection Committee held on 6.4.90 on assessment of the overall character rolls and working the applicant was found unfit for selection. It is not their case that there were any complaints pending against the applicant. In fact, they stated in the counter-affidavit that the case pending against him by that date was closed and the applicant was administered a simple warning. It must be noticed that there is neither admission nor denial of the allegation that the applicant was superseded only on the ground that he has not completed prescribed period in difficult areas. The learned counsel for the applicants, therefore, requested to look into the records whether the allegation was well founded or not.

9. The records were, therefore, produced before us and we have carefully examined the same. In the minutes of the Screening Committee held on 16.1.90 the Committee had considered the name of the applicant. In para 4 it was mentioned that the applicant Shri K.B.

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Shukla was "not considered fit as he has not done the prescribed tenure of difficult areas." The same assessment was made against the name of Shri Bansi Dhar, junior to the applicant also. Again in the meeting held on 6.4.90 the assessment of the applicant was made as 'unfit' but surprisingly the case of Shri Bansi Dhar, earlier assessment was deleted and he was assessed as 'very good'. It is evident from the minutes of the earlier meeting held in January, 1990 that the Committee has taken into consideration certain guidelines issued by the Ministry of Finance and Ministry of Personnel and Home Ministry and had come to the conclusion that the officers who have not done the prescribed tenure in difficult areas should not be recommended for appointment to the selection grade. On that reason the applicant was assessed as 'unfit'. However, in the meeting held on 6.4.90 the Committee has found such a review by the earlier Committee was not permissible. Hence the Committee considered the cases of the officers of 1976 batch afresh and found the applicant 'unfit' on an overall assessment of his work. It is, therefore, not correct to contend that the applicant was found 'unfit' in the meeting held on 6.4.90 and on 18.3.92 solely on the ground that he has not completed the specified tenure in the difficult areas.

10. However, the story is different in the deliberations made by the Screening Committee. In the note given to the DPC members the complaint against the applicant as to committing sodomy with two doctors and as to the other complaint regarding the second marriage

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while one wife living are dealt with. As stated in the counter-affidavit the enquiry has been held as to the allegations made by the Doctors and the same was already closed with a warning to the applicant. The second complaint as to the second marriage also, nothing was found against the applicant though a preliminary enquiry was held. He was neither issued a chargesheet nor was he placed under suspension. The said complaint was pending prior to 1975-76. The applicant was not recommended in the meeting held in March, 1992 only on the ground that the clear picture did not emerge regarding this case. In the absence of any pending disciplinary proceedings against the applicant on the date of DPC held on 18.3.92, only on the ground that the picture was not clear as to the validity of the allegation pending for 1-1/2 decades, the applicant's appointment to selection grade cannot be stopped or deferred. We do not find anywhere in the counter-affidavit that the applicant was subjected to any disciplinary proceedings upto 18.3.92. In the circumstances we are of the view that the recommendations made by the Screening Committee in the meeting held in March 1992 is contrary to Rule 3 (2-A) of the Pay Rules. In the circumstances, we direct the respondents to appoint the applicant to the selection grade w.e.f. 18.3.92 with all consequential benefits.

11. The O.A. is partly allowed, in the circumstances no costs.

Shanta Shastry
(Smt. Shanta Shastry)
Member (A)

'San.'

V. Rajagopal Reddy
(V. Rajagopal Reddy)
Vice-Chairman (J)