

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

X
V

O.A. No.2732 of 1993

Decided on: 20.04.1999

Shri R. Vikramarthandan & Ors. ...Applicants

(By Shri B.S. MaineeAdvocate)

Versus

Union of India and OthersRespondent(s)

(By Shri V.S.R. Krishna and Shri R.L. Dhawan, Counsel
for the respondents).

CORAM:

THE HON'BLE MR. JUSTICE S. VENKATARAMAN, VICE CHAIRMAN(J)

THE HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? **yes**
2. Whether to be circulated to the other Benches
of the Tribunal? **x**

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(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2732 of 1993

New Delhi this the 20th day of ^{April} ~~March~~, 1999



HON'BLE SHRI JUSTICE S. VENKATARAMAN, VICE-CHAIRMAN(J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Shri R. Vikramarthandan
S/o Shri A. Rethnasamy
Dy. Director Estt.(LR) III
Railway Board,
Ministry of Railways,
Rail Bhawan
New Delhi.
2. Shri K. Venkataramani
S/o Shri K. Krishnamurthi
Dy. Director, Vigilance (R&SC)
Railway Board,
Ministry of Railways
Rail Bhawan
New Delhi.
3. Shri P.C. Nautiyal
S/o Shri D.D. Nautiyal
Dy. Director, Finance (X)
Railway Board
Ministry of Railways
Rail Bhawan,
New Delhi.

..Applicants

By Advocate Shri B.S. Mainee.

Versus

Union of India through

1. The Chairman
Railway Board
(Ministry of Railways)
Rail Bhawan,
New Delhi-110 001.
2. The Secretary,
Railway Board
(Ministry of Railways)
Rail Bhawan
New Delhi-110 001.
3. The Secretary
Union Public Service Commission
Dholpur House
New Delhi.
4. Shri Inder Mohan
Under Secretary (P)
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi-1.

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5. Shri J.S. Gusain
Dy. Director, Establishment (W)
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi-1.
6. Shri D.R. Mehra
Under Secretary (E) II
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi-1.
7. Shri K.V. Ramana
Dy. Director (PG)
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi-1.
8. Shri O.P. Chawla
Dy. Director, Traffic Commercial (G)
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi-1.
9. Shri Prakash Gokhale
Protocol & Catering Officer
Railway Board
Ministry of Railways
New Delhi-1.
10. Shri M.N. Khanna
Dy. Director, Efficiency Research
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi-1.
11. Shri P.M. Ariar
Under Secretary (D&A) II
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi-1.
12. Shri K. Krishnan
Under Secretary (D&A) II
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi-1.

.. Respondents

Shri V.S.R. Krishna, Counsel for respondent Nos. 1 to 3.

Shri R.L. Dhawan, Counsel for respondent Nos. 4 to 12.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicants, who are Section Officers are aggrieved that the respondents had not prepared the promotion panel following the Departmental Promotion Committee meeting in accordance with the extant rules and instructions issued by the Department of Personnel. Their grievance is that the respondents had continued to adopt the old norms as were applicable to the respondents - department for determining the number of eligible officers to be considered within the zone of consideration instead of the norms as revised by the Department of Personnel. The rules and instructions of the Department of Personnel provide for consideration of eligible candidates to the extent of twice the number of vacancies plus 4, whereas the respondents had considered the number of eligible officers equivalent to three times the number of vacancies as per their own rules. They are also aggrieved that the respondents had purposely delayed the preparation of the panel for 1992 in order to confer benefit to some junior incumbents like respondent No.12 who would not have been within the zone of consideration had the DPC been held in time. Another area of contention is that the respondents purposely delayed the panel for 1991-92 by making necessary reference to the Department of Personnel in regard to the question of including the Principal Private Secretary in the eligibility list when it is known that these posts are non-functional post and the normal channel of promotion to the post of PPS is from the regular channel of Under

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Secretary/Deputy Director as per the Railway Board Secretary Service (Promotion to Grade-I) Regulations, 1973. By this uncalled reference, the delay had taken place and consequently the juniors like respondent No.1 were made to be eligible for consideration. Further, it is contended that by this process respondents decided to hold the 1992-93 DPC simultaneously with 1991-92 DPC. The applicant, therefore, allege that the respondents had shown lack of bona fides by delaying the preparation of the panel at the due time as per the instructions of the Government. They also contend that when the Department of Personnel revised these instructions by their O.M. dated 10.3.89 setting out the procedure for the DPC which, inter alia, included the manner of determination of zone of consideration and including the number of ACRs to be considered for promotion etc., the respondents had not chosen to amend the Railway Board Secretariat Service (Promotion to Grade-I) Regulations, 1973 in the light of the DOP&T instructions aforesaid. They allege that while the respondents had kept the zone of consideration of eligible officers upto three times the number of vacancies as per their own norms, they had chosen to adopt the DOP&T instructions in regard to the number of CRs to be considered which should be equal to the number of years of service required for promotion, i.e. 8 ACRs.

2. The respondents in their counter-reply have denied that the applicants were passed over for promotion by their juniors, as alleged. They submit that the appointment to the posts of Grade-I (Under

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Secretary/Deputy Director) of the Railway Board Secretariat Service (hereinafter referred to RBSS) (Under Secretary/Deputy Director) is made by selection in terms of Railway Board Secretariat Service Rules, 1969 and regulations made thereunder. In pursuance of the Rule 8(6) of the aforesaid rules, RBSS (Promotion to Grade-I) Regulations, 1973 were framed and these rules and regulations are statutory in nature and have been framed under Article 309 of the Constitution of India. According to these rules, Section Officers and Grade-A Stenographers who have rendered not less than 8 years of approved service were eligible for promotion to Grade-I. The select list has to be prepared in accordance with the procedure laid down in the RBSS Regulation 1973. In terms of the aforesaid selection, the Selection Committee had to consider the officers in the field of selection and may classify them in three categories viz. 'Outstanding', 'Very Good' and 'Good' and select list is prepared by including first who are classified as 'Outstanding', then who are classified as 'Very Good' and in the end who are classified as 'Good' and the 'benchmark' for inclusion in the select list is 'Good'. The field of selection as per the aforesaid regulation extends to 5 times the number of officers to be included in the select list which was subsequently modified to three times the number of officers to be included in the select list. However, they contend that when the Department of Personnel revised the zone of consideration for promotion by selection effective from 1.11.1990 by their O.M. dated 12.10.1990 to two times the number of vacancies plus 4, the respondents, namely, the Railway

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Board considered the question of amending the Railway Board Secretariat Service (Promotion to Grade-I) Regulation 1973 and it was held that it would not be desirable to amend the regulations. Further, there was no change in the benchmark for promotion to the grade of Under Secretary/Deputy Director and the benchmark for assessment for promotion continued to be 'Good' only. Accordingly, for the preparation of panel for select list of 1991-92 for filling up the vacancies, eligibility of officers equal to three times the number of officers were prepared in terms of the aforesaid regulations and the applicants were duly considered in the aforesaid selection. For 10 vacancies, select list was prepared. Out of 10, one was reserved for SC candidate. It is stated by the respondents that the applicants could not be considered because of their low merit as compared to the merit of those who were placed in the panel because of their superior merit. In other words, the persons who were having 'Outstanding' grading though junior to applicants had to be placed above in the select list on the basis of the assessment by the DPC. The applicants who had secured a lower grading vis-a-vis the others who are with higher grading could not be included in the panel. The respondents submit that no favour or discrimination had been made in their selection. Even in respect of the earlier panels for the year 1989-90, 1990-91 it is stated by the respondents that these panels were prepared simultaneously and the crucial date for eligibility was taken as 1.7.89 and for the panel of 1990-91 the crucial date was taken as 1.7.90. For the

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panel of 1990-91 applicants 1 and 2 were included in the zone of consideration but could not find place in the panel. As stated above for the 1991-92 panel, the applicants were considered and were included in the zone of consideration but they could not find place in the select list because of low merit position. On the question of consideration of number of ACRs, the respondents have stated that this aspect was left to the DPC convened by the UPSC and the DPC was guided by the extant guide lines. In regard to the contention that the respondents delayed the preparation of panel for 1991-92 in order to bring some juniors who are respondents here within the zone of consideration, the respondents have strongly denied the allegations. They have stated that the delay was due to some administrative reasons as the UPSC sought for some clarification regarding counting of approved service of Stenographers in the merged Grade-A and Grade-B as well as eligibility of Principal Private Secretary (PPS), a newly created category on the acceptance of the recommendations of the 4th Pay Commission and it, therefore, became necessary for the respondents to consult the Department of Personnel in the matter and thereafter, the DPC was held on 28.5.93 and the panel was prepared. The respondents assert that in the process of selection seniority in the feeder grade merely determines the field of consideration and the DPC selects the officers as per the comparative merit placing 'Outstanding' above, then 'Very Good' and 'Good' in the panel. The respondents contend that in the previous DPCs also some of the seniors had been passed over for

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promotion as the DPC selected more meritorious officers in the field of consideration upto the number of vacancies available. They also assert that the DPC should not be guided by the overall grading that may be recorded in the ACRs but it should make its own assessment on the basis of the entries in the ACRs. In the light of this, they contend that the grounds taken by the applicants are totally untenable.

3. The learned counsel for the applicant strenuously argued on the above contentions. He submitted that the respondents while following their own regulations of 1973 insofar as it related to the field of selection or zone of consideration to three times the number of vacancies when the DOP&T had by its Notification reduced to twice the number of vacancies plus 4, in the consideration of number of CRs the DPC had adopted the new norms of the DOP&T and considered 8 years CRs equivalent to the number of years of approved service required for promotion to Grade-I instead of 5 years CRs as per the old norms of the respondents. He argued that either the Department should have followed the old norms of considering 5 ACRs with the zone of consideration being three times of number of vacancies or adopt the new norms of 8 years CRs when the zone of consideration being 2 times the number of officers plus 4. After the conclusion of the arguments, the learned counsel for the

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applicant produced a copy of the judgment of **Shiv Kumar Sharma & Another Vs. Union of India & Others, ATJ 1998 (1) SC 531**. We shall refer to this judgment in the later part of this order.

4. We have heard the learned counsel for the parties and have perused the record including the file referred to above.

5. Admittedly, the promotion to the level of Under Secretary/Deputy Director in the Grade-I of the Railway Board secretariat Service is by selection. Although the DOPT may have revised the procedure for the DPC including certain norms for zone of consideration etc., it is stated by the respondents that a conscious decision has been taken in consultation with the DOP&T to retain the zone of consideration as prescribed in the Railway Board Secretariat Service Regulations, 1973. The Railway Board Recruitment Rules are also framed under Article 309 of the Constitution and the Board has necessary powers to prescribe its own norms and zone of consideration depending on the requirements of each service. It is also to be noted that even in respect of Central Secretariat Service which is more or less akin to the Railway Board Secretariat Service, the zone of consideration has not been revised in accordance with the norms of DOP&T. Therefore, fixing the separate zone of consideration would not by itself vitiate the selection process in any manner. As regards the number of ACRs to be perused by the DPC, it was stated by the respondents



that this was left to the DPC. It is alleged that the DPC had considered ACRs for 8 years. There is no material before us to support this. Even assuming that 8 years ACRs are perused by the DPC in the light of the fact that 8 years service in the feeder cadre for promotion to Grade-I was required, we do not find that this is in any way irrational or illegal. However, in all the selection procedures the DPC is required to see the overall performance of the eligible officers and more particularly the last 5 years ACRs in the Railways. If they had considered the last 8 years ACRs that by itself would not vitiate the selection. As regards the allegation that the respondents have deliberately delayed the holding of the DPC in order to bring respondent No.12 within the zone of consideration, we do not find any merit in this allegation. Besides, delay in filling a vacancy cannot be a ground for setting aside the appointment made. The learned counsel for the respondents has rightly referred to **D.A. Solunke etc. etc. Vs. Dr. B.S. Mahajan, AIR 1990 SC 434**. No mala fide has also been alleged by the applicants. In the DPC for selection grading adopted by the DPC is not a matter to be interfered with by the courts or Tribunals. Nor can the Courts or Tribunals substitute its own assessment or grading. The learned counsel for the respondents has rightly relied on **Major General IPS Dewan Vs. Union of India & Others, JT 1995 (2) SC 654** and **Smt. Nutan Arvind Vs. Union of India & Another, JT 1996(1) SC 699**.



6. We have given our anxious consideration to the point covered in the judgment in Shiv Kumar Sharma (Supra) produced by the learned counsel for the applicant after the conclusion of the arguments. The respondents have also filed written submissions in this behalf, simply pointing out that the judgment in question is not applicable in the facts and circumstances of the case. We have perused this judgment. In the Department of Personnel and Training circular of 10.3.1989 it is provided that where an officer is officiating in the next higher grade and has earned CRs in that grade these may be considered by the DPC in order to assess his work, conduct and performance but no extra weightage may be given merely on the ground that he has been officiating in the higher grade. This circular came up for consideration in a Full Bench reference of this Tribunal in **Mr. S. Sambhus & Others Vs. Union of India & Others, Full Bench Judgments in Volume III at page 46.** In that case applicants holding Class III posts of Surveyor Assistant Grade-I were officiating in Class-I posts of Assistant Surveyors (Works) on ad hoc basis on the basis of seniority. Their grading by the Departmental Promotion Committee was good and as it was lower than grade "very good" in Class-I post they were superseded by the juniors for regular promotion as Assistant Surveyor of Works (ASWs). The Tribunal held the view that comparing the quality of performance of a candidate at the Class-III level of S.A. with the quality of performance of another at higher Class-I level on equal footing will be comparing the incomparables and will be not only illegal and irrational but also

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violative of Article 14 of the Constitution. The Tribunal held " the only reasonable and just suggestion that in our opinion can be made to meet the ends of justice in the circumstances of the case is that for the period during which the applicants shouldered the higher responsibilities of the higher class-I posts of ASW/SW, their gradation as SA should be treated as one level higher than the grading awarded to them as ASW as per the ACR for that period. That is, if the ACR as ASW reflects 'good', it should be taken as 'very good' and if 'very good', then it should be taken as 'outstanding'. In this manner they are placed on equal footing for the purpose of assessment of comparative merits". In the judgment in Sharma's case (Supra) which involved the promotion of an officer to IPS cadre, the Apex Court referred to the aforesaid judgment of the Full Bench and observed that the formula worked out by the Full Bench in the aforesaid case which came up for scrutiny by the Apex Court in another case - **Prem Shankar Gupta Vs. Union of India** and other allied matters and the Court while disposing of group of petitions had observed "that they were satisfied that the formula evolved by the Full Bench of the Central Administrative Tribunal is the proper and just one having regard to the facts and circumstances of the case and the practicalities of the situation". After referring to the above case, the Apex Court held as follows:-

" Both the learned counsel for the officer S.K. Sharma and H.N. Srivastava contended that if this formula was adopted even on the basis of the categorisation made by the UPSC they would have been better placed insofar as assessment of their work is concerned and they would have stood the chance of being

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selected for entry into the IPS cadre at an earlier date when others with lesser record get the benefit. We do not propose to express any opinion on the merit of the matter, but we see no difficulty in accepting the submission of the counsel that the UPSC should be directed to reconsider their cases in the light of the judgment of the Full Bench of the Central Administrative Tribunal approved by this court so that a proper assessment can be made by the UPSC. It is only on this limited ground that we think that the matter deserves a second look by the UPSC".

7. There is no specific plea in the present application that had the UPSC taken into account the formula of the Full Bench in Sambhus Case (Supra) as approved by the Apex Court, the applicants would have been given a higher grading and would have become entitled to be included in the final select list. It is only generally averred that the DPC had acted in an arbitrary manner. We have, however, given a careful consideration to the issues involved and examined the same in the facts and circumstances of the present case. The DPC for preparation for the panel for consideration of vacancies which had occurred in 1991-92 was admittedly held on 28.5.1993. So, for the above vacancies the eligible candidates including the applicants would have been considered on the basis of their ACRs for the period upto 31.3.1992. Although in para 4.5 of the averment of the applicants it is stated that they were promoted as Deputy Director/Under Secretary on ad hoc basis in the years 1991, 1992 and 1993, the exact periods during which they held the promoted post on ad hoc basis has not been mentioned. In the counter-reply the respondents have referred to the promotions of the applicants on ad hoc basis and have averred that in the absence of empanelled Under Secretaries/Deputy Directors, eligible Section

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Officers were considered for ad hoc promotions on the basis of seniority-cum-suitability and they were not subjected to any promotion test at that stage and it is also submitted in the reply that this ad hoc appointment did not give any claim to the regular promotion and they were to continue in the same promotion post and when the empanelled officers became available, these ad hoc arrangements would have to be terminated. The respondents have referred to Annexure R-4 containing the orders of promotion of the applicants on ad hoc basis. On a perusal of these orders, we find that the applicant No.1 was promoted by the orders of the respondents dated 22.2.1991 for a period of three months or till the posting of a regular incumbent whichever is earlier. In the case of applicant No.2 he was promoted by the order dated 28.2.1992 for a period upto 31.3.1992 or till the posting of regular incumbent whichever was earlier. Applicant No.3 was promoted by the order dated 11.1.1993 till a period of 2 months or the posting of a regular incumbent (Annexure R-4-A, R-4-B, R-4-C and R-4-D). The applicants were clearly told that these ad hoc appointments would not confer on them any right or claim for retention in this post or promotion against such posts in future. There is no record before us whether these ad hoc arrangements were continued. Even otherwise for the preparation of the panel for 1991-92 vacancies, the applicant No.1 would have at best earned one ACR upto 31.3.1992 assuming that this promotion had continued. Whereas in the case of other applicants, however, they would not have earned an ACR in the higher post as they

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would not have completed three months in the higher post upto 31.3.1992 as ordinarily the departmental instructions stipulate the assessment of an officer if he had held that post for a period of three months. Therefore, when the DPC was held in May, 1993 there would have been no assessment or grading of the applicant Nos. 2 and 3 in the higher post as no ACR for them in the higher post would have been recorded in respect of applicant No.1, and at best there would not have been one ACR of the applicant if he had continued in the higher post up 31.3.1992. However, in the case of applicant No.1 even assuming that he had an ACR which, according to the Full Bench formula would have to be upgraded as 'outstanding', the DPC could not give a general grading merely on the basis of one ACR when they have to see the assessment on the basis of CRs of 8 years as prescribed under the Railway Board Secretariat Service Rules and Regulations thereunder. In view of this matter, therefore, the Full Bench formula even if it is extended to the applicant No.1's case, it does not help the classification of the applicant to be raised to the level of 'outstanding'. In the case of applicant No.2 there would not have been an ACR for the period from February, 1992 to 31.3.92. Any CRs of the later period if at all, would not have been relevant for the purpose of this DPC even if the ad hoc appointment had continued. Similarly there would have been no ACR for the third applicant also. Even if it was there, assuming that the ad hoc appointment in his case had continued, these ACRs would not have been relevant for the purpose of consideration



by the DPC which met on 28.5.1993.

8. It must, however, be pointed out that the Full Bench while laying down the formula in the above case had not specifically declared the provision of the Circular dated 10.3.89 as illegal and have not struck it down. It is stated by the respondents that in the rules applicable to the respondents department, namely, Railway Board Secretariat Service Rules, 1969 and Regulations, 1973 it was left to the Selection Committee to classify the officials included in the field of selection.


9. In the light of the aforesaid, it cannot be said that the Selection Committee ~~should~~ had erred in not granting a higher grading for the applicants.

10. We have also perused the records of the DPC proceedings for the 10 vacancies for which the panel was prepared by the DPC on 28.5.93. 31 eligible officers were considered including the three applicants and also one SC candidate from the extended zone as prescribed under the Rules. 9 officers were assessed as 'Outstanding' by the DPC and the lone SC candidate from the extended zone was also included in the panel against the 10th vacancy. Applicants, however, were graded as 'Very Good' but could not be accommodated in the panel. In this view of the matter, therefore, we do not find any irregularity in the procedure adopted by the Departmental Promotion Committee.

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11. In the conspectus of the above discussion, we do not find any merit in the application and it is accordingly dismissed. The parties shall bear their costs.


(K. MUTHUKUMAR)
MEMBER (A)


(S. VENKATARAMAN)
VICE CHAIRMAN (J)

Rakesh