

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No QA 636/93

Date of decision: 10.08.1993

Sh. S. K. Shukla ... Petitioner

vs.

Union of India
through
Secretary,
Ministry of Commerce,
Department of Supply
New Delhi & ors. ... Respondents

For the petitioner ... Petitioner in person.

For the Respondents ... Sh. N. S. Mehta, Counsel.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice S.K.
Dhaon, Vice Chairman)

The petitioner, a Deputy Director of Supplies in the Directorate General of Supplies and Disposals is really aggrieved by the decision of the Departmental Promotion Committee (DPC) taken on 10.6.1992 and 11.6.1992 whereby he was not found fit for promotion to the post of Director (ordinary). He, therefore, prays that the Office Order dated 23.7.1992 issued by the Department of Supply, Ministry of Commerce effecting wrong promotion may be quashed. The further prayer is that the respondents may be directed to produce all the relevant record of the proceedings of the DPC and that the proceedings of the DPC may be quashed.

2. A counter-affidavit has been filed on

behalf of the respondents by Sh.Musafir Singh,
Under Secretary to the Government of India.

3. The petitioner has appeared in person whereas the respondents are represented by Sh.N.S.Mehta, learned counsel. Parties have been heard.

4. The Indian Supply Service(Group-A) Rules, 1985(hereinafter referred to as Rules) which have been framed by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution are relevant. Sub-rule (4) of Rule 7 of the Rules provides, inter-alia, that the selection of officers for promotion shall be made by selection on merit, except in the case of promotion to the posts in Senior Administrative grade level I and Senior scale which shall be in the order of seniority subject to rejection of the unfit, on the recommendations of the Departmental Promotion Committee constituted in accordance with Schedule IV. In Schedule IV, the composition of the DPC for considering cases for promotion of Group 'A' posts included in the Indian Supply Service (Group 'A') is given. We are concerned with Sl.No.4 of this document which deals with the post of Junior Administrative Grade(Ordinary). The composition of the DPC for considering the cases for promotion is:-

" (1) Chairman/Member UPSC ..Chairman.
(2) Joint Secretary(S) ..Member.
(3) Director General(S&D)..Member. "

5. The record has been produced before us. We have perused the same. It shows that the DPC for considering the case of the petitioner

Shy

for promotion was constituted in accordance with the requirements of Schedule IV. The petitioner has relied upon certain instructions issued by Government of India DP&T OM No.22011/5/86-Estt (D) dated 10.4.1989 read with subsequent amendments. He stressed that according to these instructions, the Secretary/Additional Secretary of the Department/Ministry should invariably be one of the Members of the DPCs. He contends that the DPC having not been constituted in accordance with the requirement of the said Office Memorandum, no DPC in the eyes of law came into existence and, therefore, the decision of the DPC should be quashed.

5. It is trite law that the President or the Governor, as the case may be, while exercising power conferred under proviso to Article 309 of the Constitution, really exercises legislative power. The Rules, therefore have the same force as a statute. An Office Memorandum cannot run counter to a statutory rule. It cannot supplement but /supplant the rule. Schedule IV which form part of the Rules does not provide /Secretary or Additional Secretary of the Department or Ministry should be one of the Members of the DPC. The Office Memorandum on which the petitioner has relied upon must, therefore, be ignored as it runs counter to the Rules.

6. In the counter-affidavit filed, in Para 4 (A) (iv) it is stated that the DPC is composed as follows:-

"(i)Chairman/Member,UPSC .. Chairman
(ii)Director General
(Supplies & Disposal) .. Member
(iii)Joint Secretary
Department of Supply Member"

Sug

During the course of the arguments, the learned counsel for the respondents stated at the Bar that in the meeting of the DPC held on 10.6.1992, Director General(Supplies & Disposals) had participated. This assertion was challenged by the petitioner and he vehemently urged that we should peruse the relevant record in order to ascertain the truthfulness of the statement. Before we refer to the record, we may indicate that in the reply filed, there is no assertion either express or implied that in the meeting of the DPC held on 10.6.1992, the Director General(S&D) was present.

7. A perusal of the record indicates that on 18.5.1992, the Under Secretary to the Government of India in the Ministry of Commerce sent a communication addressed to Shri R.P.Singhal, Director General(S&D)- Member of DPC- and Shri K.P.Verma, Joint Secretary(Supply)-Member of DPC-stating that by its letter dated 15.5.92, the UPSC had intimated that the meeting of the DPC for preparation of a panel for promotion to the post of Director of Supplies (Ordinary Grade) in the Junior Administrative Grade(Ordinary) of Indian Supply Service, will be held on the 8th June 1992, at 10.30 A.M. in UPSC, Dholpur House, Shahjahan Road, New Delhi. S/Shri R.P.Singhal, DG(S&D) and K.P. Verma, Joint Secy(S) were requested to make it convenient to attend the meeting of the DPC. It appears that the said communication was delivered to Shri R.P.Singhal, DG(S&D) on 18.5.92. The said communication appears to bear the initials of Shri Singhal with date

8/5/92

12

thereon. A communication from Shri Singhal indicates that he had informed JS(S) that he would be on leave on 8.6.1992. However, he had stated that the panel might be made in his absence. On 3.6.1992, the Under Secretary to the Government of India in the Ministry of Commerce issued a communication to the Secretary, UPSC stating therein that Shri R.P.Singhal, DG(S&D) had expressed his inability to attend the meeting of the DPC on 8.6.1992 as he will be on leave on that date. On 9.6.1992, the Under Secretary to the Government of India in the Ministry of Commerce sent a communication to Shri R.P.Singhal, DG(S&D) and Shri K.P.Verma, Joint Secretary(S), Members of the DPC informing them that the meeting of the DPC which was to be held on 8.6.1992 had been postponed and would now be held on 10.6.1992 at 3.00 PM in UPSC, Dholpur House, Shahjahan Road, New Delhi. He requested S/Shri R.P.Singhal and K.P.Verma to attend the same. This communication, it appears was served upon Shri Singhal on 9.6.1992. The Under Secretary on 9.6.1992 informed the Secretary, UPSC that Shri Singhal had expressed his inability to attend the meeting on 10.6.1992 as he will be on leave on that date. Thereafter, the meeting was held on 10.6.1992 and carried over to 11.6.1992. The proceedings indicate that Shri S.J.S.Chhatwal, Member, UPSC had participated and acted as Chairman of the DPC. Shri R.P. Singhal, Director General(S&D) was not present. Shri K.P.Verma, Joint Secretary(S) was present and a decision was taken by the Members present.

Shri

8. We are now left with the question as to what would be the effect of the absence of Shri R.P.Singhal, one of the members of the DPC, upon the proceedings held on 10.6.1992. Vide Office Memorandum dated 10.4.1989, the Joint Secretary to the Government of India in the Ministry of Personnel, Public Grievances and Pensions circulated instructions in the form of guidelines on DPCs. Para 15 of the guide-lines is relevant. It provides that the proceedings of the DPC shall be legally valid and can be acted upon notwithstanding the absence of any of its members other than the Chairman provided that the member was duly invited but he absented himself for one reason or the other and there was no deliberate attempt to exclude him from the deliberation of the DPC and provided further that the majority of the members constituting the DPC are present in the meeting. Paragraph 15, in our opinion, completely covers the situation. We have already indicated that Shri Singhal on all occasions was given due information of the date, time and venue of the meeting. He absented himself on the ground that he was on leave. A genuine effort was made to secure his presence in the DPC. No attempt much less deliberate attempt was made to exclude him from the meeting. We have also indicated that out of the three Members, two attended ^{in relation to} the meeting and both of them concurred in the decision arrived at the meeting. The conclusion, therefore, is inevitable that the proceedings of the DPC were perfectly valid.

(b)

9. Very rightly, no submissions have been made by the petitioner on the bench-marks given by the DPC.

10. It is argued that the proceedings of the DPC stood vitiated as it failed to take into account the case of one Shri P.N. Soni. It is doubtful whether the petitioner has any locus standi to take up the case of Shri Soni. However, the respondents, in their reply, have pointed out that the case of Shri Soni was considered and since he was facing a disciplinary proceeding, the recommendations of the DPC with regard to him were kept in a sealed cover.

11. Lastly, it is urged by the petitioner that the proceedings of the DPC stood vitiated as one of the members, namely Shri K.P. Verma was biased against him. We have gone through the averments made in the O.A. We are not impressed at all with the allegations made against Shri K.P. Verma. We may note that most of the allegations pertain to the period anterior to June 10, 1992. The petitioner vehemently urged that Shri K.P. Verma was responsible for his transfer to Bombay and he had challenged the order of transfer. The respondents have produced before us the judgment given by a Bench of this Tribunal on 18.05.1993 in OA 3004/1992. This O.A. was directed against the order of transfer passed against the petitioner. This Tribunal has dismissed the said O.A. and upheld the order of transfer. It has repelled the allegation of bias made by the petitioner against Shri K.P. Verma.

12. No other point has been pressed in support of this O.A.

13. This O.A. fails and is dismissed. There will be no order as to costs.

B.N. Dholiyal
(B.N. DHOUDIYAL)
MEMBER (A)

S.K. Dhaon
(S.K. DHAON)
VICE CHAIRMAN