

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 1339 of 2005

Wednesday this the 27th day of February, 2008

**Hon'ble Mr. Justice A.K. Yog, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)**

Raghavendra Kumar, aged about 55 years, Son of Late Shri J.P. Verma, resident of Type-5, Duplex, National Sugar Institute Campus, Kalyanpur, Kanpur-208017, presently working as Professor Sugar Engineering(Advisory), National Sugar Institute, Kanpur.

Applicant

By Advocate Sri Pankaj Srivastava

Versus

1. Union of India, through the Secretary, Ministry of Consumer Affairs, Food & Public Distribution, Krishi Bhawan, New Delhi-110001.
2. Union Public Service Commission, through its Secretary, Dholpur House, Shahjahan Road, New Delhi-110001.
3. Shri G.K. Shukla, presently working as Director, National Sugar Institute, Kalyanpur, Kanpur-208017.
4. Shri R.B. Nigam, Former Director, National Sugar Institute, Kalyanpur, Kanpur, presently residing at 186-D, Bairy, Bithoor Road, Kalyanpur, Kanpur-208017.

Respondents

By Advocate Sri Saumitra Singh

ORDER

By K.S. Menon, Member (A)

This O.A. has been filed challenging; (i) The Office Order dated 04.02.2005 issued by the Under Secretary, Ministry of Consumer Affairs, Food and Public Distribution by which Shri G.K. Shukla (Respondent No.3) working as Professor, Sugar Engineering(Advisory), National Sugar Institute, Kanpur, has been appointed by the President to the post of Director of National Sugar Institute Kanpur in the scale of Rs.18400-500-22,400 until further orders and subject to the orders of this Tribunal in O.A. No. 1602 of 2004 (Annexure A-I of the O.A.) and (ii) letter dated 30.12.2004 of the Ministry of Consumer Affairs, Food & Public Distribution directing Shri G.K. Shukla to assume charge as Director, National Sugar Institute, Kanpur w.e.f. 31.12.2004 (AN) (annexure A-2 of the O.A.).



(25)

2. By way of relief, the applicant has prayed (i) that the said impugned order dated 04.02.2005 (annexure A-1) be quashed and set aside, (ii) the impugned order dated 30.12.2004 directing respondent No.3 (Shri G.K. Shukla) to take over charge of the post of Director, N.S.I., Kanpur w.e.f. 31.12.2004 be held as illegal, arbitrary and malafide, (iii) the respondents be directed to approve and order the promotion of the applicant to the post of Director, N.S.I., Kanpur w.e.f. the date respondent No.3 was promoted to the said post with all consequential benefits and (iv) respondent No.1 be directed not to supersede the applicant, in future for promotions to the post of Director, N.S.I., Kanpur.

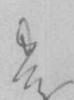
3. The brief facts of the case are that the post of Director, N.S.I., Kanpur fell vacant on 31.12.2004 with the retirement of one Shri R.K. Vaish. The applicant claims that in the seniority list published and circulated in 2004, the same Sri R.K. Vaish and one Sri P.K. Agrawal, who were actually junior to him, were shown as senior to him in the said seniority list. The applicant had earlier also challenged the seniority list in which Sri R.K. Vaish and one Sri R.K. Behl, his juniors were placed above him, by filing O.A. No. 190 of 1998 which was dismissed on 05.01.1999 on grounds of limitation. His legitimate claim to the post of Director, National Sugar Institute, Kanpur was ignored and Shri R.K. Vaish was appointed as Director. With the retirement of Shri R.K. Vaish, the applicant maintains that being senior most in Professor Cadre (feeder cadre) for promotion to the post of Director, the applicant should have been considered over Shri G.K. Shukla, respondent No.3. It appears that previously Shri R.B. Nigam, the then Director, N.S.I., Kanpur had manipulated things to ensure that his juniors Sri R.K. Vaish and Shri G.K. Shukla superseded him. Applicant further submits that despite his good track record and there being no adverse reports, the above officers deliberately ensured that his Confidential Reports were downgraded to below the benchmark in order to promote respondent No.3 as the Director. Applicant submitted several representations dated 9/10.08.2004 and 3/9.10.2004 to the respondents, but he did not receive a proper response, so he filed O.A. No. 1062 of 2004 in which he sought the quashing of the seniority list dated 10.02.2004 and the order of respondent No.1 rejecting his earlier representation. During the pendency of the O.A., the respondents directed the respondent No.3 Shri G.K. Shukla to take over as the Director w.e.f. 31.12.2004. He maintains that he was therefore illegally, wrongfully and arbitrarily superseded by respondent No.3 who

(26)

took over as the Director on 31.12.2004 and the formal orders communicating the Presidents approval to his appointment as Director till further orders subject to the outcome of the O.A. 1602 of 2004 was issued on 04.02.2005. In the meantime, this Tribunal passed an interim order dated 23.12.2004 directing the respondent No.1 to complete the ACRs of the applicant for the year ending March 2004 and any promotions made in the meantime was to be subject to the result of the O.A. 1602 of 2004. The O.A. then became infructuous on account of the promotion of respondent No.3 as the Director. The applicant then withdrew his O.A. by the direction of the Tribunal dated 28.03.2005 with liberty to file a fresh O.A., hence he filed the present O.A.

4. The applicant's main grievance is that the respondents have not followed the D.P.C. procedure as laid down in O.M. of Department of Personnel & Training dated 08.02.2002 and contained the revised guidelines prescribed for selection by merit. The sum and substance of his submission is that the guidelines stipulate that super session of officers in the matter of promotion by selection should be avoided and in support thereof he has also cited the Department of Personnel & Training (for short D.O.P.T.) O.M. dated 16.02.2005 besides the O.M. dated 08.02.2002. Another point being made by the applicant is that he has not been communicated any adverse remarks till date, hence he has not been given the opportunity of rectifying his shortcomings if any. He claims that the assessment forms for the year 2004 which was the responsibility of the respondents were never given to him and this was done deliberately to put him at a disadvantage during the D.P.C. He contends that even if his grading was below the benchmark on the basis of which he was not considered for selection, this should have been communicated to him, however no such communication was given to him which smacks of malafide intentions. In support of this contention, he has relied on the following judgments: -

1. *1996 Supreme Court Cases (L&S) 519 U.P. Jal Nigam and Others Vs. Prabhat Chandra Jain and others;*
2. *1997 Supreme Court Cases (L&S) 903 State of U.P. Vs. Yamuna Shanker Misra and another;*
3. *2003 (1) E.S.C. (All) 311 Brij Pal Vs. State of U.P. and others;*
4. *2003 (3) E.S.C. (All) 1807 Bijendra Singh Vs. State of U.P. and others;*
5. *2003 (1) A.T.J. 130 Smt. T.K. Aryavir Vs. Union of India and Ors.*
6. *2003 (2) A.T.J. 392 Dr.J.P. Srivastava Vs. Union of India and Ors.*



(27)

7. 2003 (3) A.T.J. 648 R.N. Pandey IPS Vs. Union of India and Ors.
8. 2006 (2) A.T.J. 70 Y. Ravinder Vs. Area Commandant, CISF, Ramagundam Karimnagar, Distt., A.P.
9. (2007) 2 Supreme Court Cases (L&S) 524 S.T. Ramesh Vs. State of Karnataka and another.

In view of the above the applicant submits that the entire action of the respondents is illegal, malafide and deliberately manipulated with the intention to harm him and unduly favour respondent No.3. He has therefore prayed for the reliefs mentioned in paragraph No.2 above.

5. The respondents refute all the averments made by the applicant. They do admit that the applicant was appointed as a Professor earlier than Shri G.K. Shukla (which however is not the criteria for selection to the post of Director). They further submit that in terms of date of joining Government Service and date of confirmation in the entry level post Shri R.K. Vaish, Shri R.K. Behl, Shri S.K. Shukla (respondent No.3) were all senior to the applicant. This is on account of the fact that the applicant though appointed as Professor on 18.07.1988 could complete his probation and get confirmed only on 31.03.1992 instead of 18.07.1990 i.e. the prescribed period of two years. (Paragraph No. 5 to 13 and annexure-3 of the Counter Affidavit).

6. On the issue of supply of A.C.R. Forms for the year 2003-2004 for recording his assessment, Respondents submit that the forms were given to him and duly received by the applicant but he chose not to submit his self assessment and so in accordance with the procedure prescribed the ACR form duly filled by the Reporting and Reviewing Officers was sent to the U.P.S.C. for the D.P.C. A.C.R. for the prescribed period of the years (1999-2004) in respect of all the four officers including the applicant who were under consideration for promotion was considered by the D.P.C. On the basis of the D.P.C. proceedings dated 02.11.2004 three out of the four officers were found FIT while the applicant was declared UNFIT on the basis of the benchmark VERY GOOD prescribed for selection, (copy of minutes of the D.P.C. proceedings dated 02.11.2004 is annexed at Annexure-10 of the Counter Affidavit). Respondents submit that there is no basis for the applicant's submission regarding the issue of seniority and violation of procedure by the D.P.C. They averred that as per the guidelines of D.O.P.T. contained in their O.M. dated 08.02.2002 (Annexure A-12 of the O.A.), seniority by date of appointment in the feeder cadre is not the criteria for promotion. Seniority only amongst the candidates who

(28)

are able to cross the Benchmark (i.e. Very Good) and graded as fit by D.P.C., is the criteria for promotion. Hence, no super session is envisaged among the candidates found Fit. They maintain that the D.P.C. proceedings have been strictly in accordance with the guidelines laid down by D.O.P.T. Regarding the point made by the applicant that if there were any adverse remarks in his ACR or if he fell short of the Benchmark prescribed for selection, the same were not communicated to him, the respondents contend that these are not required to be communicated as per D.O.P.T. O.M. dated 21.03.2006, which reads as under: -

"According to existing instructions the over all grading given in the ACR should however, not be communicated even when the grading given is below the benchmark presented for promotion to the next higher grade."

Respondents have also relied on ~~settled-cases~~ like J.T. (3) SC 361 Union of India and anr. Vs. S.K. Goel and others, wherein it was held: -

"In the instant case, respondent No.1 had received no adverse remarks and had rather been graded at the level of the prescribed bench mark of 'above average', therefore, as rightly pointed out by learned Additional Solicitor General, there was neither any onus nor requirement upon the appellant to have communicated the ACR entry to respondent No.1."

"For the foregoing reasons, we hold that the DPC enjoyed full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it. Hence, the interference by the High Court is not called for."

7. The applicant in paragraph No.15 of the Rejoinder and paragraph No.12 of the Supplementary Rejoinder have challenged the validity of the D.P.C. proceedings on the ground that there was no quorum due to the fact that one member of the D.P.C. viz. Secretary, Ministry of Food and Consumer Affairs was absent. Refuting this argument, the respondents have in paragraph No.12 of the Supplementary Counter Affidavit and annexure No.3 to the Supplementary Counter Affidavit pointed out that the prescribed composition of the D.P.C. as per the Recruitment Rules, is as follows: -

1. Chairman/Member, U.P.S.C. : Chairman
2. Secretary, Ministry of Food and Consumer Affairs : Member
3. Additional Secretary, Ministry of Food & Consumer Affairs : Member

28

The Member, U.P.S.C. and the Additional Secretary of the Ministry concerned were present hence the quorum was complete and the contentions of the applicant are baseless and respondents pray that the O.A. is without any merit and deserves to be dismissed.

8. Heard, Sri P. Srivastava, learned counsel for the applicant and Sri Saumitra Singh, learned counsel for the respondents and perused the pleadings on record.

9. On the issue of seniority, admittedly, the applicant was appointed as Professor (feeder cadre) on 18.07.1988 while Sri G.K. Shukla-respondent No.3 was appointed to the said post on 26.09.1991. It is on the basis of this criteria that applicant has been claiming that he is senior to respondent No.3 and consequently has staked his claim for the post of Director, N.S.I., Kanpur but it is seen from the pleadings that the applicant could complete his probationary period only on 01.04.1992 as against the prescribed period of 2 years i.e. 18.07.1990. the respondents have in their counter affidavit elaborated the fact that the probationary period of the applicant had to be extended on two occasions due to shortcomings in the applicant's functioning and personal behaviour. On the other hand, it is seen that respondent No.3 Sri G.K. Shukla was already in Government service (06.05.1985) when he was appointed to the present post on 26.09.1991. Besides, Sri Shukla completed his probationary period and was confirmed on 23.07.1988. It is, therefore, evident that in terms of joining Government service as well as the date of confirmation, Sri G.K. Shukla is senior to the applicant. Viewing the above facts in the context of D.P.C. proceedings, it has been clearly brought out that seniority on the basis of date of appointment in the feeder cadre is not the criteria for promotion. Seniority is reckoned only on the basis of and amongst the candidates who crossed the stipulate benchmark of "Very Good" and ^{as} grade ^{as} FIT by the D.P.C. In this connection, based on the directions of this Tribunal, the respondents had produced the original ACR Dossiers of both the applicant and respondent No.3 for perusal of the Bench. We have scrutinized the said documents and find that respondent No.3-Sri G.K. Shukla has got "Very Good" grading in all the five years i.e. 1999-2000 to 2003-2004 and that has been taken into consideration by the D.P.C. On the other hand, the applicant's ^{over} all grading for the said five years, in question, is 3 "Good" and 2 "Average". This would mean that applicant's over all grading is to be taken as "Good", which falls below the benchmark of "Very Good". The

(30)

D.P.C. accordingly categorized the applicant as UNFIT while three other officers who were considered by the D.P.C. namely Sri R.K. Vaish, Dr. P.K. Agarwal and Sri G.K. Shukla were declared FIT (annexure-10 of the C.A.). It has also been mentioned in the same D.P.C. proceedings that Number 1 on the panel would be Sri R.K. Vaish and since Dr.P.K. Agarwal had already retired earlier and Sri R.K. Vaish was due to retire in the vacancy year, the next in the panel for consideration of promotion to the post of Director would be Sri G.K. Shukla. From the above, it is evident that the proceedings of the D.P.C. were in accordance with the existing Rules and procedures and there appears to have been no violation in this regard. On the issue of seniority of the applicant, it is abundantly clear that the applicant appears to be under the misconception that he is senior to respondent No.3-Sri G.K. Shukla. Therefore on both the above issues, the contention of the applicant is without merit and cannot be accepted.

11. The applicant in the O.A. has alleged that the A.C.R. Forms especially for the year 2003-04 were not provided to him by the respondents in spite of him having asked for the same. He, therefore, could not submit his self-assessment and alleges that this has been clearly manipulated by the respondents including respondent No.3 in order to put him at a distinct disadvantage as far as the D.P.C. was concerned. This contention of the applicant has been strongly refuted by the respondents, who have produced before the Tribunal photocopies of letters by which the ACR Forms for the five years, in question, had been provided to the applicant and who has received the same with his initials and date. It is noticed from the said letter that only for the years 2000-2001 and 2001-02 that the applicant had submitted his self appraisal for the remaining three years although the ACR Forms were received by him and in spite of reminders having been issued by the respondents, he chose not to submit his self-appraisal for the reasons best known to him. The authorities, therefore, intimated him that his ACR was being initiated without his self-appraisal part being filled-in in accordance with the orders and instructions on the subject. The only conclusion that can be drawn from the above facts, is that the applicant has willfully not submitting his self-appraisal for which he is at fault and has also made wrong submissions to the Court, attributing motives to the respondents while all along the lapse was on his part

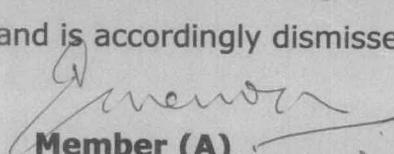
12. Regarding the point raised by the applicant, even if his grading was below the benchmark on the basis of which, he was not considered

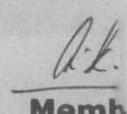
(31)

for selection, or if there were adverse entries in his A.C.R., same have not been communicated to him and hence he was deprived of the opportunity of rectifying his shortcomings, if any. He alleges that this has been deliberately done to ensure that his junior supersedes him and has cast aspersions on the authority concerned, including the Director. In support of his above contention he has relied on several Judgments, which have been enumerated in paragraph No.4 above. It is however, seen that facts and circumstances in all these are different from the facts and circumstances in this O.A. and, therefore, these Judgments will not in any way help his case. Besides, there appears to have been no adverse remarks in his ACR and hence these were not communicated to him, as per the normal given procedure. The over all grading of "Good/Average" is admittedly below the benchmark but not adverse in terms of his performance and hence the authorities have justifiably not communicated the same to him. The existing instructions of D.O.P.T. dated 21.03.2006, extract of which is given in paragraph No.6 above, provides that grading which are below the benchmark presented for promotion to the next higher grade, are not required to be communicated. In view of this, the plea of the applicant is without merit and hence rejected.

13. The last major point put forward by the applicant is on the validity of D.P.C. proceeding of the U.P.S.C. The point being made out is that out of committee of three Members of D.P.C., Secretary of Ministry concerned was absent and the third Member i.e. the Additional Secretary belongs to the Finance department and hence the quorum is not complete. This contention of the applicant also appears to be without any merit as the Recruitment Rules clearly provides for 3 Member D.P.C. consisting of Chairman/Member, U.P.S.C. and two other Members from the Ministry concerned, of the rank of Secretary and Additional Secretary. In the present case, the Member, U.P.S.C. and Additional Secretary and Financial Advisor of the Ministry concerned were the Members present while the Secretary of the said Ministry was not present. It, therefore, cannot be said that there was no quorum for the D.P.C. to conduct its proceedings. The applicant's contention that the D.P.C. proceeding has no validity is, therefore, without merit.

14. In view of the above, it is seen that the applicant has not ^{any} case warranting judicial interference by this Court. The relief (s) prayed for, cannot be granted. The O.A. is, therefore, without any merit and is accordingly dismissed. No costs.


Member (A)


Member (B)