

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: This The 09th Day of December 1999.
10th day

Coram:- Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

Original Application No. 1928 of 1993.

Azmatullah Khan

son of Late Sri Rahmatullah Khan,
aged about 57 years

Presently posted as Senior Accounts Officer in
the office of Chief Controller of Defence Accounts
(Pension) Allahabad, resident of house No. 10/74/113
Gangaganj Colony, Allahabad.

. . Applicant.

(Through Sri Nazar Bokhari, Adv.)

Versus

1. Union of India through the Secretary,
Ministry of Defence, New Delhi.

2. The Chairman, Union Public Service
Commission, Dholpur House, New Delhi.

3. The Controller General of Defence,
Accounts, West Block-V, R.K. Puram,
New Delhi.

4. The Chief Controller of Defence
Accounts (Pensions) Allahabad.

. . . Respondents.

(Through Sri N.B. Singh, Adv.)

Order (Open Court)

(By Hon'ble Mr. S. Dayal, Member (A.))

This O.A. has been filed by the applicant
for a direction to the respondents to consider

the case of the applicant for promotion to Junior Time Scale with effect from 1990 i.e. from the date his Junior Sri K. Sarangarathinam has been promoted with all consequential benefits. A prayer has also been made to consider new guidelines laid down in O.M. dated 10.4.89 which was made effective from 1.4.89 regarding principles to be observed in preparing panel for promotion.

2. The case of the applicant is that he stood at serial No. 18 in the Panel of Accounts Officers, Class II post, this post was a feeder cadre for the post of Asstt. Controller of Defence Accounts, a Class I post. Regular selection for promotion to the post of Asstt. Controller of Defence Account was to be done by Departmental promotion committee through Union Public Service Commission on the basis of All India Seniority and merit to be judged from the record of service. Those officers who had put in three years of regular continuous service were eligible. Rule 24 of the Indian Defence Accounts Service Recruitment Rules 1958 stipulated that appointments by promotion to the post in junior time scale of the service were to be made by selection on merit with due regard to seniority from amongst members of Group B Gazetted Service who had three years regular continuous service in the grade. It has also been mentioned that the Departmental Promotion Committee was to be headed by a Chairman or member of Union Public Service Commission. The applicant has assailed the list of successful candidates announced in January 1990 in which the name of the Sri K. Sarangrathinam who

was junior to the applicant is included while the name of the applicant was missing. Again in May 1991 a D.P.C. met to fill up vacancies of junior time scale in which the name of the applicant was not included while a large number of his juniors were included. Hence the applicant contends that he should have been included in both the panels for promotion to Group-A.

3. The arguments of Sri Nazar Bokhari for the applicant and Sri S.K. Anwar Proxy counsel for Sri N.B. Singh for the respondents have been heard.

4. The learned counsel for the applicant has contended that the applicant had filed O.A. 794/91 before a Division Bench of this Tribunal and the D.B. by order dated 12.10.92 had directed the respondents to re-consider the record of the applicant vis-a-vis those who have been selected in the three selections and if merit was more or less same, the applicant was to be given notional promotion with effect from the date, his next junior was promoted. In this order the case of Sri N.P. Mathur Vs. State of Bihar and others (1971)1 S.L.R. page 335 has been cited in which it has been held that:-

" If merit was equal or balanced or not decisively in favour of junior incumbent selection has to be made in favour of a senior one."

Another case cited in this order of the Tribunal is that of Sri Hari Dutt Kainthla Vs. State of Himanchal Pradesh and others (1974)1 S.L.R. page 208 in which it has been decided that:-

" When Criteria is merit with due regard

to seniority, selection has to be based on comparative merit and when merit is indecisive in favour of junior or difference is thin or minor or not that is not appreciable it is the seniority which is to prevail."

The learned counsel for the applicant has contended that in the light of the directions given in O.A. 794/91 decided on 12.10.92 by this Tribunal, the applicant should have been considered for promotion and promoted

5. The review D.P.C. proceedings of which have been shown to us by learned counsel for the respondents had met on 19.8.93 and reconsidered the case of the applicant in the light of observations made in the order in O.A. 794/91 and took into consideration the fact that S.L.P. filed by the Department before the Supreme Court against the judgment of the Tribunal has been dismissed by the said court. It reconsidered the case of the applicant and made a revised panel for the years 1987, 1988 and 89 and 1990-91. The name of the applicant has not been included in the revised panel as drawn by the Departmental Promotion Committee, the respondents informed the applicant regarding this by their letter dated 27.9.93 that his name had not been impanelled.

6. The learned counsel for the respondents has referred to the judgments of the Apex Court in 1996 S.C.C. (L & S.) 529 in which the Apex Court has ruled that:-

"When a high level committee had considered the respective merits of the candidates assessed the grading and considered the cases for promotion, this Court can not sit for the assessment made by the D.P.C. as an Appellate Authority."

The learned counsel for the respondents has also cited Mrs. Anil Katiyar Vs. Union of India and others (1997)1 S.C.C. 280 in which the Apex Court ruled as follows:-

" Having regard to the confidential procedure which is followed by the Union Public Service Commission, it is not possible to hold that the decision of the D.P.C. in grading the applicant is very good instead of outstanding was arbitrary."

7. The challenge of the applicant to the impugned order on the ground that the applicant should have been promoted because the difference between him and those selected ^{was} ^{this} This can not be upheld in the light of authorities cited by learned counsel for the respondents. The Departmental Promotion Committee presided over by a member of Union Public Service Commission is an expert body which is the final arbitrator of fitness of an official for inclusion in the panel barring malafides or arbitrariness ^{and} no other challenge of D.P.C. can succeed.


8. Learned counsel for the applicant drew attention to Annexure A.10 of his O.A. in which guidelines for D.P.C. have been annexed. He drew attention specifically to para 6.3.1(i) which stipulates that all officers whose over all grading to his equal to or better than the bench marked should be included in the panel for promotion in or inter se seniority in the lower category to the extent of number of vacancies. The same provision however incorporates provision for induction to Group A posts or service from lower groups which is case here. It has been provided that officers graded as outstanding would rank ^{en}


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block senior to those graded as very good and the officers graded very good would rank in block senior to those who are graded as good and placed in select panel accordingly upto the number of vacancies; officers with some grading maintaining their interse seniority in the feeder posts. Thus seniority is not altogether irrelevant and the criteria of merit with due regard to seniority is satisfied in the selection made by the Departmental Promotion Committee in case of the applicant.

9. The applicant has mentioned in paragraph 26 of his D.A. that the zone of consideration before 1.11.90 was to be worked out by $2X + 4$ equation. The applicant has annexed as Annexure A-11 O.M. No. 22011/1/90-Estt-(D) dated 12.10.1990 to of Department of Personnel and Training. This O.M. modifies the zone of consideration from three times of number of vacancies to $2X + 4$ equation in case the number of vacancies exceeds five. We find from the proceedings of Review D.P.C. produced by learned counsel for the respondents before us that three times the number of vacancies were included in the zone of consideration in case of D.P.C. held on 3.2.88 for the year 1987, 11 and 12th December 1989 for the year 1988 and 1989. For the D.P. 6. held on 3-5/7/91 number of vacancies were 69 of zone of consideration was kept 142 which responds to $2X + 4$ formula. No case is therefore made out by the applicant that his interest has been harmed on account of the number of officers included in the zone of consideration and that the officers included was larger than those permissible to be so included.

10. The learned counsel for the applicant mentioned that he was superseded again in the year 1993 by 41 persons. He mentions that 88 persons were in the zone of consideration and it can not be presumed that out of these 88 candidates none was having bench mark good. This contention of the applicant is not tenable because the candidates with positive merit were to be selected and the number of persons selected was 41. The learned counsel for the applicant's plea that the direction should be given for a review D.P.C. for selection held in the year 1993 can not be accepted because proceeding of three departmental promotion committees before the D.P.C. held in 1993 have been produced before us and we do not find that persons with the grading of the applicant have been included in the panel except when they belong to the category of Scheduled Castes were selected and placed in the panel. The learned counsel for the applicant does not contest the selection of Scheduled Castes as they were to be given special dispensation.

11. In view of the above, we do not find that the relief claimed by the applicant can be allowed. The O.A. is therefore dismissed as lacking in merits. No order as to costs.


Member (J.)


Member (A.)

Nafees.