

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~NEW BENCH~~O.A. No. 98 OF 1988
~~XXXXXX~~DATE OF DECISION 11-09-1991

Shri Parasram D. Raisinghani Petitioner

Mr. Sharad Pandit for
Mr. Girish Patel Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Mr. P. M. Raval Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh : Administrative Member

The Hon'ble Mr. S. Santhana Krishnan : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

Shri Parasram D.Raisinghani,
Q.6, Parasmani Society,
Near Karmacharinagar,
Ghatlodia,
Ahmedabad - 380 061.

...Applicant.

(Advocate : Mr.Sharad Pandit for
Mr.Girish Patel)

Versus

1. Union of India,
(Notice to be served through
the Textile Commissioner,
Ministry of Textiles,
Government of India, Bombay),
Having his office at
New C.G.O. Building,
48, New Marine Lines,
Bombay - 20.
2. The Textile Commissioner,
New C.G.O. Building,
48, New Marine Lines,
Bombay - 20.
3. Director,
Regional Office of the Textile
Commissioner,
Ahmedabad Peoples Co-operative
Bank Building,
Bhadra,
Ahmedabad - 380 001.
4. Mr.D.C.Agarwal,
Upper Division Clerk,
Regional Office of Textile Commissioner,
Peoples Co-operative Bank Building,
Bhadra,
Ahmedabad - 380 001.
5. Mrs.S.V.Talashilkar,
Establishment Section,
Office of the Textile Commissioner,
48, New Marine Lines,
Bombay - 20.

...Respondents.

(Advocate : Mr.P.M.Raval)

O.A. NO. 98 OF 1988

JUDGMENT

Date : 11-09-1991

Per : Hon'ble Mr.S.Santhana Krishnan : Judicial Member

The applicant has come forward with this
application under Section 19 of the Administrative
Tribunals Act, 1985.



2. The case of the applicant as we see from the application is as follows :

The applicant joined the services of the respondents as Lower Division Clerk on 17.10.1961 and thereafter he was confirmed. There was some adverse remarks against him in the Confidential Report in the year 1964 and also in the 1968. Thereafter he was promoted on ad hoc basis as Upper Division Clerk on 10.2.1978. The applicant was also confirmed in this post on 03.1.1983. The respondents also issued seniority list of the Non-Gazetted Staff of the Textile Commissioner in the year 1987. The applicants Sr. No. is 36, whereas the Sr. No. of the respondent no. 4 is 41 and the Sr. No. of the respondent no. 5 is 38. In the month of November, 1987, the 4th respondent received a telegram, whereby the authorities required his willingness to accept promotion as Assistant with posting at the Bombay Head Office. The 4th respondent is junior to him. He expressed his unwillingness to be posted at the Bombay Head Office. Thereafter the 5th respondent was promoted to the post of Assistant on officiating basis as per the order dated 6.10.1987. She was also junior to him. The applicant made a representation but he did not get any reply. The applicant was not having any adverse remarks for the last 18 years. The denial of the promotion to him to the post of Assistant is arbitrary, malafide and it violates Article 14 and 16 of the Constitution of India. In his confidential record his work is rated as "Very Good", and "Good". Even assuming that the criterion to promotion to the post of Upper Division Clerk, is merit-cum-seniority, his confidential records are not inferior on merits than those of respondent no. 4 and 5. He has not been found to be unfit

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for promotion by the Departmental Promotion Committee. Hence this application to direct the respondents to give promotion to the applicant as Assistant from the date of which the 5th respondent has been promoted and also to grant him all consequential benefits.

The two private party respondents chosen ~~not~~ to contest and made no appearance.

3. The respondents in the reply submitted that the applicant is not entitled to claim any promotion as a matter of right. The post of Assistant is a selection post and the principles of selection is laid down in the proceedings of the respondents dated 31.1.1981. It gives the details of the procedure to be observed by the Departmental Promotion Committee for adopting selection method and non selection method for drawing the panel. For the post of Assistant seniority alone is not sufficient for promotion. Even junior persons who are better meritorious are entitled to be promoted ignoring the seniors. They have received the representation dated 9.12.1981 and a reply was given on 29.1.1988. The other contentions regarding the adverse remarks and the promotions of the applicant from Lower Division Clerk to Upper Division Clerk, all are not relevant. Promotion to the post of Assistants' are effected in accordance with the panel drawn by the duly constituted Departmental Promotion Committee, on the basis of the gradings given to the eligible candidates with regard to the record/annual confidential records. Though the applicant was senior to respondent no.4 and 5, the applicant's name was not included in the panel, since he did not get higher gradings as compared to



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respondents 4 and 5. It is denied that the applicant's confidential reports are not inferior to those of respondents 4 and 5. The applicant has not earned sufficiently higher grading for being included in the panel. In the present case the applicant's case was considered but other employees though junior were meritorious than the applicant and hence the applicant was not empanelled in the panel for promotion.

4. They have filed their further reply wherein it is stated that the Office of the Textile Commissioner is a subordinate office of the Ministry of the Textiles. The method followed by the said office has got automatic approval of the said Ministry. There is no specific guidelines for laying down criteria for determining the post of selection or non-selection, but the cases are decided on merits. So, far as the post of Assistant is concerned there has been no change in the mode of promotion and the same has been treated as a selection post from the very beginning. Since the Textile Commissioner is the head of the department and since he has approved this method of promotion, such method has been continued all these years.

5. When the case came for final hearing, Mr. Sharad Pandit for Mr. Girish Patel, counsel for the applicant filed his written submissions, and also argued on behalf of the applicant. None present for the respondents. Records are also carefully perused.

6. The applicant has come forward with this application requiring this Tribunal to give direction to the respondents to give promotion to him as Assistant from

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the date on which his junior, 5th respondent had been promoted and also claiming consequential benefits. The fact that the applicant was appointed as Lower Division Clerk on 17.10.1961, and that he was promoted as Upper Division Clerk on 10.2.1978, and thereafter confirmed to ^{post} continue in the above said ~~7~~ is not disputed by the respondents. Though the applicant gives detail in his application about some of his adverse remarks received by him in 1964 and 1968, the respondents have specifically stated in their reply that they are not relevant for the purpose of deciding the matter in dispute before this Tribunal. It is also admitted that the applicant is senior to respondent no.4 and 5 and that 5th respondent is now promoted to the post of Assistant as per the order dated 6.10.1987. It is also admitted that the applicant gave a representation on 9.12.1987, and though the respondents claim that they gave a reply on 29.1.1988, the same is not filed by the respondents in their reply. Hence, there is no necessity to consider the Annexures filed by the applicant along with the application.

7. There is also no dispute that the post of the Assistant is a selection post and it is not a promotion post. Hence, we will have to consider how persons are promoted by selection to the post of Assistant from Upper Division Clerk. The respondents filed a first reply wherein they claim that the selection is made by merit cum seniority basis. It is also specifically stated in para-5, of the first reply that there are relevant extracts from the Government of India, Ministry of Home Affairs, O.M.No. 22012/1/77/Estt (D), dated 31.1.1981, relating to the procedure to be observed by the DPC for adopting selection method and non selection method for drawing the panel.

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They further claim that they have annexed a copy of the same along with the reply, but no copy in fact is annexed. They further contended that the DPC as per the procedure considered the case of the applicant as well as the 5th respondent for promotion but not include the name of the applicant in this panel since he did not get higher grade. It is the specific contention of the applicant that his Confidential records are good and very good and his reports are not inferior to those of respondent no.4 and 5. Though the respondents deny the same in their first reply, they have not chosen to produce the confidential records. They further claim that the applicant has not earned sufficiently higher grade for being included in the panel.

8. On the other hand in their further reply, the respondents have given a contradictory version regarding the selection. They state that there are no specific guide lines for laying down the criteria though they originally state in the first reply that there are guide lines dated 31.1.1981. Though they further state that there are no further changes and the same is treated as a selection post from the very begining, they are not able to state what is the procedure for selection from the very begining. They further clarify that the Textile Commissioner approved some method which has been continued all these year. We are yet to understand what is this method.

9. Along with the further reply the respondents filed Annexure-R/1, which states as follows :



"112425 TXND IN
3166653 COM IN

NO. L-2767 2/5/89
FROM COM IN NEW DELHI

TO SHRI SRAVINDRAN DEPUTY DIRECTOR
F + TEXIND BOMBAY.

FROM MALLIK US

NO.7/18/88-TPC (.) PLEASE REFER TO G +
YOUR D O LETTER NO. 23/8/88 EST.11/2545
DATED 20 TH MARCH, 1989 AND TELEX NO.T-95
DATEH 19.4.1989 (.) IT IS TO INFORM THAT :
(1) DOPAND T HAS INTIMATED THAT THERE ARE
NO SPECIFIC GUIDELINES FOR LAYING DOWN
CRITERIA FOR DETERMINING POSTS AS SELECTION
AND NON SELECTION (.) THE CASES ARE TO BE
DECIDED ON MERITS (.) (.) SINCE OFFICE OF
THE TEXTILE COMMISSIONER IS A SUBORDINATE
OFFICE THIS MINISTRY THE METHOD FOLLOWED
BY THAT OFFICE HAS GOT AUTOMATIC APPROVAL
OF THIS MINISTRY. (.)

IT IS PERSUMED THAT IT WILL SERVE THE
PURPOSE (.)

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++ CHANDRA SHEKHAR ++
11 2425 TXND IN
3166658 COM IN"

10. It is clearly admitted therein that there
are no specific guidelines in laying criteria for determining
posts as selection and non-selection. The cases are to be
decided on merits. Hence, the respondents are found
to clarify what is the prodedure for a selection regarding
the post of Assistant. The respondents failed to produce
the relevant documents to substantiate their case.

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11. On the other hand the applicant filed M.A./534/88, requiring the respondents to produce the following documents.

"(i) Annual Confidential Reports of the applicant for the period from 1978 to the year 1986 or the annual confidential reports of the applicant considered by the Committee for the selection to the post of Assistant.

(ii) Annual Confidential Reports of respondents No. 4 and 5 for the period for which they have been considered by the Departmental Promotion Committee for promoting the respondents to the post of Assistant.

(iii) Any document or documents considered by the respondent-authorities in the matter of promotion of the applicant."

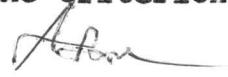
12. Though this Tribunal by an order dated 9.4.1990, directed the respondents to produce the above said documents in a sealed cover the same are not produced. As per the order dated 25.3.1991, the Tribunal ordered that if the documents are not produced adverse inference will be drawn. Even though several adjournments were granted thereafter and though the respondents have taken time to produce the documents they are not produced till the date of final hearing. Hence, adverse inference will have to be drawn and the respondents failed to produce these documents because if they are produced it will be against their contention.

13. There is no dispute regarding the seniority of the applicant. With official respondents not contesting the applicant's claim to promotion and even failing to produce

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required record though directed with regard to which failure adverse inference has to be drawn, the question remains for our decision as to whether the applicant has satisfactorily proved that he was fit for promotion though not promoted. In Ground-D, of the grounds for the relief the applicant has averred that even on information and assumption that the criterion for promotion for the post of Assistant from the post of Upper Division Clerk is merit-cum-seniority then his confidential records are not inferior on merits than those of private party respondents no.4 and 5 and that the applicant should have been given promotion on the basis of his meritorious service. It is axiomatic that the confidential service record of Respondents No. 4 and 5 will not be in the possession of the applicant. Even his own confidential service record will not be in his possession. He will be entitled to know and infer about the nature of his own confidential record from absence or presence of communication of any adverse remarks to him. His averment therefore, that his confidential record is not inferior on merits than even of Respondents No. 4 and 5 is an averment to make which he cannot have access to the required record for making such a comparison. The averment has therefore, to be taken as not substantiated by the applicant. Further, in the same para the applicant proceeds to say that the authorities ought to have come to the conclusion that he was positively unfit for being promoted and only then the authority should have taken decision not to promote him. When merit-cum-seniority is the basis for promotion which it has to be when the promotion post is selection post, the criterion of



positively unfit which is applicable to posts for which seniority is the prime consideration for promotion is not to be applicable. In selection posts, merit plays the dominant role over seniority and a person though fit for promotion will be liable to be superseded for promotion by a person who is found to be more fit though junior but coming within the zone of consideration. We should also observe that case law cited in para 6 of the application is, on the applicant's own showing, based on the criterion seniority cum-merit and not selection or merit-cum-seniority.

14. Thus this case presents us with the peculiar situation where the applicant has not been able to substantiate that he was wrongly superseded and the respondents have failed to produce required papers for adjudication giving rise to adverse inference.

15. When above is the situation, justice to the applicant requires a careful order on our part, so that while the applicant gets justice no injustice is caused to others even on account of the failures of the official respondents to produce record. In matters like contests on the subject of denial of promotion, feeling in private party respondents that the Government which promoted them after due procedure or consideration will itself contest the suit and therefore, they need also for reasons of high cost of litigation, not chose contest will not be unusual.



16. On this back ground if we analyse the facts of this case, the applicant is admittedly a senior who was not considered for promotion as Assistant and the respondents failed to give any reason for the same. Learned counsel appearing for the applicant placed reliance to a decision reported in 1982 (1) G.L.R. P. 664, (Maganbhai Bhikhabhai Mistri Vs. Olpad Taluka Azaddin and Ors.), wherein it is pointed out that if the criteria for the selection of a post is by seniority then it will have to be considered.

17. In AIR 1968, SC P. 1113, (The State of Mysore and another Vs. Syed Mahmood and others). The Hon'ble Supreme Court points out that in a case of selection on the basis of seniority-cum-merit, Seniority has got to be considered and the Court has got necessary powers to issue necessary directions.

18. The applicant has established that he is senior to respondent no.5 who is promoted to the post of Assistant by selection on 6.10.1987. The contention of the applicant that his Confidential Records are in no way inferior to that of the 5th respondent, is not disputed by the respondents by producing them inspite of the direction from the Tribunal. The respondents themselves are not sure about the procedure adopted by the Departmental Promotion Committee for selection to the post of a Assistant. Though, in the first reply, they state that it is a selection post by merit-cum-seniority, they have given up the same in their further reply. In their further reply it is submitted that Textile Commissioner approved some method

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of promotion and the same is automatically approved by the concerned Ministry. Even in the further reply the respondents are not able to clarify what is the procedure the Textile Commissioner adopts regarding the selection of the post of Assistant from the post of Upper Division Clerk. Hence, the respondents miserably failed to establish any procedure for selection and they have also failed to place before the Tribunal the DPC Proceedings and other relevant records for perusal. As the applicant has established that he is senior to the 5th respondent and that the respondents failed to follow the principles of natural justice in selecting the 5th respondent as Assistant on 6.10.1987, the applicant is entitled to urge that the order of the respondents on this aspect is violative of Article 14 and 16 of the Constitution of India. Hence he is entitled to claim the necessary reliefs as claimed in the application.

19. In view of the above, we feel that ends of justice will be met if the respondents are directed to hold a fresh Departmental Promotion Committee for the applicant as if held on the date the applicant fell due for consideration for promotion in his seniority observing the rules. We accordingly direct the respondents that such Departmental Promotion Committee should be held within three months from the date of the receipt of a copy of this order by respondent No. 2, Textile Commissioner, New C.G.O. Building, 48, New Marine Lines, Bombay - 20, result of which shall be communicated to the applicant within the same period of three months.

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Before parting with this case, we observe that the respondents, despite several directions and adjournments, failed to produce the records thereby not only delaying the disposal of the case but also making the litigation avoidably costly to the applicant.

In view of the above, we direct cost of Rs.1000/- (Rupees one thousand only) against the respondent No. 2.

S. Santhana Krishnan
(S. Santhana Krishnan)
Judicial Member

M. M. Singh
(M. M. Singh)
Administrative Member