

6

CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 274 of 1988

DATE OF DECISION 11-04-1989.

Dr. M. V. Muley Petitioner

Mr. R. V. Deshmukh Advocate for the Petitioner(s)

Versus

The Chairman, ISRO, Screening Committee & Others. Respondent

Mr. J. D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

The Hon'ble Mr. P. M. Joshi : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Dr. Mahesh Vasudev Muley,
D-3/1, Brahmlok Apartment,
Bliakaka Road, Mira Talkies,
Ahmedabad - 380 028.

..... Petitioner

(Adv. : Mr. R. V. Deshmukh)

Versus

1. Chairman,
Screening Committee,
Space Application Centre,
Jodhpur Tekra, Ahmedabad.
2. Deputy Director,
Space Application Centre,
Jodhpur Tekra, Ahmedabad.
3. Mr. Baldev Sahai,
Group Director,
Remote Sensing Area,
Space Application Centre,
Jodhpur Tekra, Ahmedabad.
4. Dr. Narayan,
Head HWRD/RSAG
Remote Sensing Area,
Space Application Centre,
Jodhpur Tekra, Ahmedabad.
5. Controller,
Space Application Centre,
Jodhpur Tekra, Ahmedabad.
6. Union of India, through
Secretary, Department of
Space, Cauveri Bhavan,
Bangalore.
7. Director,
Space Application Centre,
Ahmedabad.

..... Respondents

(Adv. : Mr. J. D. Ajmera)

J U D G E M E N T

OA/274 of 1988

Date : 11-04-1989

Per : Hon'ble Mr. P. H. Trivedi : Vice Chairman.

The petitioner Dr. M. V. Muley was promoted to the category Scientist SE in 1984 in the Space Application Centre. The Screening Committee for considering his promotion to scientist SE category decided to screen him out. As a result his name is

.....2/-

not included in the list to be placed before the Selection Committee to consider the promotion to Scientist SE category. He has challenged this action of the Screening Committee in screening him out on the ground of the committee not including the expert in his speciality and, therefore, being not competent to judge his work for suitability. His Annual Confidential Report has been spoiled by his superior Dr. Baldev Sahai for mala fide reasons and the action being arbitrary he has accordingly sought the relief of quashing and setting aside the action of the Screening Committee to screen him out. In reply the respondents have taken the stand that the petitioner has not exhausted the remedy of appealing to the Chairman. The respondent claims that the Screening Committee was duly constituted and the absence of the specialist Dr. Joseph from it does not stand in the way of the committee from making its recommendations or deprives it of its competence to do so. Under the relevant rules the Director, Space Application Centre is the competent authority to decide on the recommendations of the duly constituted screening committee whether the name should be included in the list for selection and this has been done with the yardsticks to be adopted for grading in the Annual Confidential Report which are rational and objective and have been uniformly adopted. The Screening Committee has selected 9 out of 19 candidates for the list for selection and that the two tier system of one committee preparing a list of those who are screened in and another committee to review such a list for final

g

selection is ~~isn't~~ not illegal. The respondents deny that the petitioner has been victimised in any manner for any collateral reason.

2. It is not disputed that the relevant office memorandum dated February 22, 1988 under which the procedure for selection for promotion has been prescribed is not a statutory rule but a departmental instruction.

3. Before discussing the merits of the petitioner's case the procedure for promotion in the Indian Space Research Organisation needs to be brought out. It has several distinguishing features which are not found in the normal procedures for other departments on such a subject. Firstly, the promotions are not limited by the promotion posts being limited or related in terms of any proportion to the lower posts. Secondly, eligibility arises on the basis of a period of service and on a review of the work the candidate being found to be good enough in quality on which conclusion he is allowed promotion. There is no dispute that for the decision for the candidates who are rendered eligible on account of the period of service the machinery provided is that of a Screening Committee and of a Selection Committee, a two tier system. The Screening Committee is appointed in the case of the petitioner by Director of the Unit Head. Such a Screening Committee is governed by the procedure stated in Para 3.1 of the Office Memorandum dated 22nd February, 1988 which is extracted below :

.....4/-

"3.1 Procedure of Screening :

- (a) Screening is to ensure that the candidates presented to the Selection Committee for assessment are those who prima facie appear to possess the necessary minimum merit demonstrated through accomplishments to their credit in their area of work during the period under Review. Since the selection procedure for S&T staff is based on the principle of pre-review, the screening process is also aimed at ensuring that the persons recommended have more or less the same level of technical proficiency and competence expected of the Scientists/engineers to discharge their responsibilities in the higher grade. The Screening Committee will consider each case carefully and objectively and make suitable recommendations after examining the work report of each individual, ACR assessment, recommendation of the Divisional/Unit Head and papers/technical reports, if any, generated by the person concerned.
- (b) The Screening Committee will categorise the persons as those 'Screened in', i.e. those who could be considered by the selection Committee, and those 'Screened out' i.e. those not recommended by them for being considered further by the Selection Committee. These recommendations are considered by the competent authority as indicated in Annexure-I for appropriate decisions."

If the competent authority after considering the screening Committee's recommendations decides that the candidate does not qualify for promotion by the Selection Committee his case will be placed before the Screening Committee after 1 year. However, if his case is considered to qualify for consideration for promotion by the Selection Committee, it is included in the list for the purpose. The Selection Committee is required to interview the candidates recommended by the Screening Committee as approved by the authority. The procedure of the Screening Committee is governed by para 4.1 which is extracted below:



"4.1 For grades upto SG(Promotion upto SG Grade):

The Selection Committee will consist of experts in the area, including internal/external, wherever prescribed. The Committee will interview the candidates who have been recommended by the Screening as approved by the competent authority, evaluate the accomplishments of each scientist/Engineer in terms of their work and recommend his/her suitability for promotion to the higher grade. The Committee will also keep in mind, apart from the accomplishments of the officer during the period under review, keenness exhibited in the pursuit of his/her profession, ability to take up higher responsibilities including R&D capabilities, managerial/leadership qualities (as applicable) etc. This is an essential requirement of the job of Scientists/Engineers in a high-tech area like space."

The recommendations of the Selection Committee include those for keeping the status-quo and in that case there is a provision for rereview under para 4.4. The approval of the recommendations of the Selection Committee has to be given by the competent authority which in this case is the Chairman, ISRO.

4. The first question to be decided is whether the procedure outlined above suffers from any flaw. We have to appreciate that Scientists are engaged upon work which is of a specialised nature, ~~xxx~~ the qualities of mind, ~~xxx~~ character and the habits of work demanded, ~~xxx~~ the nature of supervision to which it is to be subjected ~~xxx~~ the end result to which it is directed and the nature of accountability for it, all have special features. It is obvious, therefore, that selection procedures for scientists cannot and should

not be uniform with those adopted for administrative or other types of work. While this may be easily conceded, no such procedures specially devised for ~~xxx~~ scientists can be regarded as exempt from the basic consideration of subjectivity/and to confirm to the need of justice to be done on the basis of objective assessment of the candidates for promotion. Such a selection procedure cannot be allowed to be whimsical or arbitrary or guided by subjective personal preferences for picking up favourites and keeping down healthy differences of opinion. It is to be noted, therefore, in this context that the Screening Committee is required only to decide whether the candidate prima facie appears to possess the necessary minimum merit and to have the same level, more or less, of technical proficiency and competence which is expected for the next higher grade. It is required only to categorise the candidates as those 'screened in' and those 'screened out'.

5. In this the Screening Committee has been appointed by the Director who is the competent authority to do so. The committee when it met did not have Dr. Joseph to be present in that meeting in which it considered the case of the petitioner. We agree with the respondent that there is no rule requiring that all members of the Selection Committee (Screening Committee) should be present or that there is any particular quorum which in this case was not available. The Screening Committee cannot be said to have no basis for taking the view on

the work of the petitioner because various reports of work were available to it. The applicant has made much of adverse remarks given to him but there is no averment that he made any representation against them which is pending. The respondents have stated that there are no adverse remarks in the Annual Confidential Report. Similarly the plea that Dr. Pramodkumar has no specialisation in the line of the petitioner and, therefore, the conclusion which the committee takes is defective is not acceptable because the rules do not preclude the cooption of a member. On a perusal of the Screening Committee's proceedings we only find the bare conclusion that the petitioner was screened out and that the Director has appended his signature to it. Such a record cannot be dismissed on the ground that the conclusion is vitiated because reasons have not been given for excluding the petitioner. It cannot also be said that the Director on signing the proceedings did not agree with its findings and for the purpose of the relevant rule it is not a legitimate conclusion that the competent authority decided to screen out the petitioner.

6. On behalf of the petitioner AIR 1970 SC 150 A. K. Kraipak & Others V/s. Union of India & Others, AIR 1964 SC 962, C. S. Rowjee V/s. State of Andhra Pradesh & Others, 1984 GLH 217, Shantilal Ambalal Panchal & Another V/s. State of Gujarat & Others, AIR 1981 SC 2181 S.P. Kapoor V/s. State of Himachal Pradesh have been cited for the contentions advanced. These judgements embody familiar law. During the hearing the respondents stated

(14)

that the petitioner has come to us prematurely without appealing to the Chairman of ISRO. We found no provision for prescribing such an appeal. The plea of non exhaustion statutory remedy does not hold valid.

7. We do not regard the procedure for selection prescribed in the O.M. referred to as in any way defective or flawed but we must observe that one aspect requires to be considered. There are different authorities prescribed for the screening and the Selection Committee. It is not prescribed that one or more members of both committee are common. The Screening Committee's task is to determine the prima facie suitability for selection. Selection Committee's task is to determine who should be selected finally. It can be said that two minds apply themselves to the question of selection as a whole at two different stages. We do not consider it necessary to pronounce this as invalid but a doubt can be raised whether the Selection Committee which finally selects would regard a candidate who is screened out as deserving to be screened out if it had considered his case.

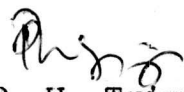
8. Although the petition cannot be regarded as premature because no statutory remedy of appeal has been prescribed by the rules, we are not in any way restricted from remitting the case to an appropriate high authority instead of our deciding the merits of the petitioner for being screened in. We have already stated that the Screening Committee did not lack any competence on the ground urged by the petitioner. However, considering the specialised nature of the work of the petitioner and the readiness with which the respondents have


(43) (15)

offered to consider his representation in appeal themselves, this is a fit case in which we should issue the following directions:

The case may be placed before the Chairman, ISRO and the present petition with all its records may be regarded as a representation for this purpose. The Chairman, ISRO is directed to decide whether the petitioner is suitable for his case to be included in the list to be placed for consideration before the Selection Committee. We are confident that the Chairman will not feel prejudised in any way on account of the petitioner having taken recourse to the Courts for seeking a remedy. The Chairman should pass necessary orders within one month of the date of this order.

9. With the above observations and to the extent stated, we find that the petition has merit and allow it. No order as to costs.


(P. H. Trivedi)
Vice Chairman


(P. M. Joshi)
Judicial Member