

16

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 625 OF 1993

Date of decision: June 22, 1994.

SURENDRA NATH PADHI

... ..

Applicant

Versus

UNION OF INDIA & OTHERS

... ..

Respondents

(FOR INSTRUCTIONS)

1. Whether reporters of local papers may be allowed or not? *yes*
2. Whether it be referred to all the Benches of the Central *yes*
Administrative Tribunals or not ?

H. Rajendra Prasad
(H. RAJENDRA PRASAD)

Member (Administrative)

22 JUN 94

K. P. Acharya
(K. P. ACHARYA)

Vice-Chairman

17

22

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 625 OF 1993

Date of decision: June 22, 1994

Surendra Nath Padhi

..

Applicant

Vs.

Union of India & Others

..

Respondents

For the Applicant

: M/s. S.Mohapatra, L.Mohapatra,
G.Mohanty, P.C.Das, P.C.Singh,
J.S.Mishra, Advocates.

For the Respondents

: Mr. Uma Ballav Mohapatra,
Additional Standing Counsel
(Central).

For the Respondent Nos.4&5: Mr. R.C. Mallick, Advocate

C O R A M :-

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

J U D G M E N T

K.P. ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985 the petitioner prays to quash the proceedings of the Departmental Promotion Committee held on 15th September, 1993 which had recommended for appointment of Opposite Party Nos.4,5 and 6 to the post of Deputy Director General Mines (Safety).

2.

Shortly stated the case of the petitioner Shri Surendra Nath Padhi is that he is now functioning as Director of Mines (Safety). Initial appointment of the Petitioner to the post of Deputy Director Mines (Safety)



was through the Union Public Service Commission. In August and September, 1993 there were two vacancies in regard to the Post of Deputy Director General(Mines)(safety) carrying a Pay scale of Rs.5900-200-6700/- due to retirement of M/s. S.K. Banerjee, K. Agast and S.N. Mitra. A Departmental Promotion Committee was constituted by the Ministry of Labour which met at New Delhi on 15th September, 1993. M/s. V. Mahajan, S.C.Batra and R.L. Arora were recommended by the D.P.C for being appointed to the Post of Deputy Director General Mines (Safety). Petitioner's grievance is that an illegality has been committed in not recommending his name for appointment. Hence this application has been filed with a prayer to quash the minutes of the D.P.C. alongwith the recommendations made by the DPC.

3. Counter has been filed on behalf of the Opposite Party Nos.1,2 and 3 namely Union of India represented through its Secretary, Government of India, Ministry of Labour, the Chairman, UPSC, New Delhi and Shri B.K. Sharan Director General of Mines, Safety, Dhanbad(Bihar) respectively.

4. Three vacancies in the post of Deputy Director General Mines(Safety) occurred on 31st August, 1993, 30th September, 1993 and 31st January, 1994 which is admitted. It is equally admitted that the DPC is constituted by Chairman or Member of the UPSC as the Chairman of the DPC, Secretary/ Additional Secretary , Ministry of Labour and



Director General of Mines are members of the said DPC. Further admitted case of the parties before us is that on 15th September, 1993, the Director General Mines (Safety) could not attend the meeting as he remained at Madras to undergo an eye operation. Further case of the Opposite Parties is that according to the grading given by the DPC the names of M/s. V. Mahajan, S.C. Batra and R.L. Arora (Opp. Party No. 4) have been recommended. No illegality having been committed in this regard, the recommendation of the DPC and acceptance of such recommendation should not be unsettled - rather it should be sustained. At the time of filing of the application, Mr. R.L. Arora was impleaded as Opposite Party No. 4 and subsequently an application for amendment of the original application was filed praying to implead M/s. V. Mahajana and S.C. Batra as Opposite Party Nos. 5 and 6. The said petition was allowed. Notices were issued to Opposite Party Nos. 5 and 6 as notices had already been sent to Mr. R.L. Arora (Opposite Party No. 4) soon after the case was admitted for hearing. Opposite Party Nos. 5 and 6 have filed counter separately and the stand taken by each of them is practically same as that of Opposite Party Nos. 1, 2 and 3.



5. We have heard Mr. S. Mohapatra learned counsel appearing for the Petitioner, Mr. Uma Ballav Mohapatra, learned Additional Standing Counsel (Central) for Opposite Party Nos.1,2 and 3 and Mr. R.C. Mallick learned counsel appearing for Opposite Party Nos.5 and 6. Mr. Mohapatra learned counsel appearing for the Petitioner submitted that an illegality has been committed by recommending the name of Mr. Arora (Opposite Party No.4) who is admittedly junior to the Petitioner. True it is Mr. Arora is junior to the petitioner. But admittedly the post in question, is a selection post where the adjudication regarding suitability of different incumbents coming within the consideration zone would be on the basis of merit-cum-seniority. Undisputedly merit is the first criteria for adjudication of one's suitability . Therefore, in our opinion, recommending the name of a junior to be suitable in preference to the officer who is senior does not at all vitiate ^{the} proceedings because according to the gradings given by the DPC, in respect of the petitioner vis-a-vis Opposite Party Nos.4,5 and 6 cannot be held to be illegal unless there is any mala fide on the part of the Members of the DPC. No such pleading has been put forward and therefore, on this account, we feel reluctant to quash the recommendation of the DPC.

EN



6. The most important point on which considerable emphasis was laid by counsel appearing for the petitioner is that in the absence of the Director General of Mines (Safety), Mr. Sharan, the proceeding of the DPC not having been based by a properly constituted DPC, the recommendations made by such a DPC cannot be acted upon and should be held to be bad and illegal. In support of this contention, Mr. Mohapatra learned counsel appearing for the petitioner relied upon a judgment of this Bench reported in ATR 1987 (2) CAT 401 (Kishore Chandra Pattnayak Vs. State of Orissa and others). Petitioner Shri K.C. Patnaik was superseded by M/s. R.N. Das and P.C. Rath for the post of Director General of Police^{Orissa}. Hence the order of supersession was challenged before this Bench by Shri K.C. Pattnayak. Amongst many other contentions, the first and foremost contention was that the DPC was to be constituted by the Chief Secretary in the Chair, Commissioner Agriculture and Rural Development and Additional Development Commissioner and Secretary to the Government of Orissa Planning and Co-ordination Department. Dr. Bhupinder Singh who was then the Commissioner cum Secretary of the Agriculture and Rural Development Department did not attend the meeting and he was away from headquarters on training. Since the consideration of the officers coming within the consideration zone in the absence of Dr. Singh recommendation of the DPC was quashed by this Bench on



the ground that the said DPC was not properly constituted according to the resolution of the Government. This view taken by the Cuttack Bench in the case of K.C. Pattnayak (Supra) has not been un-settled by the Apex Court. It was therefore, contended by Mr. Mohapatra that the same view should be taken in this case. Mr. Mohapatra further relied upon a judgment of the Hon'ble Supreme Court reported in AIR 1981 SC 2181 (Dr. S.P. Kapoor Vs. State of Himachal Pradesh and others and Dr. Jiwan Lal Vs. State of Himachal Pradesh and others). In this case, it was maintained by the Petitioners that under the rules, the DPC of Himachal Pradesh in respect of the Health services was constituted by the Chief Secretary, Finance Commissioner and Secretary Health and Family Welfare of the Himachal Pradesh Government. But the Departmental Promotion Committee which met on 3. 11. 1979 to consider the question of appointment of Deputy Director and Director of Health Services was constituted by the Chief Secretary, Finance Commissioner and Principal Secretary to the Chief Minister of Himachal Pradesh who was appointed additionally as one of the members in the place of the regular Secretary who was on leave. Their Lordships in the concluding portion of paragraph 33 were pleased to observe as follows :-

" Though it is not possible to accept the belated contention that there was any mala fide on the part of the then Chief Minister in the matter of constitution of the Departmental Promotion Committee with his Principal Secretary as one of its Members in the place of the regular Secretary, Health



and Family Welfare, we are of the opinion that there is room for suspecting the reason why the whole thing was completed in haste on 3.11.1970 after the preparation of the final seniority list on 2.11.1979, in the light of the admitted position that the Deputy Directors and Director of Health Services, Himachal Pradesh were holding adhoc appointments from 1973. The matter was not such as could not have been put off by a few days. Such rush is not usual in any State Government. The post-haste manner in which these things have been done on 3.11.1979 suggests that some higher-up was interested in pushing through the matter hastily when the regular Secretary, Health and Family Welfare was on leave. Therefore, we are of opinion that the matter requires to be considered afresh".

7. Relying on the above quoted observations of Their Lordships it was emphatically contended by Mr. Mohapatra ^{case} that heaven would not have fallen if the DPC in the present / would have been adjourned for few days more when the Director General Mines(Safety) after operation would have attended the meeting and therefore, the view taken by the Hon'ble Supreme Court in the case of Dr. S. P. Kapoor etc. (supra) should be followed by this Bench and the proceedings should be quashed.

8. On the other hand Mr. Uma Ballav Mohapatra learned Additional Standing Counsel (Central) relied upon Annexure- R/3 containing the Office Memorandum dated 6th March, 1975 issued by the Government of India, Cabinet Secretariat. In paragraph 2 of the said Memorandum it is stated as follows :-

" A question has been raised whether the recommendations of the Departmental Promotion



Committee in which one of its members is absent can be considered legally valid and operated upon. It has been decided in consultation with the Ministry of Law that the proceedings of the Departmental Promotion Committee shall be legally valid and can be operated 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 deliberations of the DPC and provided further that majority of the members constituting the Departmental Promotion Committee are present in the meeting".

9. Mr. R.C. Mallick learned counsel appearing for the Opposite Party Nos. 5 and 6 contended that no illegality has been committed in regard to the recommendation made by the DPC even though the Director General Mines (Safety) did not attend the meeting. In support of his contention, Mr. Mallick learned counsel appearing for the Opp. Party Nos. 5 and 6 relied upon a judgment of the Hon'ble Supreme Court reported in AIR 1972 SC 1812 (Ishwar Chandra Vs. Satyanarain Sinha). The facts of the case decided by Their Lordships are as follows .

10. Under section 13(2) of the University of Saugar Act, the Chancellor had to constitute a Committee for recommending names of suitable persons for appointment to the Post of Vice-Chancellor of the said University. The committee was constituted by Mr. G.K. Shinde, Retired Chief Justice, Justice T.P. Naik of the Madhya Pradesh High Court and Justice A.B. Agrawal, Retired Judge of



the Allahabad High Court. Justice Naik could not attend the meeting as he was in disposed. The Committee held its meeting on a particular day and on the said day Justice Naik could not attend. The Committee recommended the name of the appellant before Their Lordships namely Ishwar Chandra. The Governor did not accept the recommendation because the Committee was not properly constituted on the day on which the meeting was held. The High Court of Madhya Pradesh upheld the order of the Governor. The matter was carried in appeal to the Hon'ble Supreme Court and Their Lordships at paragraph 5 of the judgment held as follows :-

"If for one reason or the other one of them could not attend, that does not make the meeting of others illegal. In such circumstances where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered thereat cannot be held to be invalid".

Undoubtedly, we are bound by the above quoted observations of Their Lordships. But keeping in view the judgment reported in AIR 1981 SC 2181 (supra) (with which we are also bound), we would find that in the present case, the Director General of Mines (Safety) was an expert member in the Committee. Inclusion of the Director General Mines (Safety) in the Committee by the Government is with the intention that the Director General of Mines (Safety) would be in a position to give his expert advise to the other members of the Committee. In matters of appointment



to such a high technical post, advise of the expert is essentially required. For example in every meeting of the UPSC or the State P.S.C. an expert is nominated to render its opinion regarding the performance of the each candidates appearing in the interview. If the expert is absent, can it be said that the opinion regarding the performance of different candidates on technical subjects is worthwhile to be relied upon ?. In our considered view, the answer would be in the negative. At the cost of repetition, we may say that, in the present case, the Director General of Mines (Safety) had to play very important role in the matter of rendering advise regarding suitability of different candidates who were within the zone of consideration. On this account, the case of Shri Ishwar Chandra (supra) is clearly distinguishable because no expert opinion is necessary regarding the suitability to be adjudicated for the post of Vice-Chancellor who would normally have a high reputation in the field of education. Therefore, following the dictum laid down by Their Lordships , in the judgment reported in AIR 1981 SC 2181, we would say heaven would not have fallen if the DPC would have been deferred by a month or so within which time the Director General of Mines (Safety) would have recovered from the operation and could have attended the meeting to render its valuable advise to the members of the Committee.



11. To add to all these, another illegality has been committed which is as follows :

12. Admittedly, there were only two vacancies for the year 1993 and one vacancy for the year 1994. The meeting was held on 15th September, 1993 to consider the vacancies for the year 1993-94. The moot question that needs determination as to whether consideration should be according to the calendar year or financial year because it was contended ~~by~~ behalf of the Opposite Parties that the consideration was confined to financial year of 1993-94. In our opinion in every Government Departments, consideration is confined to the vacancies occurring during the calendar year. We had therefore, called upon the learned Additional Standing Counsel Mr. Mohapatra to file any instruction(s) issued by the Government of India modifying its directions/instructions to the extent that the consideration would be confined to the vacancies during the financial year. No document could be filed by the learned Additional Standing Counsel to substantiate his contention that the Government of India has issued that instructions modifying the consideration would be confined to the vacancies of the financial year.

13. In such circumstances, we cannot but be slow to accept the aforesaid contention of the learned Standing Counsel (Central) and we further hold that the Committee had ~~been~~ committed an illegality by considering the vacancies for the financial year.



14. Taking into consideration, the above mentioned irregularity/illegality occurring in the proceedings of the D.P.C. held on 15th September, 1993 for recommending names of suitable candidates for appointment to the post of Deputy Director General Mines (Safety), we have no other alternative but to quash the findings of the DPC and we would direct that the suitability of the officers coming within the consideration zone be reconsidered by the Committee in respect of vacancies occurring for the calendar year of 1993 and subsequently for the year 1994 and accordingly after adjudicating the suitability of the candidates coming within the consideration zone for the year 1994 make necessary recommendation as deemed fit and proper by the Committee.



15. In case any of the Opposite Parties (namely Opp. Party Nos. 4, 5 and 6) have been appointed as Deputy Director General Mines (Safety) in pursuance to the recommendations of the said DPC, their appointments are also hereby quashed and further steps be taken as indicated above. Selection process may be undertaken afresh and it should be completed within forty five days from the date of receipt of a copy of the judgment. In case Opposite Party Nos. 4, 5 and 6 or any of them have been already functioning as Deputy Director General Mines (Safety), they may be allowed to continue as a stop gap arrangement till

the final selection process is completed within 45 days as indicated above so that the administrative work will not suffer and if not completed within 45 days, Opposite Party Nos. 4, 5 and 6 will vacate the posts of Deputy Director General Mines(Safety) on expiry of the forty fifth day.

16. Thus, the application stands allowed leaving the parties to bear their own costs.



.....
MEMBER (ADMINISTRATIVE)

22 June 94

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty/
22nd June, 1994.

.....
VICE-CHAIRMAN