

15
CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 546 OF 1995
Cuttack, this the 25th day of February, 2000

Shri R.Vijaya Kumar

Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
2000

16

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 546 OF 1995

Cuttack, this the 25th day of February, 2000

CORAM: HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDL.)

.....

Shri R.Vijaya Kumar, son of Shri A.N.Raghava Panicker, aged about 44 years, Manager (Deputy Armament Supply Officer, Grade-I), Naval Armament Depot, PO-Sunabeda-763 004, District-Koraput (Orissa) Applicant

Advocates for applicant - M/s M.K.Mohanty
YSN Murty
P.Mishra
S.Joseph

Vrs.

1. Union of India, represented by the Secretary, Ministry of Defence, New Delhi-110 001.
2. Chief of Naval Staff, Naval Headquarters, New Delhi-110 011.
3. Director of Civilian Personnel, Naval Headquarters, New Delhi-110 011.
4. Shri J.L.Jonwal, Deputy Armament Supply Officer, Grade-I, At present working as Deputy General Manager, Naval Armament Depot, PO-Chicalim, Vascodagama, Goa-403 711.
5. Shri S.P.Sharma, Deputy Armament Supply Officer, Grade-I, at present working as Deputy General Manager, Naval Armament Depot, Bombay-400 023.

... Respondents.

Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the panel list for promotion to the grade of Naval Armament Supply Officer, Ordinary Grade (NASO, OG) and also for quashing the order of promotion at Annexure-3. The second prayer is for a direction to the respondents to promote the applicant to the post of NASO, OG from the date his

juniors were promoted to the post with all consequential service benefits along with arrears.

2. The applicant's case is that he joined Indian Naval Armament Service through Union Public Service Commission and joined as Deputy Armament Supply Officer, Grade-II in December 1981. He became Deputy Armament Supply Officer, Grade I on 31.10.1987 and after completion of five years of service in the post of Deputy Armament Supply Officer, Grade-I, by 31.10.1992 ~~XXXX~~ became eligible for promotion to the next higher post of Naval Armament Supply Officer (Ordinary Grade). For promotion to NASO (OG), Departmental Promotion Committee met in July 1994 for filling up of four vacancies. Accordingly eight officers were considered. Amongst these eight the applicant was no. 4 in order of seniority. The applicant has stated that in order to be promoted only officers who meet the bench mark grade according to their Annual Confidential Rolls can be selected. The applicant has stated that he met the bench mark grade and was also the fourth seniormost officer. He had brilliant record of service. But from the panel it was found that respondent nos. 4 and 5, namely, J.L.Jonwal and S.P.Sharma have been selected superseding the applicant. Two other officers, A.K.Ghosh and M.K.Shrivastava have also been superseded. It is further stated that the method of selection is on consideration of seniority-cum-merit and because he was senior to respondent nos. 4 and 5 he should not have been superseded. The second grievance of the applicant is that actually there were five vacancies instead of four. Three vacancies were available in 1993. One more vacancy had arisen by the end of 1993 on the retirement of one S.K.Mittal and on 31.1.1994 another vacancy in the rank of NASO (OG) arose on account of retirement of one

S.Sun

R.C.Sharma. Even though there were five clear vacancies, only four vacancies were reported to D.P.C. Had five vacancies been reported, then the panel list would have contained five names and thereby the applicant would have been selected. The applicant has also mentioned that the instruction dated 10.3.1989 issued by the Department of Personnel & Training provides that where a DPC has already been held in a year and further vacancies arise during the same year due to death, resignation, voluntary retirement, etc. or because the vacancies were not intimated to the DPC due to error or omission on the part of the Department, then in case of vacancies arising later another DPC should be held in the same year and if for some reason another DPC cannot meet, then the procedure of drawing up of yearwise panels should be followed when the DPC meets next year. In the case of non-reporting of vacancies due to error or omission, a second DPC or review DPC should meet keeping in mind the total number of vacancies of the year. The applicant has stated that during the period of six months prior to meeting of DPC there were five vacancies but only four were notified to DPC and therefore in accordance with the circular dated 10.3.1989 a review DPC should be held. In the context of the above facts the applicant has come up in this petition with the prayers referred to earlier.

3. The respondents have stated that the post of Naval Armament Supply Officer (Ordinary Grade) is a selection post and in accordance with the Department of Personnel & Training's Office Memorandum dated 10.3.1989 (Annexure-R/1) the bench mark should be "Very Good" in respect of the posts in the pay scale of Rs.3700-5000/- and above. The DPC considered the applicant but his name was not empanelled because he did not secure the bench mark "Very Good". As

regards reporting of less number of vacancies the respondents have stated that DPC meetings are being held financial yearwise and for the DPC meeting held in July 1994 there were three clear vacancies and one anticipated vacancy. Accordingly, proposal was sent for filling up of four vacancies. One more vacancy was due to occur because of voluntary retirement of one S.K.Mittal. This vacancy, however, could not be taken into account due to non-receipt of relief order of Shri Mittal. Accordingly for the four vacancies 12 individuals were entitled for consideration. But only eight individuals as per the list given by the applicant himself fulfilled the eligibility condition and accordingly the applicant was considered along with seven others. Therefore, it is stated by the departmental respondents that increase or decrease in the number of vacancies or consideration zone would not have made any material difference in the matter of selection because all the eligible persons who are eight in number were considered. On the above grounds, the departmental respondents have opposed the prayers of the petitioner.

4. The applicant in his rejoinder has stated that the DPC met in July 1994 and in the meeting Confidential Rolls for five years immediately preceding the meeting of the DPC, i.e., CRs from 1988-89 to 1992-93 were due to be considered. The applicant has stated that his CRs were "Outstanding" and "Very Good" for these years and therefore he should have been graded as "Very Good". The applicant has stated that for the year 1992-93 his CR might not have been "Very Good". He has stated that for 1992-93 because of extraneous consideration the reviewing officer wrote his CR. The reporting officer one J.Surya Rao did not write the CR of the applicant. The applicant has enclosed a letter dated 19.9.1994 from J.Surya Rao addressed to the applicant in which

J.Surya Rao has indicated that the reviewing officer intentionally avoided him and wrote the ACR of the applicant. The applicant has made averments regarding writing of CRs. He has also mentioned that the letter of September 1995 rejecting his representation which is at Annexure-R/2 was not received by him. On the above grounds, the applicant has reiterated his prayers in the rejoinder.

5. We have heard Shri Y.S.N.Murty, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have also perused the records. After hearing the learned counsel of both sides we had directed the respondents to produce the CRs of the eight officers for the relevant years and these have been produced and we have perused the same.

6. From a perusal of the CRs of the applicant we find that for the five years from 1988-89 to 1992-93 the applicant has been graded "Very Good" in one year, "Good" for three years, and "Average" in one year. Thus on an overall rating he has been rightly graded as "Good". Of the two persons respondent nos. 4 and 5, who were junior to the applicant but have been included in the panel over the petitioner, one has been graded for two years as "Outstanding" and for three years as "Very Good" and has been rightly given overall grading "Very Good" by the DPC. The other person has been graded for four years as "Very Good" and for one year as "Good". He has also been rightly graded as "Very Good". Thus from a perusal of the CRs of the applicant we find that no mistake has been committed by the DPC in assigning the grading "Good" to him. Moreover the DPC was headed by a Member of Union Public Service Commission and Joint Secretary of the concerned Division of the Ministry was also a member,

besides a high official of Naval Headquarters. The Member, Union Public Service Commission is an expert in assessing and evaluating the CRs. There are also decisions of the Hon'ble Supreme Court that the Tribunal is not appellate authority over the DPC and cannot re-evaluate the CRs and substitute its finding for the finding arrived at by the DPC. In any case we find that in this case DPC has rightly evaluated the CRs of the applicant. Thus the contention of the applicant that his CRs have not been correctly evaluated is held to be without any merit.

7. As regards the applicant's averments regarding writing of CR for 1992-93 this point was raised for the first time by the applicant in his rejoinder and the respondents have not had any opportunity to reply to this point and therefore this cannot be taken into consideration. Moreover the DPC has to go by the CR as it is written and cannot go behind the CR. This contention is also therefore held to be without any merit.

8. So far as non-reporting of the fifth vacancy is concerned, the departmental respondents have explained that this was not an ordinary superannuation vacancy. This vacancy arose because of an officer going on voluntary retirement and as the relief order of the officer was not available this vacancy could not be reported to Union Public Service Commission. This explanation is reasonable. Moreover, as only eight officers were eligible to be considered for having put in five years of service in the lower grade and all the eight including the applicant were considered, non-reporting of the fifth vacancy has not affected the chances of the petitioner in any way.

9. In the result, therefore, we hold that the Application is without any merit and the same is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
25.2.2000

VICE-CHAIRMAN