

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED THE 10TH DAY OF NOVEMBER ONE THOUSAND NINE HUNDRED
AND EIGHTY NINE

PRESENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 459/89

E. K. Nandanan

Applicant

Vs.

1. Union of India represented by the
Secretary to Government,
Ministry of Finance, Department of
Revenue, New Delhi
2. The Collector of Central Excise,
Catholic Centre, Cochin-31
3. Deputy Collector, (P&E)
Central Excise, Cochin
4. Smt. K. Vijayalakshmi,
Deputy Office Supdt. Level-II
Central Excise Head Quarters,
I.S. Press Road, Cochin-18
5. Smt. P. Prasannakumari
Tax Assistant, Central Excise,
Divisional Office, Calicut.

Respondents

M/s. K. Ramakumar, V. R. Ramachandran
Nair, Roy Abraham and P. Nandakumar

Counsel for the
applicant

Mr. P. V. Madhavan Nambiar, SCGSC

Counsel for the
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The grievance of the applicant in this case is that
though he was promoted as Deputy Office Supdt. Level II
on ad hoc basis as per Annexure-A order dated 10.1.1989
(order No. 4 of 1989) by the impugned order Annexure 'C'

dated 31.7.89 (order No. 91/89) the third respondent reverted him without assigning any reason.

2. While the applicant was working as Tax Assistant in the Central Excise office under the Collector of Central Excise, Cochin, he was promoted to the post of DOS Level II by Annexure-A order on an ad hoc basis. According to him this post is not a selection post but only a promotion post to be filled on the basis of seniority-cum-fitness and the applicant being the seniormost in the feeder category namely Tax Assistant, is entitled to be promoted. Since there was no adverse remark he ought to have been selected by the DPC which met in July, 1989. But to his surprise ⁱⁿ the order promoting and appointing DOS Level II dated 31.7.89 (Annexure-B) his name was not included. It is stated that no reversion is necessary at present because out of six persons who have been included in the said order Annexure-B, only Smt. Vijayalakshmi and Prasannan, item Nos. 2 & 4 have joined the promoted post. The rest according to the applicant have opted to join the post of Inspectors. So there is sufficient vacancy for accommodating him.

3. The applicant is challenging both Annexure-B & C orders mainly on the ground that he being the seniormost in the feeder category, is eligible to be selected by the Departmental Promotion Committee ^{and} he ought to have been selected and included in the Annexure-B list. The

according to him, ^{by}
order Annexure-C was passed reverting him to the post of
Tax Assistant only because of malafide as alleged in
ground 'C' of the application.

4. We have heard arguments of the learned counsel for
the applicant and the SCGSC. Immediately after the
admission, the respondents have filed a statement
disclosing the details about the availability of the
vacancy in the cadre of DOS Level II. The third respondent
submitted in the statement that out of the six persons
included in the Annexure-B list, only three have accepted
and others have declined their promotion. But in the place
of the three vacancies another three Tax Assistants have
already been promoted and posted as per order 109/89 dated
7.9.89 and there is no vacancy to accommodate the applicant.
It was also stated that ^{by}
/in view of the finding of the DPC, it is not possible to
allow the applicant to continue to work as DOS Level II on
ad hoc basis.

4. The learned SCGSC submitted at the time of the
argument that the DPC which met on 27.7.89 for filling up
of the vacancy in the grade of DOS Level II, the applicant's
case was also considered for promotion but the DPC found
the applicant not fit for promotion. Hence, his name was
not included in the list of persons promoted as per
Annexure 'B' order. The applicant was holding the post of
DOS Level II only on ad hoc basis and since he was not
found fit for promotion by the DPC they were compelled to

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fill up the existing vacancy by promoting persons who have been found fit for promotion by the DPC.

5. The learned SCGSC has made available to us the files of the DPC for our perusal. Accordingly, we have gone through the same and we do not find any irregularity or illegality in the matter of selection and the preparation of the list of persons to be promoted as DOS Level II. As per the existing instructions, the DPC should consider the suitability of officers for promotion on the basis of their service records with particular reference to the CRs for a period of five years preceeding the selection. The applicant's CRs were also perused. Since he has an adverse entry in the CRs for the year 1984, he was not found fit and this adverse entry according to the third respondent had already been brought to the notice of the applicant.

6. The jurisdiction of this Tribunal to interfere with a fair and proper decision of the DPC is very limited. It has been held by the Kerala High Court in State of Kerala Vs. Krishnan Namboodiri and others (ILR 1977 (2)/678) as follows:

" Indeed, Ext. P-1 had delimited the criterion for selection as the confidential reports. These were examined by the Committee, the entries were scrutinised and commented upon in the impugned orders, and the inferences and conclusions from these entries were drawn by the Committee. It was on such overall assessment that the impugned orders were passed. It was not within the province of this court in proceedings under Article 226 to weigh or to balance the entries in the confidential records or to reconcile the apparently conflicting effect of the entries or portions thereof. We are clearly of the view that the learned Judge overstepped the limits for interference under Article 226 with the Committee's assessment and conclusion."

7. With regard to the allegations of malafides in ground 'C' though there is no specific denial, the respondents submitted that a fair and proper selection has been made by the DPC after considering the case of the applicant also.

The DPC found him not fit for the promotion. Hence, the respondents were not able to promote him. On going through the averments in the application, we feel that there is no specific allegation of malafide against the DPC. The applicant has not even made the DPC a party in this proceedings. Moreover, the applicant has not cited any specific instance in support of the allegation in ground 'C'. The burden is very heavy on the part of the applicant to establish a plea of malafides. But we feel that the vague allegations couched in wide forms may not be helpful to the applicant to persuade us to go into the matter in depth. The Supreme Court has time and again held in various cases that the allegation of malafides must be specific and pointed supported by evidence and materials. The observations in the following two decisions would be useful for reference in this connection. In *Express Newspapers Pvt. Ltd. and others V. Union of India and others* (AIR 1986 SC 872) the court held as follows:


"This does not mean that vague allegations of malafide are enough to dislodge the burden resting on the persons who makes the same though what is required in this connection is not a proof to the hilt, as held in *Barium Chemicals Ltd. V. Company Law Board*, (AIR 1967 SC 295) the abuse of authority must appear to be reasonably probable."

Again the Supreme Court reiterated the same view in Hem Lall Bhandari V. State of Sikkim and others (AIR 1987 SC 762) as follows:


"The petitioner has made various allegations of malafides against the Chief Minister of Sikkim. These allegations are not supported by any acceptable evidence. Therefore, we do not propose to consider them. Much was made of the fact that the Chief Minister has not filed a counter affidavit himself denying the allegations. According to us it is not necessary since the allegations are wide in nature and are bereft of details. We do not think it necessary in all cases to call upon persons placed in high positions to controvert allegations made against them by filing affidavits unless the allegations are specific, pointed and necessary to be controverted. We, therefore, propose to confine ourselves purely to the question whether there has been a violation of the mandatory provisions contained in S.8 of the Act, or not."

8. The applicant has no case that the DPC has committed any irregularity in the matter of selection even though he /memorandum dated 10.3.89 of the Deptt. of Personnel. has raised certain contentions based on Annexure-'D'/. He contended that there is violation of the procedure in the evaluation of CR by the DPC, by not following the method prescribed for non-selection post as prescribed in Annexure-D'. We are not very much impressed by the submission made by the learned counsel for the applicant. We have examined the DPC files. There is no procedural irregularities as alleged by the counsel for the applicant. The applicant's case has been duly considered by the DPC held in July, 1984 strictly in accordance with the Rules and he was not found 'fit' for being considered for promotion in view of the adverse entry in the year 1984 as indicated above and this is very clear from the proceedings of the DPC. Hence, there is no substance in the allegation of malafides.

9. On the facts and circumstances of the case, we see no merit in this application and it is liable to be dismissed. Accordingly, we dismiss the application; but without any order as to costs.


10/11/89

(N. Dharmadan)
Judicial Member


15/11/89

(N. V. Krishnan)
Administrative Member

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