

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 513/89 199

DATE OF DECISION 6.8.90

N.J.Abraham Applicant (s)

M/s E.Subramanian & Advocate for the Applicant (s)

R.Sreekumar Versus

Union of India (Secretary, Deptt. of Space) & 3 others Respondent (s)

Shri Santhosh Kumar, ACCS Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.Haridasan, Judicial Member

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

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 24th August 1989, filed under section 19 of the Administrative Tribunals Act, the applicant who has been working as Technical Assistant-C (TA-C) in the Vikram Sarabhai Space (VSSC) Centre, Trivandrum, has prayed that the impugned order dated 10.8.89 at Annexure-A informing him that he has not been found fit for promotion to the post of TA-B as in 1977 should be set aside and the respondents directed to promote him as TA-B as ⁱⁿ 1977 with all consequential benefits. The brief facts of the case are as follows:

2. The petitioner was appointed as Tradesman-A in the Indian Space Research Organisation (ISRO) in 1968 and was promoted as Tradesman-B in 1971. In 1974, he obtained a Diploma in Mechanical Engineering in second class and became eligible for promotion as TA-B. He appeared before the Selection Committee in November 1976,

but was not selected. In accordance with the relevant orders he was entitled to be considered for such promotion again after every one year, i.e., in 1977 and in subsequent years, but he was not called for interview. When his representation did not bear any fruit, he moved the High Court of Kerala in OP 2048/79 and the High Court, by its judgement dated 21st June 1979, directed the Director, VSSC to dispose of his representation. Since the respondents did not dispose of his representation, the petitioner moved the High Court again in OP 4275 of 1979 and the High Court, by its judgement dated 14.10.80, directed the respondents to inform the petitioner about his right for review with opportunity to move the court again. The petitioner again filed a representation on 26.11.80 for re-review of his case for promotion as Technical Assistant as in 1977. Shortly thereafter, on 6th June 1981, the respondents issued general orders laying down that only First Class Diploma or Degree holders will be considered for review for further promotion. On the basis of this order his representation for re-review was rejected as he did not hold First Class Diploma. On this, the petitioner filed the third petition OP.781/81 before the High Court of Kerala which, by its judgement dated 6.1.82, directed the Department "to review the petitioner's claim for being appointed as Technical Assistant-B, treating his Second Class Diploma as sufficient qualification, and taking into account his work and performance between ^{and} 1976/1977....." The appeal filed by the respondents against this judgement was dismissed by a Division Bench on 5.7.82. The petitioner was, therefore, interviewed for promotion as TA-B in January 1983 and found suitable by the DPC. After that, on 16th February, 1983, an order was passed promoting him with effect from 19th January, 1983. This order was challenged by the petitioner again in OP 2450/83 with the prayer that the respondents be directed to promote and appoint him as TA-B with effect from 1976. This writ petition was transferred to this Tribunal as TAK 242/87 which was decided on 13.4.89 with the following direction:

"In the facts and circumstances we direct the respondents to get the petitioner's case re-reviewed for promotion as

in 1977 by a review DPC by taking into account his performance upto 1977 and not later. If he is found fit for promotion as in 1977 he should be given promotion with effect from the date appropriate for him in 1977 with all consequential benefits of arrears of pay, seniority and consideration for further promotion. If he is not found fit for promotion in 1977 the DPC should consider his fitness for promotion in each of the subsequent years till 1980. He should be promoted with all consequential benefits with effect from the relevant date in the year in which he is found fit for promotion. If he is not found fit for any of these years his promotion with effect from 19th January 1983 will stand. The petition is disposed of on the above lines. There will be no order as to costs."

In the meantime, during the pendency of that petition, the applicant after selection was promoted as TA-C with effect from 1.4.87. In compliance of the direction of the Tribunal as quoted above, the applicant was called for interview by the review DPC to assess his suitability for promotion to the post of TA-B as in 1977 and was interviewed on 1.8.89 and was later informed vide the impugned order dated 10.8.89 that he was not found fit for promotion as TA-B. He was interviewed again on 21.8.89 for promotion in 1978. ^{He} came to know that in a similar case of Shri N.Natarajan, the respondents themselves had sought a review of the judgement delivered by the Tribunal in that case indicating that it would not at all be realistic to assess a person holding a higher post at present to adjudge his suitability for a lower post as on an anterior date. On that basis, the Tribunal allowed the review application indicating that Shri Natarajan could be given notional promotion with retrospective effect in 1976 when his juniors were promoted to that grade. The applicant's grievance is that this Tribunal in disposing of the transferred petition No.242/87 by its judgement dated 13.4.89 never intended that the applicant should be subjected to an interview by a review DPC as in 1977. Accordingly, he has prayed that because of his being already promoted as TA-B and further promoted as TA-C, he should be given notional promotion as TA-B as in 1977 without any interview.

3. The respondents after surveying the long history of the case indicated that in accordance with the directions of this Tribunal

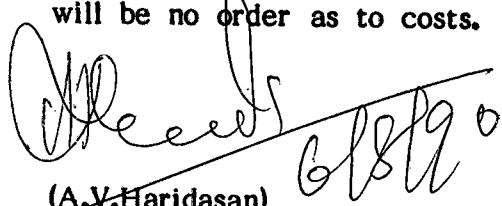


the review DPC interviewed the applicant on 1.8.89, but did not recommend him for promotion as in 1977. For review in 1978 the applicant sought postponement of the interview. They have indicated that "it is not impracticable" to conduct a review of the applicant's performance with retrospective effect. They have conceded that in the case of Shri Natarajan, respondent-1 had made a plea that Tradesman F cannot be ~~realistically~~ assessed for appointment as Tradesman E at an anterior date, but distinguished his case from that of the applicant before us on the ground that Shri Natarajan being a Tradesman, his technical skill as in 1976 could not be decided in 1987 or 1988.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. This Tribunal in its judgement dated 13th April 1989 had clearly directed the respondents "to get the petitioner's case re-reviewed for promotion as in 1977 by a review DPC by taking into account his performance upto 1977 and not later...." It will thus be clear that the question of holding an interview in 1989 for assessing the applicant's suitability for promotion as TA-B in 1977 or 1978 does not arise. The interview would have given the Review DPC an account of his performance in 1989 and not in 1977. We are, however, not prepared to accept the contention of the applicant that he is entitled to automatic notional promotion without any assessment by the review DPC. The judgement in the case of Shri Natarajan cannot be invoked to depart from the judgement of this Tribunal in TAK 242/87. Since the later judgement has not been set aside or modified in appeal or review, it has to be implemented in the manner it was directed.

5. In the facts and circumstances, we allow this application without interview in part with the direction that the review DPC should re-review the applicant's case for promotion as TA-B as in 1977 and if not selected, for every subsequent year till 1982, on the basis

of the Confidential Reports and other admissible documents upto the year of re-review. He should be promoted with all consequential benefits with effect from the relevant date in the year in which he is found fit for promotion. If he is not found fit in ~~any of~~ these years, his promotion with effect from 19th January 1983 as TA-B will stand. There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman