

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~XXXXXX~~

568/ 1989

DATE OF DECISION 17.8.90

D. Parameswara Iyer Applicant (s)

Applicant in person Advocate for the Applicant (s)

Versus

The Director, Respondent (s)

Vikram Sarabhai Space Centre,

I.S.R.O P.O.,

Trivandrum-695 022

Mr. N. N. Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The applicant is a physically handicapped Laboratory Assistant in the Vikram Sarabhai Space Centre (VSSC, for short) Trivandrum. His grievances started ever since the accident on 9.4.76 and consequent loss of three fingers and thumb of his right hand. Though some monetary compensation (Rs.16,632/-) for the loss as provided under the Workmen's Compensation Act 1923 was paid to him, he was not fully satisfied with it. He has a case that but for the negligence of the management this loss would not have occurred, so the respondents should also provide him ^{with} all further service benefits such as promotions

overtime earnings which are being enjoyed by similarly placed Lab. Assistants who worked with him during the time of the accident. He submitted repeated representations for getting these benefits. They were rejected. Hence his prayer in this application, filed under Section 19 of the Administrative Tribunals Act, is to quash Annexure A1 order dated 28th July, 1989, rejecting his request in Annexure AVII for more benefit either financial or otherwise.

2. After the accident at the request of the applicant he was shifted to Analytical Laboratory from Propellant Processing Laboratory. According to the applicant even though he was given two promotions after the accident he has not been given the promotions which are due to him and were given to persons similarly situated like S. Jayachandran and others in the same category.

3. The respondents are not taking into consideration the physically handicapped condition of the applicant and he is not given additional benefit on account of the disadvantage, which according to the applicant, resulted solely due to the negligence of the employer. The applicant's case is that even after the accident he is discharging the duties in the laboratory to the complete satisfaction of the respondents and there is no adverse remark or proceedings against him. Shri Jayachandran who worked in the same laboratory with the same qualification

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.3.

and experience before the accident is now working in two grades higher than that of the applicant. He is also getting additional amounts as overtime allowances. The applicant has also pointed out the case of one Sri Senthival, Lab.Assistant to substantiate his case of disadvantage on account of the accident and consequent discriminatory treatment by the respondents.

4. The respondents have filed a detailed counter affidavit in which they have submitted that the loss of fingers of the applicant was duly compensated by awarding monetary benefits provided under the law when he approached the authority under the Workmen's Compensation Act. All the further allegations raised by the applicant have been considered and rejected by the High Court when he filed O.P 2416/79. However, the applicant's case was reviewed in the light of his representations and he was given two promotions with retrospective effect from 1.11.1974 as Lab.Assistant A and from 1.4.1978 as Lab.Assistant C on the basis of the recommendations of the DPC in 1977. The applicant was transferred to the Physical Testing Laboratory on the basis of his request on 12.5.1977 and he can only aspire for the promotions available in that category. The applicant's submission that Jayachandran and Senthival and others are similarly situated and that he is entitled to same

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benefit after his accident, cannot be conceded because their work cannot be equated with that of the applicant in the matter of grant of further promotional or monetary benefit earned by them. The present attempt of the applicant is to circumvent a category change merit selection scheme with ulterior motive. Answering these contentions of the respondents, the applicant submitted argument notes.

5. The learned counsel on both the sides were heard. We have also gone through the documents. Admittedly the applicant is a handicapped employee . The monetary benefit for the loss paid to him as provided under the relevant law would not deprive him of any service benefits which a handicapped person is eligible under the law. In the Government services special consideration is being given to such persons taking into account their disability. A person who is handicapped in some respect may not be able to stand in competition with those who are not so handicapped. Unless some kind of special preference is given to them in the public service they would remain as weakling for ever. The society cannot march forward in a proper perspective at a required speed if a section of its people are so weak and handicapped that they are unable to move with it. So it is not only desirable but also essential in the interest of the society or public as a whole to give some provision of preferential treatment of the handicapped persons similar to that of the preferential

treatment provided under Art.15(4) and 16(4) of the Constitution of India. No such provision seems to have been made by the VSSC so as to enable us to consider the case of the applicant in the light of the same. It would not be out of place to suggest in this connection that the VSSC also may take such steps as may deem fit and proper for giving some preferential treatment to handicapped persons as has been done by the Government of India in this behalf for minimising the difficulties of the handicapped persons to the extent possible.

6. Since there is no special provision or preference for the handicapped employees working in VSSC it would be difficult to accept the contentions of the applicant raised in this case. However after hearing the matter on 4.4.90 and on 3.7.90 we felt that for a fair disposal of this case it is necessary to call for the ACRs of the applicant from the year 1980 onwards and peruse the same especially in view of the statement in the counter affidavit filed by the respondents that the case of the applicant was considered along with others when he was due as on 31.12.87 and later as on 31.12.88, but he was not recommended for review by the Committee as he did not obtain the required minimum marks in the screening. Accordingly we have directed the learned Senior Central Govt. Standing Counsel to produce for our perusal the ACRs

of the applicant with the minutes of the meeting of the Committee. He is fair enough to produce all the records for our perusal.

7. Before examining the ACRs of the applicant and the minutes of the meeting of the Committee, it is necessary to dispose of the contention of the applicant based on discrimination and differential treatment by the respondents while considering his case of promotion vis-a-vis the cases of M/s. Jayachandran and Senthival. The case of the applicant is that these two officers are similarly situated before the accident and loss of his fingers and now they were given two grades higher to him and they are in a better position both financially and otherwise. This is answered by the respondents by stating that the applicant after the accident was transferred as per Annexure R6 to Analytical section in the Physical Testing and Chemical Analysis area in which the promotion scope of the applicant is limited to the cadre of Senior Lab.Assistant. The next promotion in that line is Scientific Assistant B for which the basic qualification in B.Sc(1st class), which the applicant is lacking. ~~is necessary.~~ On the other hand Shri Jayachandran who joined as a Helper was designated as a Tradesman on a strict assessment of the work done by him while the applicant was designated as Lab.Assistant on promotion from Helper. An employee in the category of

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Tradesman with ITI qualification can go upto the level of Tradesman G and an employee in the category of Lab.Asstt. can rise only to the level of Senior Lab.Assistant. The applicant and Shri Jayachandran are in two separate categories having different promotional avenues and hence their cases are not comparable. The case of Shri Senthival is also not a comparable one. These averments are not disputed and the applicant has not produced any materials to satisfy us that the applicant is in every respect equal to S/Shri Jayachandran and Senthival except his statement that they all commenced their service under VSSC in the same category with same or equivalent qualifications. This statement is not sufficient to attract the provisions of Art.14 especially because from the initial promotion stages itself the applicant and others were put in two different categories having separate promotional avenues and that the applicant is a handicapped person from 1976 onwards. Under these circumstances there is no merit in the contention of the applicant based on violation of Art.14 of the Constitution of India.

7. We have perused the ACRs of the applicant from 1980 onwards . In the report of 1982 the reporting officer reported that a penalty of censure as per order dated 1st May 1982 was imposed apart from the statement that 'he has become easily excitable, after the accident'. In 1983 the report is to the effect that he can be 'entrusted with only

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certain types of works always' because of his argumentative nature and non cordial relations with supervisory and senior officers. The countersigning officer also observed that he 'is more conscious of his rights than his duties'. More or less same statements were repeated in 1985 also. The reports of 1986 indicate that 'he has to improve his co-operativeness towards all' and the reviewing officer suggested that in his case "there may be scope for improvement by a change in job/environment". The reports for the next two years also indicated 'change in the job/environment' is required for improving him. The reports of 1988 and 1989 disclose some elements of adverse remarks. After a careful perusal of the ACR and the minutes of the meeting produced before us it is felt that the Committee has not seriously considered the suggestions of the reporting and reviewing authorities for a suitable change of job of the applicant for his improvement and making good use of his services having regard to his handicapped conditions and special knowledge of particular jobs in which he is found to be proficient. Moreover some of the entries in the ACRs considered by the Committee in the meeting held on 31.12.87, 31.12.88 and 31.12.89 appear to be adverse in nature, but the respondents have admitted that none of these entries have been communicated to the applicant. So it can only be presumed that all

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these entries weighed with the members of the Committee when it considered the case of the applicant for promotion. It is a settled proposition of law that uncommunicated adverse entries in ACRs cannot be relied on by the DPC or any other Committee which considers the candidates for promotion. If there is any indication of having considered such entries by the DPC or other Committee such action would be tainted with illegality and legal infirmity warranting interference. The Supreme Court in GURDAYAL V. STATE OF PUNJAB AND OTHERS, AIR 1979 SC 1622 and BRIJ MOHAN SINGH CHOPRA V. STATE OF PUNJAB, AIR 1987 SC 948 held that the object of communication of adverse entries in the ACR of a Govt. servant is to afford an opportunity to the concerned employee to make representation and also to improve his work and conduct. If such representations are filed it is imperative on the part of the authority to consider the same before taking a decision based on such adverse remarks. So the uncommunicated adverse entries in the ACR cannot be acted upon by the DPC or Committee while considering the promotion of the Govt. servants. In the instant case it appears that the uncommunicated remarks in the ACR of the applicant were also placed before the Committee for consideration.

8. Under these circumstances, we are of the view that the applicant's case for promotion to the post of Senior Scientific Assistant requires to be reviewed by a

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review D.P.C from 1987 onwards without taking into
after interviewing him and
consideration the uncommunicated adverse entries but/at
the same time taking into account the suggestions of the
reporting and reviewing authorities for a change of job/
environment of the applicant for improving or better
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to be suitable for any other job or in the present job from
any earlier date, he shall be given the promotion and
consequential benefits in accordance with the decision
of the review D.P.C.

9. The application is thus allowed to the extent
indicated above. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

17.8.90.


(N.V KRISHNAN)
ADMINISTRATIVE MEMBER

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any earlier date, he shall be given the promotion and
consequential benefits in accordance with the decision
of the review D.P.C.

9. The application is thus allowed to the extent
indicated above. There will be no order as to costs.

(N.DHARMADAN)
JUDICIAL MEMBER

(N.V KRISHNAN)
ADMINISTRATIVE MEMBER

TRUE COPY

Dated

n.j.j

Deputy Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM

R. A. in 108/90 in

O.A. No. 568/89

199

~~TA No.~~

DATE OF DECISION 23.10.90

D. Parameswara Iyer Applicant (s)

Advocate for the Applicant (s)

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The Director, VSSC, Tvm & another Respondent (s)

Mr. N. N. Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. Krishnan, Administrative Member

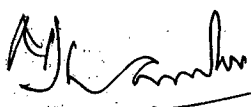
The Hon'ble Mr. N. Dharmadan, Judicial Member

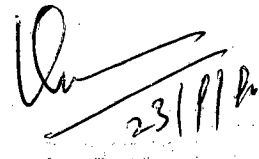
1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

We have gone through the matter. The applicant who has filed this Review Application raised some irrelevant and unsustainable ground and requested for a review of our judgment dated 17.8.90. There is no merit in this Application. It is only to be dismissed. Accordingly we do so.


(N. Dharmadan)
Judicial Member
23.10.90


(N. V. Krishnan)
Administrative Member
23.10.90

kmm