

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Date of decision 12.12.1990

PRESENT

Hon'ble Shri N.V.Krishnan, Administrative Member

And

Hon'ble Shri N.Dharmadan, Judicial Member

Original Application No.580/89

S.Balakrishnan Nair &
another Applicants

Vs.

The General Manager,
Naval Armament Depot,
Alwaye and 11 others. ... Respondents

Party in person

Mr. A.A.Abul Hassan ... Counsel for respondents

O R D E R

(Shri N.V.Krishnan, Admve.Member)

The two applicants are Upper Division Clerks in the Naval Armament Depot, Alwaye, under the first respondent. The first applicant has since retired. Their grievance relates to the non-inclusion of their names by the Departmental Promotion Committee (DPC) for promotion to the next grade of Office Superintendent Grade II. They have impugned the Annexure-2 Select List for promotion dated 30th December, 1987. The letter dated 30.12.87 which forms part of Ann.II indicates that earlier, a Select List dated 26th March 1987 was issued (Ann.1) but it had to be reviewed because, two out of the 7 vacancies in the grade of

Office Superintendent Grade II, pertained to 1986 for which a separate list ought to have been prepared but was not done, by mistake. Hence, the matter was reviewed and the Annexure-2 Review DPC Select List was announced in which two names were included in the Select List of O.S. Grade II for 1986 and 7 names were included in the Select List for 1987.

2. In fact, the applicants earlier challenged the Annexure-1 Select List on the same ground, viz. that the vacancies for 1986 and 1987 had been bunched. That was allowed in OAK 81/87 by the order dated 28.2.89 (Annexure-3).

3. However, as the respondents had already reviewed that Select List by Annexure-2 Select List, they filed a Review Application 17/89 to review the Annexure-3 judgement. The applicant also preferred a CCP No.12/89 in this regard. By Annexure-4 order, both these matters were disposed of, stating that, as the earlier Select List has already been reviewed by a new Select List drawn by a new Review DPC dated 29.12.89, non-compliance of the earlier order did not arise. However, the right of the applicants to challenge the Review DPC result was preserved. Hence this application.

4. The main challenge to the Annexure-2 Select List is again on the ground that the vacancies for the two years 1986 and 1987 have not been properly reckoned. According to the applicant, there were 4 vacancies

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in 1986 and only 2 vacancies in 1987 against which the Review DPC, which took place on 29.12.87, was advised that there were only 2 vacancies in 1986 and 7 vacancies in 1987. The applicants' contention is that if there were 4 vacancies in 1986 some of the respondents from Sl. No.5 to Sl. No. 11 could not have been considered at all, as they would have been beyond the zone of consideration, and hence they would have had a better chance for selection. That would also be true if the vacancies for 1987 were limited to only 2.

5. Respondents 1 to 4, viz., the Department, have denied these allegations and contended that in the revised DPC meeting the vacancies have been properly computed. The two applicants were not considered fit for inclusion in the Select List only because of the fact that there were persons with better record who had a preferential claim for inclusion. No reply has been filed by the party respondents 5 to 11.

6. The first applicant appeared in person and argued the case of the applicants and Shri Abul Hassan, ACGSC appeared for respondents 1 to 4. We have heard in detail the submissions and also perused the records.

7. The applicants' case is that there were 4 vacancies in 1986 as follows:

- " i) P. Sathyanandan of the 1985 panel refused promotion to office Supdt. Gr.II.
- ii) Venugopal, O.S.Gr.II retired in 6/86.

iii) New complement sanction for NAD Sunabeda in September 1986.

iv) C.S. Menon O/S Sr. I promoted in November 1986.

v) D.Sathyinandan O.S.Gr.II expired on 31st December 1986.

(Shri D.Udayawar of the 1985 panel was promoted against the vacancy at (ii) above, hence remaining vacancies for 1986 are 4)."

8. In regard to the vacancies mentioned in para 7 by the applicants, the submissions of the respondents are as follows:

i) vacancy of P.Sathyinandan:

He was included in the Select List of 1985. He refused promotion and a person included in the Select List as stand-by was promoted i.e. S.S.Udayawar. Therefore, there is no vacancy vice Shri P.Sathyinandan's refusal.

ii) Shri Venugopal, O.S.GradeII, retired in 6/86

This is admitted.

iii) New complement sanction for NAD Sunabeda in September 1986.

It is contended that the vacancy arose only in 1987. No doubt, there was an order dated 12th December 1986 fixing the revised complement of Naval Armament Depot (NAD) Sunabeda (Exbt.R1d). However, it may be seen from the complement that no post of O.S. Gr.II as such, is referred to therein. What happened was that as a result of this re-fixation of strength, there is an increase in the civilian complement. According to the

yardstic fixed, this would entitle the Establishment to one more post of Supdt. This is made clear in the letter dated 27.3.87 (Ann.R1c) It is stated therein that on the basis of the existing complement of clerks, which includes the staff in respect of Sunabeda also, 19 posts of Office Supdts. are authorised as against only 18 post which existed then. As one post of Office Supdt. Grade I was thus created in 1987 this would also result in a vacancy in the grade of Office Supdt. Grade II, when one O.S. Gr.II is promoted to the post of O.S.Gr.I.

We find this explanation satisfactory. We are of the view that the additional post of O.S. Gr.II on account of the increased strength in NAD Sunabeda arose only in 1987.

iv) C.S.Menon, O.S. Gr.I promoted in 1986.

The respondents contended that Shri C.M. Menon (and not C.S.Menon) O.S. Gr.I was promoted as AASO from 11.11.86. If an Office Supdt. Gr.II had then been promoted as O.S.Gr.I in the vacancy of Shri Menon, one vacancy would have arisen in 1986. However, it is claimed that the Select List for

promotion to the grade of O.S. Gr.I had already been exhausted. A fresh Select List was prepared only in March 1987 by the impugned Ann.1 order. Hence one O.S. Gr.II from this Select List was promoted in that vacancy. Therefore, the consequential vacancy of O.S. Gr.II arose only in 1987.

We accept this explanation.

v) Shri Sathyanandam, O.S.Gr.II expired on 31st December, 1986.

It is explained that though the death took place on 31.12.86, his name was struck off from the rolls only on 1.1.87. Obviously, if a person died on 31.12.86, the vacancy cannot be counted from that date and it can be said to be arisen only from the next day.

We find this explanation to be satisfactory.

vi) The applicants contend that Shri Udayawar of the 1985 panel was promoted against the vacancy of Shri Venugopal who retired in June 1986. As against this, the respondents stated that Shri Udayawar was posted against a vacancy of 1985 based on the refusal of Shri Sathyanandam. We see no reason not to accept this version.

9. The contention of the Department is that there were only 2 vacancies in 1986, viz. one due to the retirement of Shri Venugopal from 30th June 1986 (at Sl.No.(ii) of the previous para) and the other was a vacancy due

to the refusal, with effect from 12.8.1986, by J.S.Balakrishnan of the promotion of O.S.Gr.II offered to him. In view of the explanation given by them we accept this position.

10. The applicants contend that though Shri P.K.Madhavan at Sl.No.6 and Shri M.N.Koli at Sl.No.7 in Annexure-2 have been included in the 1987 Select List, there were no vacancies in that year because they were promoted only in 1988. The applicants have produced Annexure 2 and 3 with the Rejoinder (which should really have been exhibited as Annexures 6 and 7, as Annexures 1 to 4 have already been exhibited by him in his reply) to prove this. The mere fact that these two persons were promoted on 11th January 1988 cannot establish that the vacancies did not arise in 1987.

11. We are next concerned with the question whether there were 7 vacancies in 1987 as averred by the respondents. The particulars of these vacancies given by them are as follows:

i) A vacancy of Supdt. Gr. I resulting from the promotion on 11.11.86 of Shri C.M.Menon, O.S. Gr.II as AASO existed in 1987. This vacancy was filled up only in 1987 from the O.S.Gr.II Select List, and hence there was a resulting vacancy of O.S. Gr.II.

ii), iii) & iv) It is stated that Shri K.G.Pillai, D.Thatha Rao and J.R.Tattle, all O.S. Gr.II, were included in the Select List of 1987 for the post of O.S.Gr.I. This is established by the Select List for promotion to the grade of O.S. Gr.I in the Annexure-1

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Select List. As their promotion to O.S.Gr.I will result in 3 vacancies, it is normal to count 3 consequential vacancies of O.S. Gr.II in 1987.

v) As stated earlier, the vacancy of O.S. Gr. II in respect of Shri Sathyanandam who died on 31.12.86 is counted from 1.1.87 only.

vi) As stated earlier, there was an increase in the complement of Supdts. from 18 to 19 in 1987. Therefore, there will be a consequential vacancy in the grade of O.S.Gr.II.

vii) Retirement of Shri S.S.Vohra, O.S.Gr.II with effect from 31.10.87.

This is admitted by the applicant also.

We are thus satisfied that there were seven vacancies in 1987.

12. Accordingly, we find that the respondents were quite correct in advising the Review DPC that there were 2 vacancies in 1986 and 7 vacancies in 1987.

13. We have also perused the DPC proceedings which are produced for our perusal. We are satisfied that the earmarking of vacancies in favour of SC/ST has been done in accordance with the existing instructions based on the 40 Point Roster.

14. The ground at E in the application that by including so many names of Scheduled Castes in the Select List, the Department has increased the number of

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posts meant for SC/ST candidates in the grade of O.S.Gr.I to 8 out of 19, which is excessive, cannot be taken note of. He has not challenged the appropriate circulars of the Govt. of India which have a bearing on this issue and which require reservation to be made on the basis of the 40 Point Roster.

15. We now proceed to consider the recommendation of the Review D.P.C.

16. We are of the view that the DPC was not correct to recommend the name of Shri T.S.Balakrishnan for appointment against one of the vacancies in 1986 with a rider that he should be promoted after 11th August 1987. The reason given for this recommendation is that as Shri T.S.Balakrishnan had refused his promotion on 11.8.86, he was bound to be promoted after one year, i.e. 11.8.87. That explanation may be satisfactory so far as it goes, but, nevertheless as a post remained vacant in 1986 itself, it should have been given to one of the persons who were considered by the DPC. We find from the proceedings of the DPC for drawing a Select List for the vacancies in 1986, that there were two other persons senior to the present applicant who had a better claim on that post, viz. Shri S.S.Bandiwadekar and Shri K.P.Nair, if it was not reserved for T.S.Balakrishnan.

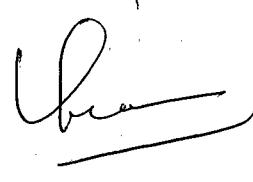
17. We have also seen the DPC proceedings for preparing the Select List for 1987. We notice that out of the 7 vacancies, according to the Roster, 2 posts had to be reserved for SC and 1 for ST and the

remaining 4 posts were meant for general candidates.

As there were 7 vacancies, 21 candidates were examined in which S/Shri B.S.Bisht, C.D.Livingstone and P.Appalacharyulu at Sl.No. 5, 6 and 7 in the Seniority List as well as D.Sathyanarayana at Sl.No.20 in the Seniority List were given outstanding ranking. All these four persons were placed in the Select List after superseding not only the present 2 applicants, but also S/Shri S.S.Bandiwadekar and K.P.Nair at Sl.No.1 and 2 in the Seniority List. The other 3 candidates are SC and ST candidates for reserved vacancies in respect of whom the applicants can have no grievance.

18. Thus, after carefully examining the details of the vacancies and manner of selection, we are fully satisfied that the impugned Select List at Annexure-2, based on the Review DPC meeting, is unassailable. This application has no force and it is, therefore, dismissed with no order as to costs.


(N.Dharmadan) 12.12.90
Judicial Member


(N.V.Krishnan)
Administrative Member

Index

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