

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 590
T. A. No.

199 1

DATE OF DECISION 22.6.92

M.L. Anslem _____ Applicant (s)

Mr. P. Santhosh Kumar _____ Advocate for the Applicant (s)

Versus

Union of India represented by
Secretary, Ministry of Agriculture
New Delhi and others

Mr. N.N. Sugunapalan, SCGSC Advocate for the Respondent (s) R-1
Mr. P.V. Madhavan Nambiar for R. 2-4

CORAM:

The Hon'ble Mr. P. S. HABEEB MOHAMED, 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? *No*
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

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant at present is working as a Senior Draftsman after getting due promotion. He is challenging Annexure-A-III proceedings passed by the Sr. Administrative Officer on behalf of the Director, the third respondent in this case. The impugned order reads as follows:

"Shri M.L. Anslem, T-4 (Sr. Draughtsman) is informed that the competent authority has not approved the recommendations of the Assessment Committee which considered his case for Reassessment as on 31.12.89."

2. The applicant is challenging this order on the ground that the Director has no authority under the rules governing the matter to reject the recommendation of the Committee constituted in this behalf without accepting the recommendation of the Committee. The relevant clause of

the Rule is quoted by the applicant in ground-B. The

relevant portion is extracted below:

- "7. The Head of Division/Research Station/Project shall then carefully look through the proforma and in case, he notices marked discrepancies between the Reviewer and the Reviewee's evaluation he may give his comments on the discrepancies. In case the Director disagrees with the assessment of both the Reviewer and the Reviewee, he may give his reasons for disagreement. He shall then countersign the proforma with his recommendation.
8. The Director will then place the proforma relating to all Technical Personnel before the Assessment Committee and obtain their recommendations for the grant of promotion or advance increment(s), as the case may be.
9. The assessment Committees will be constituted by the Appointing Authority and will comprise not less than 3 and not more than 5 members including the Chairman. The Chairman of the Committee would be a person from outside the Institute and would be nominated by the Chairman of the ASRB. Separate Assessment Committees will be constituted for each professional group/discipline and will include experts in the particular professional group/discipline in addition to Heads of Divisions/Research Stations/Project concerned in the Institute.
10. The Committees shall decide on the performance of the Technical personnel by taking into consideration the documents mentioned in para 3 above. The Committee may also give an opportunity to assessee for a personal discussion if so desired by him in writing to project his work and achievements during the period under assessment. On the basis of their assessment, the Technical personnel will be given merit promotion or advance increment(s), as the case may be. The number of advance increments to be given will not exceed three. One advance increment means one increment over and above the normal increment. . ."

3. The respondents in the reply statement admitted that the applicant's promotion has been recommended by the Committee constituted in this behalf but submitted that on the basis of the applicant's performance, his case was considered by the Committee constituted for the purpose and the Committee granted merit promotion to the applicant

to the grade of T-IV in the pay scale of Rs. 550-900 from 1.7.82. Late on completion of 5 years in the grade, on 31.12.87 his case was again placed before the Committee for recommendation. The Committee did not recommend merit promotion but recommended only grant of one advance increment. This recommendation was implemented by the appointing authority.. His case was placed before the Committee for reassessment as on 31.12.88, but the Committee did not recommend either advance increment or merit promotion to the applicant. However, the applicant's case was again placed before the Assessment Committee constituted for this purpose for considering his case for promotion for the year 1989. After considering the case of the applicant, the Committee recommended the case of the applicant for promotion. But the appointing authority did not accept the recommendation and issued the impugned Annexure-III order. The explanation given by the Director for his refusal to accept the recommendation is that the applicant who is expected to attend office for about 220 days during a year excluding holidays, have taken leave for 142 days.

4. However, the applicant has filed rejoinder denying these facts and produced Annexures XI & XII to substantiate his case that one Shri A. C. Joseph, S-2 and Mr. M.R. Reghunath, S-2 had taken leave like the applicant but they were not denied promotion given by the Assessment Committee.

5. In the light of these pleadings and the Rules, the only question to be considered is whether the appointing authority, the Director has any power under the rules to

refuse promotion to an employee whose case⁴ has been considered by the Committee and recommended for 'promotion.'

We have perused the relevant rules. The Director has power ^{in matter b} to deal with the case before placing ^{it} before the Committee. After the Committee has considered the case on the basis of relevant records placed before it and the Committee has approved the promotion making recommendation, the Director has no power to deny the same.

6. In the instant case, the case of the applicant was placed before the Committee for assessing his suitability for promotion. The Committee has approved the promotion and recommended the applicant for grant of promotion. The Director found out reasons for not accepting the promotion recommended by the Committee. Since the Rules produced in this case does not authorise the Director to refuse the recommendation of the Promotion Committee, we are of the view that the impugned order is unsustainable.

7. In the light of the foregoing discussions, we are unable to approve the contentions of the respondents and sustain the proceedings Annexure-III.

8. In the result, we quash Annexure-III and direct the respondents to implement the recommendation of the Committee so far as the applicant is concerned w.e.f. 31.12.89. The applicant is also entitled to all consequential benefits in accordance with law.

9. The application is allowed. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

22.6.92


(P.S. HABEEB MOHAMED)
ADMINISTRATIVE MEMBER
22/6/92