

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 148 of 1991
~~T. A.~~ No.

DATE OF DECISION 14-2-1992

Mr MSN Balasubramanian Applicant (s)

Mr N Nandakumara Menon Advocate for the Applicant (s)

Versus

The Director, VSSC, Respondent (s)
Trivandrum & 3 others

Mr NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. AV HARIDASAN, 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

(Hon'ble Shri SP Mukerji, Vice Chairman)

The relief claimed in this application lies within a narrow compass of admitted facts ~~and~~ which can be narrated as follows. The applicant before us has sought his re-consideration by a Review Committee for promotion from the grade of Scientist Grade-F to the ~~post of~~ ^{post of} grade of Scientist(SG), in pursuance of the judgement of the Madras Bench of this Tribunal dated 22.12.1989 in OAK-681/87. A copy of this judgement is at Annexure-R1. The operative portion of that judgement is reproduced below:

"We have carefully considered the arguments advanced by both the sides and also perused all the records made available to us. We note that even though the Vikram Sarabhai Space Centre was an autonomous body till 31.3.1975

and came under the Department of Space with effect from 1.4.1975, to date no statutory rules have been framed under Article 309 of the Constitution for effecting promotion of Scientists/Engineers from one grade to the next. Promotions are covered only by executive instructions which do not have the authority of law and as such do not give any legal right to the Scientist/Engineers to agitate their cases and seek legal remedy. However, this particular case is fully covered by the judgement of the Bangalore Bench of this Tribunal in OA-240/1987 dated 8.12.1987 (supra). As has been held in that case, the Screening Committee cannot usurp the powers of the DPC.

In this view the respondents are directed to place the case of the applicant before the DPC for consideration on merits as on 1.7.1988."

The case of the respondents is that the applicant's case was placed before the Departmental Promotion Committee on 21.3.1990 and since the Committee did not find him fit for promotion, he was rejected. We have seen the record ~~xxxx~~ of the original minutes of the Review Committee held on 21.3.1990 at ISRO over headquarters, Bangalore. The Committee was presided by the Chairman of ISRO and 6 members. The proceedings indicated that the Committee considered the case of the applicant for promotion as on 1.7.1988 and "...for objective evaluation of the performance of Dr. Balasubramanian as on 17.1988, the Committee considered his ACR for the preceding 5 years. The Committee also made a careful assessment of the professional contribution of Shri Balasubramanian and the progress made by him in the assignments allotted to him." The Committee unanimously came to the conclusion that "on the basis of his performance and contribution during the period under review, the officer was not fit to be considered for the next stage of the review process for promotion as on 17.1988."

2. There is no dispute about the fact that for assessment of the applicant's performance, no interview was held by the Review Committee. The case of the applicant is that in accordance with the Government of India, Department of Space's order No.HQ:ADMN: 4.20(3) dated February 22, 1988 which is placed as Annexure-R8, the selection procedure laid down for grades upto SG(promotion upto SG Grade) which applies to the applicant, the following procedure should have been followed:

"The Selection Committee will consist of experts in the area, including internal/external, wherever prescribed. The Committee will interview the candidates who have been recommended by the Screening Committee as approved by the competent authority, evaluate the accomplishments of each Scientist/Engineer in terms of their work and recommend his/her suitability for promotion to the higher grade. The Committee will also keep in mind, apart from the accomplishments of the officer during the period under Review, keenness exhibited in the pursuit of his/her profession, ability to take up higher responsibilities including R&D capabilities, managerial/leadership qualities (as applicable) etc. This is an essential requirement of the job of Scientists/Engineers in a high-tech area like Space." (emphasis added)

The learned counsel for the applicant states that the Selection Committee by not interviewing him, violated the prescribed procedure and to that extent, he has not been properly considered by the Review Committee as directed by the Tribunal. The applicant's further contention is that in accordance with the Annexure-R8 of the OA, the recommendation of the Selection Committee has to be approved by the Appointment Committee of the Cabinet(ACC) ^{procedure} which/was also completely violated and the rejection by the Review Committee was approved by the Chairman himself, who chaired the Selection Committee also.

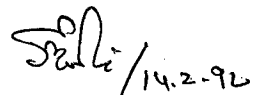
3. The learned counsel for the respondents Shri NN Sugunapalan argued that in accordance with the O.M. of February 1988

at Annexure-R8, the applicant's case could not be considered for being placed before the ACC as he was 'screened out' by the Review Committee. The learned counsel was however, fair enough to accept the position that in accordance with the aforesaid O.M. the screening out [✓] was to be done by the Screening Committee and he also agreed that the Chairman is not supposed to be a member of that Committee, because the recommendations of the Screening Committee [✓] have to be approved by the Chairman himself. If that be so, by no stretch of imagination can it be presumed that the Review Committee which met on 21.3.1990 headed by the Chairman of VSSC is a Screening Committee. We have to take it therefore, that the Committee which met on 21.3.1990 is the Selection Committee. That is also what to our mind ~~xxxxxxxx~~ [✓] was intended in the judgement of the Madras Bench of the Tribunal wherein it was specifically mentioned that the Screening Committee cannot arrogate to themselves the powers of the Selection Committee. The case of the applicant therefore, had to be placed before the Selection Committee for review. The Selection Committee by not interviewing the applicant has seriously violated the selection procedure and we have no hesitation in accepting the contention of the applicant that his case was not properly considered by the Review Committee. The further fact that the proceedings of the Selection Committee were not placed before the Appointment Committee of the Cabinet before rejecting the applicant's case for promotion is another serious infirmity in the selection process to which the applicant's case ^{was} [✓] subjected and the applicant was rejected for promotion.

4. In the conspectus of facts and circumstances, we allow this application to the extent of setting aside the impugned order at Annexure-F and direct the respondents to get the applicant's case reconsidered for promotion as Scientist-SG as on 17.1988. This disposes of the relief claimed in sub paras (a) and (c) of para 8 of the O.A. So far as the other reliefs claimed on confidential roll entries in sub paras (b),(d), (f) and (g) are concerned, (the relief at sub para(e) has already been excluded by our order dated 18.2.1991) the applicant is at liberty to press these reliefs, if so advised, by amending the OA-762/91 a connected application which was also listed before us today, within 2 weeks from today. The O.A. is disposed of as above. There is no order as to costs.



(AV HARIDASAN)
JUDICIAL MEMBER



(SP MUKERJI)
VICE CHAIRMAN

14-2-1992

trs

R.A. No. 47/92

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by Director, VSSC

(Applicant/Respondents in
OA /TA No. 148/91) seeking a review of the order dated 14.2.92
passed by this Tribunal in the above noted case.

2. Unless ordered otherwise by the Bench concerned, a review
petition shall be disposed of by circulation where the Bench may
either reject petition or direct notice to be issued to the opposite
party.

3. A Review petition is, therefore, submitted for orders of
the Bench consisting of Hon'ble Shri S.P. Mukherji, V.C
Hon'ble Shri A.V. Haidasan, Member J-2
which pronounced the Order sought to be reviewed.

h
6/4

PS to Hon'ble V.C.

SW
8/4/92

We may issue notice
to both the parties on the
R.A., if Hon'ble JM(II) agrees.

SW
13.4.92

Hon'ble JM(II)

Yes I agree
Dury
30/4

S.O (J2)

May be posted for hearing

27/5/92

7/8

Yes

1/5/92

SW

Pl note
V.R. noted
1/5/92

1/5/92

27-5-92
(10)

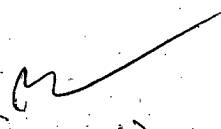
RA-44/92 is
OA-148/91

Mr. PK Madhusoodhanan for
review applicant

At the request of the
learned Counsel for the review
applicant, list for further directions
on 19.6.92

Sd/-

(SPM)



(AVH)

27-5-92

22.6.92.

Mr. NN Sugunapalan
None for the original applicant.

On request of SCGSC list for further directions
on R.A. on 24th June, 1992.


AVH

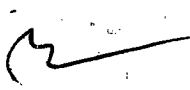

SPM

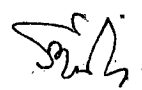
22.6.92.

1.7.92

Mr. K. Murthy sep. SCGSC.
Mr. Anil - for original app't.

At the request of the learned Counsel
for the original applicant, list the R.A.
for further directions on 13.7.92


BVH
1.7.


SPM
1.7.



A parts of OA + RA
were not in the file.
27/5

A parts of OA + RA are
under circulation
(SPM/AVH.)
27/5

adj by mhu is 22/6



36/12

Mr. Sugunapalan R. Pray.

Mr. D. Sulekumar sep. v. Menon.

As the learned Counsel for the respondents, indisposed, list for further directions on 27.7.92

DNH
13/7

Sd/-
Sdm
13/7

27.7.92
(19)

Mr. Sugunapalan
Mr. Nandakumara Menon

At the request of the learned Counsel for the original applicant, list for final hearing on 12.8.92

Reply by Review
applicants filed
on 29/12/92
2

(AUIH)

Sd/-
(SPM)

27.7.92

12-8-92
(12)

Mr NN Sugunapalan
Mr Nandakumara Menon

We have heard the learned counsel for the parties on RA-47/92. The main ground in the review application is that the Madras Bench of the Tribunal in CCP-42/90 in order dated 15.2.1990 had accepted due compliance of their earlier order by the Bench ^{that} ~~though~~ the case of the applicant had been considered by the DPC and therefore this Tribunal in our judgement dated 14.2.1992 in OA-148/91 should not have questioned the proceedings of that DPC on the ground that no interview was held. The

...

learned counsel for the original applicant however, brought to our notice the order of the Madras Bench of the Tribunal passed on RA-25/91 on the same CCP dated 19.7.1991 wherein it was made clear by the Madras Bench that "If it is the case of the applicant that the consideration is fundamentally vitiated for any reason, it is open to him to challenge that consideration by way of an independent application." (emphasis added). It is thus clear that it was open to the applicant in OA-148/91 to challenge the proceedings of the DPC on any reason including the reason of the interview not being held. Further, our judgement was based not only on the fact that no interview was held but also on the ground that the orders of the Appointment Committee of the Cabinet were not obtained.

We are fully satisfied that there is ^{neither any} ~~no~~ error ⁱⁿ apparent on the face of record ^{or} any new material on the basis of which our aforesaid judgement needs a review. The RA is dismissed.

(AV Haridasan)
J.M.

(SP Mukerji)
V.C.

12-8-1992

F.O.
A
13W
mkm


F.O. Communicator
B

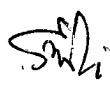
CPC) 48/93 in OA-148/91

10-3-93
(26)

Mr. Anilkumar for petitioner
Mr. Poly Mathai for SC/ST

At the request of the Learned
Counsel for the petitioner, list for
further direction on 16.3.93


(Anilkumar)



(SPM)

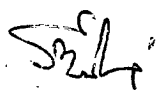
10-3-93

16-3-93
(21)

Mr Anilkumar
Mr Poly Mathai

We have heard the learned counsel for the parties.
The learned counsel for the original respondents states
that the question of considering the applicant for promo-
tion ^{cannot} ~~shall~~ be considered unless the final decision about
the expunction of the adverse remarks is taken by the
respondents. We feel that this is a very valid reason
and especially when no time limit was fixed in implemen-
tation of our judgement dated 14.2.92 in OA-148/91. No
case for a contempt is made and the CP(C) is closed and
the notice discharged.


(AV Haridasan)
J.M.


(SP Mukerji)
V.C.

16-3-93

16/3
17/3
in KRM