

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 179/90  
T.A. No. 199

DATE OF DECISION 28.8.91

P.Mullakoya \_\_\_\_\_ Applicant (s)

M/s.P.Santhoshkumar & T.A.Rajan \_\_\_\_\_ Advocate for the Applicant (s)

Versus  
The Administrator,  
U.T. of Lakshadweep, \_\_\_\_\_ Respondent (s)  
Administration,Kavarathy, and 3 others

Mr.N.N.Sugunapalan,SCGSC (R1-3) \_\_\_\_\_ Advocate for the Respondent (s)  
M/s.Sukumaran & Usha (R4)  
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  
(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 5.3.90 the applicant who is working as an Agricultural Officer under the Union Territory Administration of Lakshadweep has challenged the impugned order dated 9th June, 1986 (Annexure-IV) of the Administrator promoting respondent 4 as Plant Protection Officer as also the impugned orders dated 30th October, 1986 (Annexure-VI) rejecting his representation dated 15.7.86 and order dated 28.8.89(Annexure-IX) rejecting his representation dated 3.7.89 for a review of the Departmental Promotion Committee on the recommendations of which respondent 4 had been promoted. He has also prayed that the first respondent be directed to promote the applicant with retrospective effect from 9.6.86 to the post of Plant Protection Officer reverting

the 4th respondent and to declare the applicant as senior to respondent in all respects for further promotion to the posts of Coconut Development Officer or Dy.Director. The material facts of the case are as follows.

2. The applicant joined the Agricultural Department as Demonstrator on 8.2.74 while the 4th respondent joined on 13.2.74. In the same post the applicant was regularised on 8.2.76 while respondent 4 on 13.2.76 vide Annexure-I. While the applicant was promoted as Agricultural Officer on 9.2.79 respondent 4 was so promoted on 13.2.79(Annexure-II) . In the seniority list of Agricultural Officer (Annexure -III) the applicant was at Sl.No.2 whereas the 4th respondent at Sl.No.3. While so, the Departmental Promotion Committee met on 25.4.86 and considered candidates of promotion to the post of Plant Protection Officer. The Committee graded the applicant as 'Good' and respondent 4 as 'Very Good' and the promotion being on the basis of selection, respondent 4 was promoted as Plant Protection Officer on 9.6.86 superseding the applicant who was senior to him as Agricultural Officer. Immediately thereafter the applicant represented on 15.7.86 and a day thereafter on 16.7.86, the following adverse remarks were communicated to him for the year 1984.

" I am directed to communicate the following adverse remarks in your ACR for the year 1984 :

"At the time of his farewell from Andrott a resolution was adopted to support one particular candidateduring the general elections. He has been found also criticising Government developmental policies to support the stand taken by a particular faction. He needs to be closely watched."

The applicant represented on 1.8.86 for expunction of the adverse remarks and sent reminders on 3.2.87, 20.3.87 and 14.8.89 and finally by the order dated 5.6.89 (Annexure-VII) communicated to him on 12.12.89 the adverse remarks were expunged. In the meantime in response to his representation dated 15.7.86 against his supersession, <sup>it was</sup> ~~had~~ intimated to him by the impugned order dated 30th October 1986(Annexure-VI) that the question of reviewing the DPC's decision does not arise. However, after the decision to expunge the adverse remarks of 1984 had been taken, the applicant represented again on 3.7.89 for a review DPC but the same was rejected vide the impugned order dated 28.8.89(Annexure-IX) . The applicant's grievance is that since the adverse remarks of 1984 had not been communicated to him when the D.P.C met on 25.4.86, the grading done by the D.P.C taking into account the uncommunicated adverse remarks is vitiated and since those very remarks have been expunged, he is entitled to get the grading of the D.P.C reviewed. He also apprehends that by his irregular supersession to the post of PPO and loss of seniority in that grade, his chances of promotion to the next higher grade of Coconut Development Officer/Deputy Director have been jeopardised.

3. The respondents 1 to 3 have argued that the adverse report of 1984 had no bearing on his supersession as the applicant was given adhoc promotion as PPO when respondent 4 went on leave. They have argued that the proceedings of the D.P.C do not reflect the fact that

adverse remarks which were later expunged had been considered by them.

They have further argued that the adverse remarks were expunged after considering the applicant's performance during 1985-88.

4. Respondent 4 in the counter affidavit adverted to his acquiring Post Graduate Diploma in Plant Protection and his other achievements as Agricultural Officer. Being a matter of selection, he has defended his promotion as PPO on the ground that he was ranked first and the applicant was ranked second by the D.P.C. Like other respondents he has also argued that the application is time-barred.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We have no hesitation in repelling the contention of the respondents that the application is time-barred. The applicant has been diligently and continuously protesting against his supersession. His first representation was within less than six weeks from the date of passing of the impugned order dated 9.6.86. He sought review D.P.C on 3.7.89, i.e, within less than a month from 5.6.89 when the decision was taken to expunge the adverse remarks. He had a fresh cause of action on 5.6.89 when the adverse remarks were and expunged and when his representation was rejected on 28.8.89, he approached the Tribunal well within time by this application which was submitted on 23rd March, 1990. We also went through the proceedings of the D.P.C. which met on 25.4.86. From the proceedings it is clear that the assessment

of performance of the applicant and respondent 4 was done for the years 1980, 1981, 1982, 1983 and 1984. The D.P.C. allotted 4 marks for an 'Outstanding' report, 3 marks for 'Very Good', 2 marks for 'Good' and only 1 mark for 'Average'. The applicant had earned three 'Good' entries between 1980 and 1982, one 'Outstanding' entry in 1983 and only an 'Average' entry in 1984. His average during five years entries was 2.2 marks and he was thus graded as 'Good'. Respondent 4, on the other hand, earned two 'Good' entries in 1980 and 81, two 'Very Good' entries in 1982 and 83 and an 'Outstanding' entry in 1984. The average of these entries came to 2.8 marks and he was assessed as 'Very Good'.

6. From the above it is clear that the applicant having obtained an 'Outstanding' entry with 4 marks in 1983 and 'Good' entries during each of the previous three years, was assessed only as 'Average' during 1984 which brought down his grading appreciably. The 'Average' grading during 1984 after he had earned an 'Outstanding' entry in 1983, could be for no other reason than because of the existence of the uncommunicated adverse remarks in 1984. We have already quoted the text of the adverse remarks earlier. We are convinced that if the adverse remarks had not been there, the applicant's grading would have been higher than the 'Average'. Since those 'Average' remarks were subsequently expunged on his representation after the same had been communicated to him on

16.7.86, i.e., after the D.P.C had met <sup>and</sup> considered the adverse remarks

and the damage had been done, the justification to review the D.P.C proceedings cannot be denied. It is now established law that uncommunicated adverse remarks cannot be considered by the D.P.C in the matter of selection for promotion or for crossing of Efficiency Bar or for compulsory retirement. The Hon'ble Supreme Court in Amar Kant Choudhary /vs. State of Bihar and others, 1984(1) SLR 470, relying upon the earlier ruling of that Court in Gurdial Singh Fiji v. State of Punjab and others, (1979) 3 SCLR 518, observed as follows:-

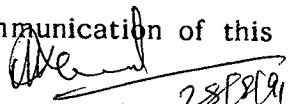
" After giving our anxious consideration to the uncontested material placed before us we have reached the conclusion that the case of the appellant for promotion to the Indian Police Service Cadre has not been considered by the Committee in a just and fair way and his case has been disposed of contrary to the principles laid down in Gurdial Singh Fiji's case (supra). The decisions of the Selection Committee recorded at its meetings in which the case of the appellant was considered are vitiated by reason of reliance being placed on the adverse remarks which were later on expunged. The High Court committed an error in dismissing the petition of the appellant and its order is, therefore, liable to be set aside. We accordingly set aside the order of the High Court. We hold that the appellant has made out a case for reconsideration of the question of his promotion to the Indian Police Service Cadre of the State of Bihar as on December 22, 1976 and if he is not selected as on that date for being considered again as on March 12, 1981. If he is not selected as on March 12, 1981 his case has to be considered as on October 14, 1981. The Selection Committee has now to reconsider the case of the appellant accordingly after taking into consideration the order passed by the State Government subsequently on any adverse entry that may have been made earlier and any other order of similar nature pertaining to the service of the appellant. If on such reconsideration the appellant is selected he shall be entitled to the seniority and all other consequential benefits flowing therefrom. We issue a direction to the respondents to reconsider the case of the appellant as stated above. We hope that the above direction will be complied with expeditiously but not later than four months from today."

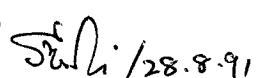
7. The Government of India in the Department of Personnel and Training O.M No.22011/5/86-Est.(D) dated the 10th April, 1989 while issuing consolidated guidelines on Department Promotion Committees(ATR 1989 (2) Journal Section page 32) inter alia observed as follows:-

" 18.1 The proceedings of any D.P.C. may be reviewed only if the D.P.C. has not taken all material facts into consideration or if material facts have not been brought to the notice of the D.P.C. or if there have been grave errors in the procedure followed by the D.P.C. Thus, it may be necessary to convene Review D.P.C.s to rectify certain unintentional mistakes, e.g.,-

- (a) where eligible persons were omitted to be considered; or
- (b) where ineligible persons were considered by mistake; or
- (c) where the seniority of a person is revised with retrospective effect resulting in a variance of the seniority list placed before the D.P.C; or
- (d) where some procedural irregularity was committed by a D.P.C; or
- (e) where adverse remarks in the C.Rs were toned down or expunged after the D.P.C. had considered the case of the officer."(emphasis added)

8. In view of the unambiguous rulings of the Supreme Court and guidelines issued by the Government of India, we have no hesitation in allowing this application. We do so and set aside the impugned orders at Annexures -IV, VI and IX with the direction that the Review D.P.C. should consider the comparative merits of the applicant and respondent 4 as on 25.4.86 for promotion to the post of PPO without taking into account the adverse remarks of 1984 which had been expunged. These adverse remarks should be pasted over in such a manner that nobody can go through them. If the applicant is graded higher in the panel than respondent 4 on the basis of comparative merit-cum- seniority, the applicant should be given notional promotion as PPO with effect from 9.6.86 with all consequential benefits of arrears of pay and allowances and seniority in the grade of PPO and consideration for further promotion as Coconut Development Officer/Deputy Director. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.

  
(A.V.Haridasan)  
Judicial Member

  
S.P. Mukerji  
Vice Chairman