

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 207/90
TCM NO.

100

DATE OF DECISION 23.7.91.

K.G.K. Nair

Applicant (s)

Mr. M.C.Sen,

Advocate for the Applicant (s)

Versus

U.O.I., Chairman, I.S.R.O & Respondent (s)

3 others.

Mr. V.V. Sidharthan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji .

Vice Chairman

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? *Yes*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

SHRI N DHARMADAN, JUDICIAL MEMBER

The applicant is working as Administrative Officer Grade I in the Regional Laboratory under the Council of Scientific & Industrial Research, CSIR for short, Trivandrum. His complaint is denial promotion to the post of Administrative Officer Grade II in spite of the fact that he was found fit for promotion by the Departmental Promotion Committee on 8.4.1988.

2. According to the applicant he has excellent service records denoting outstanding performance in Vikram Sarabhai Space Centre, Trivandrum. He was promoted as Asstt. Administrative Officer and

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transferred to Space Application Centre, Ahmedabad.

While working there, an order was issued on 3.9.85 transfe-

rring him to INSAT-I SSPO at Hassan in the same capacity

against the post of Administrative Officer II, ADO II

for short in the grade of Rs.3000-4500. But, the applicant

could not join Hassan due to ill health. On 5.10.85

he was called for interview alongwith others for the

post of ADO II. He was not selected and the vacancies

at Hassan and Ahmedabad were filled up by M/s V.Karunakaran

Nair & I.H. Brahmbhatt as per Annexure B order dated

17.10.85. The persons figure in this order are all ^{who} _{as}

junior^s to the applicant. Again on 12.5.86, the applicant _{as}

was called for interview for promotion as ADO II, but he

was not found fit for promotion. In the meanwhile he

was deputed on foreign service by Annexure-C order

dated 30.6.87 as ADO I in ^{the} CSIR - equivalent grade of _{as}

Administrative Officer II in ^{the} Department of Space. The _{as}

applicant was again called for the third time for ^{the} _{as}

interview for promotion as ADO II on 8.4.88. This time he was found _{as}

fit and given 6th rank in the select list. The list

was to be valid till 7.10.89. But during the validity

period promotions were given to persons in the list upto ^{the} _{as}

5th rank. Though two other vacancies arose in June 1989

and May 1989 due to retirement of M/s P. Nandakumar and M.C. Kapila respectively the respondents 1& 2 did not fill up the vacancies till the expiry of the list on 7.10.89. Another interview was conducted on 28.12.89 in which the applicant was found unfit, but, the 4th respondent who was 7th in the earlier list, immediately below the applicant and junior to him, was found fit and promoted. Alongwith him the 3rd respondent, who was also junior to the applicant was also promoted. In Annexure-D seniority list of officers in the Administrative Category as on 1.8.88 the applicant was ^{at} rank ~~10~~ No.6, but, 4th respondent was rank No. 8 and 3rd respondent was not in the list for he was not even promoted as Administrative Officer-I on that date. Respondents 5 & 6 were also later promoted ignoring the right of the applicant. Altogether fifteen persons juniors to the applicant in Annexure D list were promoted. The panel prepared in 1988 was allowed to expire deliberately by respondents 1& 2 in order to deny ~~the~~ promotion to the applicant overlooking the fact that the applicant carried out the duties of ADO II successfully from 19.11.83 to October 1985 in the Department of Space and is working in the same grade

since 19.6.87 in C.S.I.R. He stood first in all selections including Administrative Officer I in ISRO.

He submitted Annexure E representation dated 22.1.90.

Since no reply was received he approached this Tribunal.

3. The learned counsel for the applicant, Shri M.C. Sen, contended that his client was denied illegally and deliberately ~~promotion~~ in the parent department, as ADD II in the vacancy of M/s M.C.Kapila and Nanda Kumar, on the basis of his rank in the select lists of 1988, while his juniors, respondents 3 to 6, were given promotion overlooking the legitimate claims of the applicant. This is violative of Art.14 and 16 of the Constitution of India. According to him persons upto ^{the} 5th rank in the list were promoted against vacancies which arose before 7.10.89 and though due approval for filling up the vacancies ^{was} given by the Member Finance, the respondents 1 & 2 waited till the expiry of the list solely for depriving the chance of the applicant to get his due promotion.

4. This contention is denied in the reply statements and in the argument with reference to the files pertaining to the selection and sanction for filling up the posts. But, the respondents have admitted the

Fact of the existence of two vacancies, one on 2.6.89 due to the retirement of Shri P. Nanda Kumar (Public Relations Officer II, it belongs to a different category) and another in May, 1989 of Shri M.C.Kapila (a post of Under Secretary). They have given the following explanations for not filling up the vacancies before the expiry of the promotion panel on 7.10.89.

"... The vacancy caused due to the retirement of Shri P. Nanda Kumar on 2.6.1989 was that of a Public Relations Officer-II. The post of Public Relations Officer-II belongs to a different category and as such could not be filled up straight away as Administrative Officer-II. The prior approval of the competent authority (Member, Finance, Space Commission/ Finance Secretary, Government of India) was required for operating the post of Public Relations Officer-II as Administrative Officer-II. It is submitted that the select list of the applicant had become invalid since the above approval for operating the post as Admin Officer-II was received by the Department only during the beginning of November, 1989."

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"... In fact, it was due to this uncertainty that the Department did not even fill up the post of Under Secretary vacated by Shri Kapila by short-term arrangements by promoting internal Section Officers on ad hoc basis. Even before the approval of competent authority was received on 27.7.1989 for the long term operation of the post of OSD, NNRMS beyond 31.12.1989, i.e. the date of retirement of Shri Kapila, a proposal was mooted on 4.5.1989 for operating the post as Admin Officer-II, based on a request made by the Non-Technical Space Officers' Association. However, no decision could be

taken at that time owing to the uncertainty cited above. Subsequently a point arose in December 1989 as to whether the post of Under Secretary could be operated at least on an ad hoc basis. It was then stated that the post may have to be operated as Administrative Officer-II. However, the final decision to operate the post as Admin. Officer-II was taken only during January 1990. From the above it is clear that the matter was under process throughout and as could be seen from the facts explained, that there was no effort whatsoever to avoid promotion to any one."

5. The applicant filed rejoinder and denied the statements in the reply. According to him there is no condition for getting prior approval of the competent authority (Member, Finance) for operating the post of Public Relations Officer as ADO II. When a vacancy arose on promotion of Shri V.K. Nair, PRO II in 1988, the post of PRO II was filled up by Shri O.S.N Kurup as ADO II without any prior permission from the Member Finance. He was also transferred to Trivandrum along with the post in violation of instructions issued by the Member Finance. Regarding the filling up the vacancy of Shri Kapila the applicant contended as follows:

"... To fill up the vacancy of Shri M.C. Kapila, admittedly the competent authority had given approval on 27.7.1989. There was no uncertainty

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regarding filling of the vacancy of an A.D.O. II as stated in the reply statement. Inspite of getting the approval of the competent authority, the 1st and 2nd respondents deliberately delayed taking a decision to fill up the post. There was no reason for not filling up the post from 27.7.1989 to 7.10.1989 except waiting for the expiry of the panel. Linking of posting of OSD in NNMRS (autonomous body) has no relevance in the case and the uncertainty described is artificial. If a prompt decision had been taken at that time, the applicant would have also got the promotion."

6. Having considered the matter in detail we are of the view that admittedly there was vacancy before the expiry of the panel of 1988. Shri T.C. Kurian was 5th in the panel. ^b He was promoted ^b and the applicant could have been accommodated if prompt actions were taken by the respondents 1 & 2 by at least posting him on ad-hoc basis pending finalisation of the steps initiated by them. There is no valid and supportable explanation for the refusal to consider the posting of the applicant as provisional or ad hoc ADO-II from May 1989 in either of the two vacancies which arose before 7.10.89. It is to be noted that T.C. Kurien was promoted and posted as A.D.O.II in a vacancy which arose during the pendency of the panel. The next two vacancies arose on account of retirement in May and

June 1989. If this vacancy of Under Secretary was operated in time, the applicant, who was the next person in the panel, would have got it. The statement in the reply that even if the vacancy of Under Secretary was available for appointment as ADO II before the expiry of the panel it would have gone to Shri T.C. Kurian cannot be appreciated fully in the light of the facts and circumstances in this case. However, even assuming that Shri T.C. Kurian could only be promoted to this vacancy, when a temporary vacancy arose due to leave and absence of Shri A.P. Rajagopal, it could normally be filled up by posting the 4th respondent who was next to the applicant and subsequently regularised in the same manner as in the case of Shri T.C. Kurian, in which case the applicant was eligible for proforma promotion under the 'Next Below Rule.'

7. We have perused the files which were made available to us to ascertain the statement of the applicant that there was a deliberate delay on the part of the respondents 1 & 2 which resulted in the denial of the promotion of the applicant. Shri P.

b Nandakumar retired on 2.6.89. At that time a

a proposal for the upgradation of the post of Public Relation Officer-II in ISRO was pending and that was being perused. Regarding the operation of the post of Head Publications and Public Relations Unit, ISRO Hqrs., Bangalore, Government of India, letter dated 30.12.88 seen in the files indicates 'The post of Public Relations Officer II vacated by Shri Nair and subsequently redesignated as Administrative Officer II has since been filled up by promoting an eligible Administrative Officer I in DOS/ISRO consequent on the post becoming the part of the strength of the post of officers in P&GA area in Department of Space/Indian Space Research Organisation." But in the light of a subsequent communication dated 10.1.89 a decision appears to have been taken on 4.7.89 to fill up the vacant post created due to the retirement of Shri Nandakumar only after ex-post facto approval of Member Finance. Thereafter no urgent follow up action seems to have been taken or pursued in this behalf, but steps are being taken in regard to the merger of Public Relations

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staff with P & GA and for approval thereof. Only on 6th September, 1989 a letter seems to have been forwarded to Member for Finance requesting 'post-facto' approval for the decision taken by the Department in 1980 to merge the P.R. Staff with P & GA as proposed in this Department's note dated 26.6.89. This was answered by the communication of Finance Secretary dated 24.10.89 agreeing to the proposal in the following manner

"I see no alternative but to agree to your proposal for post-facto regularisation of the operation of the Scientific/Technical post in 'SE' grade by promotion of a person belonging administration category."

8. From the perusal of the files it is seen that till a decision was taken on 4.7.89 the post of Public Relations Officer II was treated by the respondents 1 & 2 as part of the strength of the post of officers in P & GA area when vacancy of such post arose previously the same was ~~was~~ filled up by promoting an eligible officer who was in Administrative side viz., Administrative Officer I in DOS/ISRO. The reason for a deviation from this practice is not discernible from the facts in the case. Admittedly the department had not framed any Recruitment Rules

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governing the matter. The lacuna in this behalf only enables the respondents 1 & 2 to make promotions without any fixed pattern according to their whims and fancy. This is evident from the promotion and posting of Shri O.S.N. Kurup as DOS II without any prior permission from the Member Finance in a vacancy created by the promotion of Shri V.K. Nair, PRO II in 1988 as contended by the applicant. It appears that Shri Kurup was later transferred with the post to Trivandrum to suit/convenience ignoring the instructions of the Member Finance. Considering the case of Shri Kurup there appears to be discriminatory treatment and the applicant's/deserves Under these circumstances we see considerable force in the submission of the applicant that respondents 1 & 2 did not take prompt action for promoting the applicant in the vacancy arose during the validity of the panel.

9. Regarding the other post held by Shri Kapila the files show that in the meeting taken by the Secretary, DOS with ^{the} representatives of Non-Technical Space Officers' Association held on 20.4.89, it was agreed to operate the post of Under Secretary vacated

by Shri Kapila at Bangalore. As the post belongs

to DOS Secretariat, JS may please consider asking

ISRO Hqrs. to make arrangements for filling up of

the post". It also states ".....

" Perhaps the post may be operated as
Administration Officer II till such time,
the Recruitment Rules for the post of
Under Secretary are got approved and issued".

On 27.7.1989 a communication appears to have received ^{lun}
that the

intimating "Member Finance has approved the proposal
of the Department contained in para 4 of DOS Note

dated 7.7.89 for the continued operation of the post

of Scientist/Engineer-SE as an administrative post

in Branch Secretariat, New Delhi on a long term basis

beyond 31st December, 1989." The period of the panel

in which the name of the applicant was included in

1988 list for promotion expired only on 7.10.89.

Even though there was some uncertainty at the initial

stage regarding the operation and availability of

the post of the Under Secretary on a long term basis,

it was over when a decision was taken by the department

with the officers Association in April 1989. Thereafter

the respondents 1 & 2 could have made adhoc promotion

and posting and written for ratification by Member

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Finance stating the circumstances, in which case approval becomes easier and could have been granted treating it as a routine affair under the circumstances of the case. Thus the respondents 1 & 2 could have promoted and posted the applicant as ADD II on an ad hoc basis before the expiry of the period of the panel, if they really wish to do so and oblige the applicant.

10. The applicant has unblemished record of service and he was repeatedly appearing in the interview, and He was selected and included in the panel for promotion as ADD II in the year, 1988. He is entitled to the benefit of pro forma promotion in principles of parent department under the "Next Below Rule". The intention underlying this Rule is that ~~xxxxxxxxxxxx~~ when an officer is for any reason prevented from officiating in his turn in a post on higher scale or grade borne on the cadre of the service to which he belongs, he may be authorised by special order of the appropriate authority proforma officiating promotions into such scale of pay. The 'Next Below Rule' is not a rule of independent application. A person

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and promotion
cannot as of right claim super time scale/merely on
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the basis of his seniority. He must have been selected
for the higher post having better scale. The officer
must stand the test of suitability and his integrity
must be beyond doubt. The Supreme Court in State of
Mysore Vs. Bellary AIR 1965 SC 868 held.

" So long therefore as the service of the
employee in the new department is satisfactory
and he is obtaining the increments and promo-
tions in that department, it stands to reason
that satisfactory service and the manner
of its discharge in the post he actually fills,
should be deemed to be rendered in the parent
department also so as to entitle him to
promotions which are open on Seniority-cum-
merit basis. What is indicated here is
precisely what is termed in official language
the "next below rule" under which an officer
on deputation is given a proper-promotion
and shown as holding a higher post in the
parent department if the officer next below
him there is being promoted".

The Supreme Court in D.D. Suri Vs. Union of India
1979(3) SLR-689, examined the scope of this Rule
and observed as follows:

" The real implications of the 'Next Below Rule'
as defined in the Secretary of State for India's
ruling clarified by the Government of India
Ministry of Finance by letter No.2(25)--Est. III/46
dated April 2, 1947. All India Services Manual,
2nd Ed. PP-765-66, in so far as they bear upon the
claim of right to the benefits thereunder in
respect of the petitioner are extracted below:--

"The so called 'rule' is not a rule of any
independent application. It sets out only
the guiding principles for application
in any case in which the Governor-General
in Council, or the Governor exercising
his individual judgment in virtue of the
powers conferred on him by the Secretary

of State's Rule of the 14th April, 1942 (published with Home Department Notification No. 195/40 Ests., dated the 9th June 1942), proposes to regulate officiating pay by special orders under the second proviso to Fundamental Rule 30(1). The condition precedent to the application of the 'Next Below Rule' must, therefore, be fulfilled in each individual case before action may be taken under this proviso."

It would thus appear that the "Next Below Rule" is not a rule of any independent application. It sets out only the guiding principles for application in any case in which the President or the Governor proposes to regulate an officiating pay by special order under the second proviso to F.R. 30(1). The condition precedent to the application of the 'Next Below Rule' must, therefore, be fulfilled in each individual case before any action can be taken under this proviso.

The object of this rule is that an officer out of his regular line should not suffer by forfeiting the officiating promotion which he would otherwise have received had he remained in the original line. The applicant satisfies all the conditions for getting the benefit of this rule. Admittedly he was senior to respondents 3 to 6. He was on deputation on Foreign Service from 30.6.1987. He stood first in all selections including Administrative Officer I in ISRO. There was no adverse remarks against him.
had been ^{to}
He was successfully carrying out the duties of ADD II ^{to}
from 19.11.83 to October, 1985 in the Department of

Space and is working in the same grade in ISRO.

The DPC selected and included him in 1988 panel for promotion as ADD-II. Under these circumstances when the vacancy of ADD-II arose before the expiry of the period of the panel of 1988 he should have been promoted and posted on ad hoc basis. The failure of the respondents 1 & 2 to give him the promotion causes injustice to him.

11. In the result we are of the view that the applicant is entitled to succeed and we accordingly allow the application and declare that the applicant is entitled to be promoted as ADD II in the retirement vacancy of Shri Kapila. The respondents 1 & 2 shall pass orders granting him the promotion within a period of three months from the date of receipt of this judgment. The application is therefore, allowed; there will be no order as to costs.

N. Dharmadan
23.7.91.

(N DHARMADAN)
JUDICIAL MEMBER

S.P. Mukerji
23.7.91.

(S P MUKERJI)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

R.A. 53/91 W

~~XXXXXX~~ No. BA 207

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1990

DATE OF DECISION

11.11.91

Union of India rep. by the Applicant (s)/Respondents in OA
Chairman, Indian Space Research
Organization, Antariksha Bhavan,
New Bel Road, Bangalore-560 094 and another
Mr. V.V. Sidharthan Advocate for the Applicant (s)

Versus

K.G.K Nair, Admve. Officer, Respondent (s)/Applicants in OA
Gr.I RRL, CSIR, Indl. Estate,
Trivandrum and 4 others

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman,

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
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

N. Dharmadan, M(J)

This Review Application can be disposed of
by circulation.

2. The respondents 1 and 2 in the Original Application filed this Review Application. The main grounds urged in this application are as follows: (1) certain 'factual positions have not attracted the kind attention of the Hon'ble Tribunal' while making some observations and arriving at the conclusions; (2) There were no regular vacancies of Administrative Officer-II to promote the applicant before the expiry of the 1988 panel. The findings

regarding the vacancy position due to the retirement of M/s. Nandakumar and Kapila ^{are 42} is wrong and there is no deliberate delay to avoid the promotion to the applicant, and (3) the concept of 'Next Below Rule' does not apply in the case of promotions to the post of Under Secretary and Administrative Officer in DOS/ISRO. The decisions referred to in the judgment are distinguished.

3. According to the Review Applicants ends of justice requires review and reconsideration of the judgment.

4. In this case the applicant's denial of promotion to the post of Administrative Officer Gr.II despite the fact that the Departmental Promotion Committee ^{found} him fit to be included in the panel in its meeting held on 8-4-88. He was given 6th position by DPC in the list which was valid upto 7-10-89. The applicant's complaint is that he was not even given an ad hoc promotion ~~even~~ ⁴ though two regular vacancies arose due to retirements after the promotion of the 5th man in the list before the expiry of the list in October 1989. The respondents did not fill up the vacancy deliberately ^{under 42} on the pretext of lack of permission from the competent authority.

5. No relevant fact, which was presented for our consideration at the time of the hearing of the case

was omitted by us: In fact we have gone through voluminous files produced before us and on perusal we could find sufficient materials indicating deliberate delay on the part of the respondents 1 and 2 in filling up the vacancy in spite of occurrence of two vacancies due to retirement. This is clearly stated in paras 7, 8 and 9 of the judgment. We see no error or mistake warranting review of the judgment. We had considered all the aspects pointed out in the R. A.

6. The concept 'Next below rule' is a general principle applicable to particular situation irrespective of the persons concerned or the establishment in question. In this case, having regard to the facts we are of the view that this general principle applies and there is nothing wrong in having applied the same on the facts of this case.

7. The grounds urged by the review applicants may not be good enough to be presented in this R.A. before us. They can be pressed only before an appellate forum and not in a review application.

8. The review applicants have not made out any ground for invoking our jurisdiction and power of review in this case. There is no ^{allegation} error or mistake in the judgment as alleged by the applicant.

9. Accordingly we are of the view that there is no substance in this application and it is liable to be rejected. We do so.

10. M.P. No. 1389/91 filed in the R.A. for stay of the operation of the judgment is also dismissed.

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

CP(C) No. 253/94 in O.A.No.207/90.

Tuesday this the 25th day of June, 1996.

CORAM:

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

K.G.K. Nair,
Administrative Officer,
Regional Research Laboratory,
Council of Scientific &
Industrial Research,
Trivandrum - 695 019.

.. Petitioner

Vs.

1. Dr. K. Kasturirangan,
Chairman,
Indian Space Research
Organisation,
Antariksh Bhavan,
New B.E.L. Road,
Bangalore-560 094.

.. Respondents

(By Advocate Ms. Nandini for Shri CN Radhakrishnan)

ORDER

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Neither Petitioner nor his counsel is present.

There is no representation either. The Contempt Petition
has been pending for about two years. Petition is
dismissed. No costs.

Tuesday this the 25th day of June 1996.


P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


Chettur Sankaran Nair

CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN