

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED THE 20TH NOVEMBER ONE THOUSAND NINE HUNDRED AND
EIGHTY NINE

PRESENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O. A. No. 222/89

Solomon David

Applicant

Vs.

1. Union of India represented by the
Secretary, Department of Space,
Cavery Bhavan, Bangalore-1

2. Sreenivasa Rao,
Accounts Officer, Grade II
Satalight Centre, Murugeshpulaya,
Airport Road, Bangalore-17

3. N. Prabhakaran Nair
Accounts Officer-II
Civil Engineering Division
Shar Centre, Sriharikota-524124
Nellore District (Andhra Pradesh)

4. Vijaya Kumar,
Accounts Officer Grade I
Department of Space, III Floor
Lok Nayak Bhavan,
New Delhi

5. Sreenivasan,
Accounts Officer Grade I, ISTRAC (ISRO)
A-1, Peenya Industrial Estate,
Bangalore-560 058

Respondents

M/s. Bhaskaran Pillai & Leela S.

Counsel for the
applicant

Mr. P. V. Madhavan Nambiar, SCGSC

Counsel for R-1

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant in this case, filed under Section 19
of the Administrative Tribunals Act 1985 seeks to
quash Annexure A-1 intimation about the decision that he

was not recommended for promotion from Accounts Officer Grade I to Accounts Officer Grade II since the Departmental Promotion Committee (DPC) has not found him fit for promotion.

2. The applicant originally joined in the Accounts Department of the Tata Institute of Fundamental Research and worked there upto 1968. But when this Institute was taken over by the Government of India, he became the employee of I.S.R.O. Considering his earlier service he was promoted as Accounts Officer Grade I w.e.f. 1.1.1981. Annexure A-2 is the order of promotion. Thereafter, as per Annexure A-3 order he was confirmed in that post w.e.f. 30.3.1981. According to the applicant he is senior to respondents 3 to 5 and better qualified and fully eligible for the next promotion as Accounts Officer Grade-II. Annexure-IV bio data received from the computer was sent to the DPC by departmental authorities. But according to the applicant Annexure-4 does not discloses all his qualifications including his pass in the M. Com. degree. They were not placed before the DPC for consideration. He also submitted that the Annual Confidential Records (ACRs) of the applicant for the year 1988 was not considered by the DPC for assessing the merits. He has also a case that the respondents 3 & 4 who have been selected to the promotion post by the DPC are juniors and in the matter of assessment, the seniority and merits of the applicant have not been given due weightage. They have been selected for promotion overlooking the seniority and fitness of the applicant. Annexure A-5 certificate shows that the applicant had been accorded sanction for one additional increment in the existing grade considering his meritorious service. But nevertheless, he has not been given promotion to the post of Accounts Officer Grade II.

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3. The applicant mainly raised the following three grounds before us for consideration:-

- i) The ACR for the year 1988 was not placed for consideration before the DPC for assessment of his merit.
- ii) The superior merit and higher qualifications of the applicant have not been feeded to the computer for being placed before the DPC. So much so his pass in the M. Com. and meritorious service were not considered by the Committee.
- iii) The allotment of marks namely 30% for ACR and 70% for interview is illegal and
- iv) The DPC was not constituted properly by associating UPSC.

4. The applicant's counsel contended that promotion to Accounts Officer Grade II (A.O. Grade.) is purely based on merit-cum-seniority and applicant being seniormost A.O. (Grade I), the denial of promotion to him is arbitrary and illegal.

5. Ext. R-1 to R-3 produced along with the counter affidavit of the first respondent are the Office Memoranda prescribing the procedure for promotions and appointment in VSSC. The relevant portions dealing with 'Internal promotions in paragraph 9 read as follows:

"9.1 Internal promotions of administrative staff will be governed by the procedures contained in Annexure-III read with paragraph 7 above. The minimum service after which a person may be considered for promotion to the higher grade and the nature of the test to be conducted have been indicated in columns 4, 5 and 6 of the Annexure-III. Invariably, scrutiny of the confidential reports and personal interview are essential."

Scale of pay	Designation	minimum service for consideration	Nature of promotional tests
700-1300	AO-I	3 years	ACR + Interview
1100-1600	AO-II	3 years	ACR + Interview "

Ext. R-1 was further amended by Ext. R-3 memorandum dated

5.10.1976. The relevant portion reads as follows:

"To qualify for promotion, the employee concerned should secure an aggregate of 60% with a minimum of 50% each of the marks allotted for written test, CRs and interview. Even if an employee does not secure a minimum of 50% in the written test, he should be interviewed since this would give him the psychological satisfaction of having been called for interview and the assessment would be based on all the parameters.

(ii) Where no written test is prescribed, the employee concerned should still secure an aggregate of 60% with a minimum of 50% each in the interview and assessment of CRs.

(iii) The marks for various areas of assessment will be the following:

CR	20
Written test	50
Interview	30

(iv) Where no written test is prescribed and reviews are to be made on the basis of CRs and interview only, the marks prescribed will be 30 for CR and 70 for interview.

(v) Where reviews are to be made only on the basis of CRs as in the case of Attendant for promotion to Attendant 'B', the employee concerned should still secure a minimum of 60% marks."

6. In the case of promotion to A.O. Grade II there was no test as per the procedure in Ext. R-1 to R-3. The assessment of ACR and interview are the two formalities and they have been duly conducted and all the factors which are relevant were taken into consideration by the DPC. According to the first respondent the merit-cum-seniority is not the sole basis for promotion to Group 'A' post in ISRO. The work of an employee concerned as reflected in the ACR's first page which was reported by the officer himself and assessed by the Reporting Officer, Reviewing Officer and Countersigning authority would be placed for consideration before the DPC. Thus the consideration of the ACRs for a period of three years is one of the parameters that the DPC takes into account

while recommending the promotion. Out of 100 marks, 70% are assigned to the performance in the interview and 30% marks are earmarked for ACR grading.

7. During the DPC meeting, selection to the post of A.O. Grade II held on 1st January 1989, the ACRs of all the officers including that of the applicant for the year 1988 were not taken into consideration by the DPC because entries in the ACRs for the year of 1988 were not finalised considering the objections before January, 1989. For the above reason the ACRs of all the officers for the year 1988 were not placed before the DPC. This reason is uniformly applicable to all the officers, both the applicant and respondents 3 to 5. The applicant was fully aware of this procedure. The ACR for every year becomes final only after it has gone through different stages. The various stages are the entering of details of the qualification and assessment by the employee concerned, furnishing of remarks by the Reporting Officer and review by the higher authority and also countersigning by the appropriate authority in the hierarchy. After completing these steps the same is to be communicated to the employee concerned and he is to be given some time to represent about the remarks entered therein. Only after due consideration of the representation filed by the officer, the CR will be ready for being produced before the DPC. Under these circumstances, it was not possible to get the CRs of 1988 completed in the case of all the officers before 18.1.1989 on which date the interview was scheduled for consideration of the eligible officers for promotion to the post. Since ~~xx~~ the ACRs of all the officers for the year 1988 were not placed before the DPC for consideration, there is no scope for any grievance

for the applicant in this behalf. There is no unequal treatment of the applicant and respondents 3 to 5 in the matter of placement of ACRs for consideration.

8. With regard to the next contention that the qualifications including his M.Com Degree and his superior merits were not placed for consideration of the DPC, the applicant alone need be blamed because it has been specifically pointed out by the respondents that this being a case of self assessment, the applicant has himself written his qualifications. The relevant portion in the counter affidavit of the first respondent reads as follows:

"It is further submitted that all the qualifications acquired by the Applicant have been incorporated in the Bio-data presented to the committee as stated earlier and the Applicant has himself entered details of the qualifications (including M. Com) he acquired in the ACR forms before making the self assessment. Therefore the possibility of the qualification (though not relevant for DPC) acquired by the Applicant being missed by DPC in any case does not arise."

Under these circumstances, if there was any omission as alleged by the applicant the default can only be attributable to the applicant himself. On the facts and circumstances of the case we see no merits in this contention.

9. The third contention pertains to the allotment of marks for assessment of ACR and the interview. The applicant has not raised any specific ground attacking this allocation of marks in the application but he has stated in the rejoinder that there is no provision in Ext. R-1 fixing 70% marks for interview and 30% marks for ACR. He has also stated that by granting the broad opportunity to award 70% marks for interview and to ^{to b} restricting the marks/30% for ACR, arbitrary power is given to the Committee to select persons of lesser merit

and qualifications. We have examined this question also in the light of the contentions raised by the applicant. The submission of the applicant is that by means of assigning 70% marks for the interview, there is possibility of tilting the balance in favor of the persons in whom the members of the DPC are interested and thereby there is possibility of arbitrary decision being taken in the assessment of the merit of the candidates. He has cited before us in support of this contention the following decisions:

- i) Ajaytasia and others vs. Khaled and others (1981 (1) SCC 722)
- ii) Asok Kumar Yadav Vs. State of Haryana and others (1985 (4) SCC 447)
- iii) Mehmood Alam Tariq and others vs. State of Rajasthan and others (1988 (3) SCC 241)

10. We have examined these decisions in detail and we feel that they are not applicable to the facts of this case. In Ajay Harias's case the admission to Engineering College was challenged on various ground including the allocation of marks for viva-voce as part of admission procedure. On the facts of the case after considering all the aspects and charts of marks obtained by the candidates the court observed that the chart creates a strong suspicion but it cannot take the place of proof and held that the plea of malafides has not been established. In the concluding portion the court observed:

"under existing circumstances, allocation of more than 15% of the total marks for oral interview would be arbitrary and unreasonable."

This is not applicable on the facts of this case because the facts are different and the applicant had not produced any clinching materials as in the Supreme Court case and in this case. he had not challenged Ext. R-3 itself. Since the O.M. in

Ext. R-3 prescribing the allocation of marks for the interview and ACR has not been challenged in this case, the other cases cited at the bar are inapplicable in the facts of this case. When a policy decision has been taken by the first respondent in the matter of allocation of the marks as disclosed in Annexure R-3 O.M. as early as in 1976 and it is ~~being~~ uniformly applied in the assessment of merit of all candidates, the case of the applicant cannot be accepted especially in view of the fact that Annexure R-3 memorandum has not been attacked in this case. So long as the above memorandum prescribing the division of marks remains unchallenged the applicant's contention cannot be accepted. In Mehmoodi's case (988 (3) SCC 241) the Supreme Court held that "This court indicated that in matters such as these, which reflect matters of policy, judicial wisdom is judicial restraint. Generally matters of policy have little adjudicative disposition." So there is no substance in the third contention urged by the learned counsel for the applicant before us.

11. The last point specifically urged by the learned counsel for the applicant is that the DPC has not been properly constituted. But there is no pleading in this behalf except a vague statement in paragraph 7 of the rejoinder. The learned counsel for the respondents has submitted that the DPC has been properly constituted behalf and it is clear from Annexure R-2 notification, dated 5.7.76. It is not necessary to associate the UPSC in the matter of the constitution of the DPC as contended by the applicant because of the exemption contained in Annexure R-2.
12. The applicant's counsel relying on paragraph B.1.5 of O.M. No. HQ. ADMN.4 20(2) in "A Compendium of Orders on Career Opportunities for Administrative Staff" published by ISRO, HeadQuarters dated 9th July, 1989, contended that

Ext. R-1 has been repealed and that the first respondent is bound to inform the "results and the area where they have failed to make the grade" so that they make efforts to show improvement. We have examined the 'Compendium of Orders'. Ext. R-1 has not been repealed as contended by the applicant. On the contrary, paragraph 3 of the "Compendium" states otherwise. It reads as follows:

"As stated in the opening para, this O.M. is only a consolidated document of the various orders issued from time to time, in order to facilitate easy reference. Wherever considered necessary, the original orders as applicable should be referred to. In case of any doubt, ISRO Headquarters should be consulted."

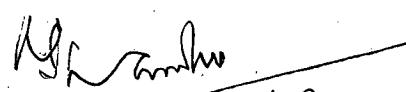
This will make it clear that Ext. R-1 to R.3 are in force and the original orders can be referred for promotions whenever necessary. So far as review of officers on the administrative categorries, O.M. dated 7.3.1981 marked as Annexure R-5 (produced by the first respondent along with a memorandum dated 16.10.89) provides that a decision was taken at the higher level to adopt a standard pattern of communication by all Centres/Units of ISRO to all candidates soon after recommendation of the Review when it is approved by the competent authority in the following form:-

"Shri having been considered for promotion from grade to grade has been found fit/has not been found fit for promotion."

It is submitted before us by the learned counsel for the respondents that it is being followed in the case of every review by the promotion committee. Hence, there is no scope for any grievance for the applicant.

13. In this view of the matter, on a careful examination of the facts and circumstances of the case, we see no merit in this application and it is only to be dismissed. Accordingly, we dismiss the O.A.

14. There is no order as to costs.


(N. Dharmadan)
Judicial Member

26/11/89


(N. V. Krishnan)
Administrative Member