

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 246/89
XXXXXX

100-

18 - 10 - 1990
DATE OF DECISION

R Nandanam Thampli _____ Applicant (s)

Mr MR Rajendran Nair _____ Advocate for the Applicant (s)

Versus

Union of India rep. by Secretary Respondent (s)
To Govt. of India, Ministry of
Finance, New Delhi and 5 others.

Mr P Sankaran Kutty Nair _____ Advocate for the Respondent (s) 1 to 5.

Mr OV Radhakrishnan Nair for R-6.

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✗
4. To be circulated to all Benches of the Tribunal? ✗

JUDGEMENT

Shri NV Krishnan, Administrative Member

The applicant who is a Technical Assistant in the Central Excise Headquarters, Cochin is aggrieved by the Annexure-I order dated 7.2.89 of the Deputy Collector (P&E) (Respondent-3) in which, on promotion to the post of Technical Assistant, the sixth respondent is placed above the applicant, implying that Respondent-6 will be senior to the applicant. The applicant is also aggrieved by the Annexure-VIII order dated 14.5.87 of the third respondent, by which the promotions made by the Office Order dated No.55/87 dated 20.4.87 (Annexure-VI) were directed to be treated as purely on ad-hoc basis. By Annexure-VI order, the applicant and Respondent-6 were

promoted as Technical Assistants and the applicant was shown as senior to Respondent-6.

2 The grievance of the applicant has arisen in the following manner.

2.1 The Government of India had directed that the Group-C Telecommunication staff, which includes the post of Technical Assistant, be treated as a Collectorate based cadre. That decision necessitated the revision of the Recruitment Rules in respect of the composition of the Departmental Promotion Committee (DPC), promotion, efficiency bar, confirmation etc. The draft amendments to the Rules having been submitted to the Government of India, the Directorate of Prevention, Central Board of Customs and Excise sent a letter to all Collectorates as at Annexure-VII, the relevant portion of which is extracted below:

"It appears that final acceptance of the draft proposals may take some more time in the ministry. As there are number of vacancies in supervisory cadres as well as at the junior levels OTC, RTs number of Collectorates are experiencing difficulties in managing the Telecommunication Wings in their collectorates due to shortage of staff. The Collectors are requested to fill up the vacant posts in their collectorates, by holding DPC/Recruitment tests as per proposed in draft amendment to recruitment rules (a copy is enclosed).

2.2 It is on this basis that proceedings were initiated to fill up the 2 vacant posts of Technical Assistant by promotion of Radio Technicians. A DPC comprising Members as mentioned in the draft amendments to the Recruitment Rules (Draft Amendment, for short) was constituted which met on 10.4.87 and recommended the names of the applicant and the sixth respondent in that

order, for promotion to these two vacancies. On that basis, the Annexure VI order of appointment was issued by Respondent-3.

2.3 Subsequently, on 27.4.87, the Government of India addressed a letter to the Director of Preventive Operations advertizing to the latter's instructions dated 10.3.87 (Annexure-VII) and directed that till the Recruitment Rules are amended, vacant posts may be filled up purely on ad-hoc basis and not on a regular basis. A copy of this direction of the Government of India was forwarded to all Collectorates by the letter dated ~~XXXXXX~~ 1.5.87 of the Director of Preventive Operations (Annexure R1).

2.4 In pursuance of this direction, the third respondent issued the impugned addendum dated 14.5.87 (Annexure VIII) to the Office Order No.55/87 dated 20.4.87 (Annexure-VI) stating that the promotions ordered therein are made purely on ad-hoc basis.

2.5. Finally, it would appear from the rules produced for our perusal by the counsel for Respondents 1 to 5 (Department, for short) that the amendments were published in the Government of India Gazette dated 30.1.1988, from which date they came into force. It is admitted by the counsel of the Department that the amendments as finally published were exactly the same as the Draft Amendment, sent to the Collectors as enclosure to the Annexure-VII instructions.

2.6 In pursuance of the amendments to the Recruitment Rules, a fresh DPC was constituted on 31.1.89 to fill up the 2 vacant posts of Technical Assistant by promotion which were being held, according to the Department, by the applicant and 6th respondent on a purely ad-hoc basis. The DPC recommended the promotion of the 6th respondent and the applicant, in that order. In pursuance of this recommendation, the impugned Annexure-I order was issued on 7.2.89 appointing the sixth respondent and the applicant as Technical Assistants.

2.7 The applicant has challenged the Annexure-I and Annexure VIII orders on the following grounds.

(a) The initial promotion by the Annexure A-VI dated 7.2.89 was as a result of a selection made by a properly constituted DPC in accordance with the Draft Amendment and is in the nature of a regular appointment. That promotion cannot be treated to be ad-hoc in nature by the subsequent impugned Annexure-VIII order dated 14.5.87.

(b) No such decision should have been taken without issuing a show cause notice to the applicant and giving him an opportunity to be heard.

(c) As there is no change between the provisions of the Draft Amendment relating to the composition of the DPC and the provision of the Rules as finalized after amendment, there was no need to appoint a fresh DPC to consider promotions on a regular basis. The earlier promotions made by the Annexure VI order ought to have been simply regularized, or at best, the new DPC should

ratified

have merely ~~reaffirmed~~ the proceedings and recommendations resulted in of the earlier DPC which ~~recommended~~ the Annexure VI order.

Therefore, the impugned Annexure I order is without ~~jurisdiction~~ jurisdiction.

(d) The fifth respondent, Shri PT Bashkaran, Assistant Director, Communications has been partial to the sixth respondent and was instrumental in giving him a higher rating, so that in the final selection by the 2nd DPC, he was placed above the applicant, on the basis of which Annexure-I order was issued. There was no material whatsoever, in the confidential record of the parties to warrant this decision.

3 The Department (i.e. Respondents 1 to 5) have filed a reply denying these allegations including the allegations made against the fifth respondent. It is contended by them that the Annexure-VI order was issued on the basis of the Annexure VII instructions received from the Director of Preventive Operations, which directed the Collectors to fill up the posts on the basis of the Draft Amendments, pending their finalization by the Government of India. The impugned Annexure VIII addendum was also issued in pursuance of the Government of India's directions contained in their letter dated 27.4.87 (Annexure R-1).

4 It is also contended on behalf of the Department that when the amendments to the Recruitment Rules were finalised in January, 1988 it was necessary to fill up regularly the vacancies of Technical Assistants, to which the applicant and the sixth respondent were appointed on a

purely ad-hoc basis only. Therefore, a second DPC was constituted under the amended Rules which met on 31.1.89 and recommended the names of the sixth respondent and the applicant in that order. On the basis of this recommendations the Annexure-I order was issued. Hence, there is no irregularity and the application cannot be sustained.

5 The sixth respondent has also filed a reply denying that any favouritism has been shown to him by the fifth respondent and contending that his selection for promotion to the post of Technical Assistant as the first candidate by the third respondent cannot be assailed, as it has been done on the basis of merits as assessed by a DPC.

6 We have heard the counsel and also perused the records of the case. On our directions, the learned counsel for the Department produced for our perusal the original Recruitment Rules, the Draft Amendments, as also the amendments in their final form. The minutes of the two meetings of the DPC held on 10.4.87 and 31.1.89 were also produced before us.

7 We notice that the recruitment to the post of Technical Assistant as well as certain other categories of posts in this Department are governed by the Directorate of Communications (Customs and Central Excise) Group-C (Technical) Posts Recruitment Rules, 1978, - Recruitment Rules, for short. For our present purpose, it is sufficient to notice that under these Recruitment Rules, the post of Technical Assistant is a selection post which had to be filled up 100% by promotion from Radio Technicians. The promotion was to be considered by a DPC consisting of

the Director of Communications as the Chairman and consisting of Deputy Director, Directorate of Coordination, Police Wireless, Deputy Director of Communications and the Assistant Director of Communications as the 3 Members. As stated in the Annexure VII letter, changes were required in the Recruitment Rules because of the decision of the Government of India to make the Telecommunication staff a Collectorate based cadre. It is as a result of this change, that amendments were required in Recruitment Rules. We notice that amendments were finally made in the Recruitment Rules, by the Directorate of Communications (Customs & Central Excise) Group-C (Technical) Posts Recruitment (Amendment) Rules, 1987 (1987 Amendment Rules, for short) which came into force from 30.1.88. Among other changes, the composition of the DPC has been changed. The composition of the DPC for the Group-C posts borne on the strength of the Collectorate of Central Excise or Customs is the Collector, Central Excise/Customs as the Chairman, Deputy Collector (Personnel and Establishment), Deputy Director (Communications) or Assistant Director (Communications), and the Assistant Collector. There is also a direction that if none of the above persons belong to the Scheduled Castes/Scheduled Tribes, a Group A Officer from outside the Collectorate belonging to the SC/ST shall also be associated as a Member of the DPC. We also notice that the 1987 Amendment Rules are the same as the Draft Amendment which was initially sent to the Collectors along with the Annexure VII letter.

8 In the normal course, the recruitment ought to have been made on the basis of the Recruitment Rules before their amendment. The only material difference would have related to the composition of the DPC. However, as a decision had already been taken to declare the staff as Collectorate based and consequently to amend the Recruitment Rules, the Department cannot be faulted for the issue of the instructions at Annexure-VII, to fill up the posts on the basis of the Draft Amendment. In the very nature of things, any recruitment on this basis has necessarily to be on an ad-hoc basis for, when Recruitment Rules exist, the regular recruitment has to be on the basis of those Rules. However, as a DPC consisting of persons entirely different from those mentioned in the Recruitment Rules was directed to consider the case of promotion, by following the ~~promotion~~ ^{provisions} of the Draft Amendment, the promotion made on that basis has necessarily to be on ad-hoc basis as it has no other legal sanction. Therefore, even though it was left unsaid in the Annexure VI order or even in the Annexure VII letter, in the circumstances of the case, it was implicit that the promotions were only to be ad-hoc, pending the finalization of the amendments to the Recruitment Rules. This position was only made clear to the Directorate of Preventive Operations by the Ext.R1 letter of the Government of India in unambiguous terms and this circular of the Government of India was forwarded to Collectors. It is in pursuance thereof the

impugned Annexure VIII order has been issued, which, in the circumstances mentioned above, cannot be impugned.

9 We are, however, of the view that if the Govt. of India did not want to follow the Recruitment Rules for effecting promotions, they could as well have directed that purely subjective ad-hoc promotions could be made pending finalization of the amendments. They need not have issued specific directions to the appointing authorities that while making such ad-hoc promotions, they should comply with the provisions contained in the Draft Amendment. Though the Department has not stated any reason as to why such an instruction was given, it cannot be that such direction did not have any meaning. In the circumstances, we feel that this direction was, perhaps, issued to only facilitate regular promotion on the basis of the amendments to the Recruitment Rules when they came into force. For, ~~if~~ the 1987 Amending Rules ~~were~~ finalized without any change from the Draft Amendment, a further direction could have been issued that the promotions already made on the basis of the Draft Amendment on ad-hoc basis, be regularised from the date the 1987 Amending Rules came into force. Alternatively, they could have directed that a fresh DPC be constituted in accordance with the 1987 Amending Rules which could consider the matter, after perusing the proceedings of the ad-hoc selection made

unless there are some serious objections to such a earlier by a similar DPC and ratify the earlier decision. In that event also, the ad-hoc promotion made earlier would have been regularised or approved without any change by

the DPC. Such a step would have ~~aggravated~~ avoided the situation that has arisen in the present case.

10 Considering the background in which the Annexure VII instructions were issued, we are of the view that the ad-hoc promotion made in 1987 by Annexure VI order should not have been treated as an ordinary ad-hoc promotion. It has all the trappings of a regular promotion because the appointment was made on the basis of a selection made by a regular DPC in accordance with the Draft Amendment, which did not undergo any change before finalization. Therefore, in the normal course, that selection should have only been either ratified or endorsed when the 1987 Amending Rules came into force.

11 The applicant has alleged that the first DPC did not consider Shri K Jayaraman though admittedly senior to the sixth respondent, because he had not then qualified for consideration, not having passed the Departmental promotion test. It is alleged that when the second DPC met, it considered the case of Shri Jayaraman also as he had ~~xxx~~ then qualified for consideration. The applicant's counsel contends that ~~xx~~ there were only two vacancies and ~~xx~~ there was no way of superseding the the applicant who was the first candidate, considering his merit. It is alleged that the fifth respondent had already decided to ~~xx~~ select the ^{respondent} ~~sixth~~ ^{who was, however,} only the third in the consideration list. Hence, the sixth respondent was deliberately given a higher ranking, such that he could supersede Shri Jayaraman, the second

in the consideration list. However, this also resulted in his being placed above the applicant.

12 We see from the records of the DPC held on 10.4.87 and 31.1.89 that the facts as mentioned by the applicant are substantially correct, but we do not accept by the allegations made him against the fifth respondent or the conclusions drawn by him. The fifth respondent only was ~~xxxx~~ one of the four Members of the DPC and there is nothing to show that he influenced the decision of the other three Members, including the Chairman. Further, if the alleged anxiety was to only ensure that the sixth respondent was ~~willy nilly~~ recommended for selection, this objective could have been achieved by merely superseding Shri Jayaraman, the second on the consideration list, but without superseding the applicant, who was first in the consideration list. In that case the sixth and the applicant respondent could have been given the same higher grading and the second on the consideration list, Shri Jayaraman, and others could have been given a lower grading. We are, therefore, not impressed by this plea.

13 In the absence of any instructions to the contrary, which we feel ought to have been given by the Government of India or by the Director of Preventive Operations as

mentioned in para 9 supra, the DPC which met on 31.1.89

was entitled to consider the entire case de-novo and

not merely confine itself to ratifying the earlier

to the DPC members
decision of the first DPC. *XXXXXX* They were not even

informed about the earlier ad-hoc selection. They should

have been informed of the letters at Annexure VII and

the Ext.R1 clarification thereto and the orders at

Annexure VI and Annexure VIII. As the vacancy arose

in 1987, they ought to have considered only the cases

of those persons who were eligible for consideration

then, i.e., the four persons considered by the first DPC.

14. Therefore, the proceedings of the second DPC have

to be quashed and a review DPC has to be held comprising

to
Members not associated with this case earlierXXXXXX/consider

the case of promotion to 2 posts of Technical Assistant

in 1987. The selection by the first DPC is the authority

for the Annexure VI order and hence that selection cannot

be interferred with.

15. In the circumstances of this case and for the

foregoing reasons, we dispose of this application with

the following orders/directions:

(i) The proceedings of the DPC held on 31.1.89

for selection to the 2 posts of Technical Assistant are

quashed as also the consequential Annexure-I order of

*But there are 8
other flaws
in
this proceedings*

promotion dated 7.2.89 in so far as it concerns the promotion of the applicant and the sixth respondent as Technical Assistant.

(ii) The first respondent is directed to constitute an ad hoc review DPC, in accordance with the 1987 Amended Rules consisting of officers other than those who were included as Chairman or Members of the DPCs which met on 10.4.87 and 31.1.89 and direct it to consider the case of the persons who were eligible for promotion to the 2 vacancies which existed in 1987, as if/are making recommendations, for filling up the vacancies in that year and meeting for this purpose on 10.4.1987 i.e., the date on which the first DPC met. We further direct that these two vacancies may be filled up by/Department in accordance with law on the basis of the recommendations of the ad hoc review DPC.

16 There will be no order as to costs.


18.10.90

(N Dharmadan)
Judicial Member


18.10.90

(N V Krishnan)
Administrative Member

18-10-1990