

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~TXXXXXXX~~

249/89 189

DATE OF DECISION 31.10.1990

K.T Mansoor

Applicant (s)

M/s. N.D Premachandran, Advocate for the Applicant (s)
V.P.Seemanthini, T.B.Ramani &
Bhargavi V. Versus
Union of India, represented Respondent (s)
by Secretary to Government of India,
Ministry of Home Affairs, New Delhi-1 and 3 others
Mr. P.V. Madhavan Nambiar, Advocate for the Respondent (s)
(For RI-3)

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?
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

(Hon'ble Shri S.P Mukerji, Vice-Chairman)

In this application dated 15th April 1989 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Deputy Surveyor, Androth Island under the Administrator, Union Territory of Lakshadweep, has challenged the selection and promotion of respondent No.4 to the post of Revenue Inspector vide Annexure-C in preference to the applicant and has prayed that the said promotion should be set aside as malafide and illegal and respondents 1 to 3 directed to promote the applicant as Revenue Inspector. The material facts of the case are as follows.

2. The applicant was appointed as Deputy Surveyor on 15.1.77 (Annexure-A) and according to him, has been discharging his duties satisfactorily without any complaint. In accordance with the Recruitment Rules of 1987 (Annexure-B), Deputy Surveyors were made eligible for promotion as Revenue Inspector. The applicant satisfies

all the qualifications prescribed for such promotion .

On the recommendations of the Departmental Promotion Committee the respondents 1 to 3 vide the impugned order at Annexure-C. promoted the 4th respondent who is junior to him to the post of Revenue Inspector. According to the applicant contrary to the constitution of the Departmental Promotion Committee as prescribed in the Recruitment Rules, the Settlement Officer, who is the Member Secretary of the D.P.C could not be present in the meeting of the D.P.C on 20.7.1988 as he was on leave. His suspicion is that the meeting of the DPC was intentionally held on that date to avoid the presence of the Settlement Officer. His further contention is that the 4th respondent is a close relative of the Assistant Executive Engineer(Electrical) who is one of the Members of the D.P.C, though the latter did not participate in the meeting. He has further stated that in the absence of the Settlement Officer, the Research Officer who has nothing to do with the Revenue Department deputised on his behalf and participated in the D.P.C. Alleging unfair practice in the selection process, the applicant represented in 1988 xxxxxxxxxxxxxxxx and after several reminders he got a reply in the impugned letter dated 18.11.88 at Annexure-E indicating that the appointment to the post of Revenue Inspector was made by the D.P.C by the process of selection after considering the cases of all eligible candidates including the applicant. It was also indicated therein that since there was no vacant post of Revenue Inspector, the applicant should wait for the next vacancy "and also make improvements in his performance". The applicant's argument is that whereas he was allowed to cross the Efficiency Bar on 25.2.86, the 4th respondent was not having any experience of field work and had never served in the minor Islands as Deputy Surveyor independently.

3. In his counter affidavit the respondent 2 has stated that the post of Revenue Inspector is to be filled up by promotion by selection from amongst the Deputy Surveyors and Draughtsmen in the ratio of 2:1. The D.P.C which met on 20.7.88 considered five Deputy Surveyors including the applicant and selected two other than the applicant. He denied that the applicant had been working as Deputy Surveyor independently. The respondent has conceded that the petitioner possesses the qualifications prescribed for promotion as Revenue Inspector in accordance with the Recruitment Rules, but has denied that he was having better experience in the field work ~~other~~ than that of qualified Deputy Surveyors. It has been indicated that the D.P.C considered all the five qualified Deputy Surveyors including the applicant for the two available posts. The applicant was graded by the D.P.C as 'Good' whereas respondent 4 and one Shri B. Jaleel were graded as 'Very Good' and accordingly promotion orders were issued in favour of those two Deputy Surveyors. He has conceded that in accordance with the Recruitment Rules the following were to be the Members of the D.P.C:-

- (a) Collector-cum-Development Commissioner, Lakshadweep (Respondent No.3)
- (b) Secretary (Admn.)
- (c) Director, Agriculture
- (d) Assistant Executive Engineer (Electrical)
- (e) Settlement Officer - Member Secretary

It has been conceded that the Settlement Officer was on leave from 9.5.88 to 22.7.88 and during this period one Shri Renthidevan held the additional charge of the Settlement Officer (Annexure R2 and R3). The posts of Settlement Officer and Research Officer are in the same scale of pay and accordingly Shri Renthidevan participated in the D.P.C proceedings in the capacity as Settlement Officer and Member Secretary. It has been clarified

further that another Member of the D.P.C, i.e., the Assistant Executive Engineer(Electrical) representing the Scheduled Tribe who happened to be related to respondent No.4 did not attend the meeting of the D.P.C which made the selection for promotion to the post of Revenue Inspector. In his place one Shri Manikfan, Assistant Engineer(Shipping) was nominated and co-opted by the Appointing Authority with the approval of the Administrator. Another Member, i.e., the Director, Agriculture could not attend the meeting as he had gone to Cochin. His absence, according to the respondents, does not vitiate the proceedings of the D.P.C. According to the respondents, crossing of Efficiency Bar by the applicant does not entitle him to promotion to the higher post. It has been clarified that respondent 4 had the field experience.

4. In the rejoinder the applicant has denied the averment made by respondent 3 that the applicant had never been working as Deputy Surveyor independently. He has criticised the induction of Draughtsman in the Revenue Department as the other feeder category for promotion as Revenue Inspector. Further, he has indicated that ^{the} post of Revenue Inspector was lying vacant for the last six years and the meeting of the D.P.C was held in hurry when most of the officers constituting the D.P.C were out of station. He has also alleged that the notice of the meeting was not given to the Settlement Officer and the Director of Agriculture. Out of the five regular Members only two regular Members namely the Collector and Secretary(Administration) were present. He has also a suspicion that his CR had been manipulated to pull him down below respondent No.4. His contention is that the Settlement Officer is the Head of the Survey and Settlement Department and his absence from the D.P.C has prejudiced his case. His further

contention is that his appeal at Annexure-D addressed to the Administrator has been disposed of by the Collector when the applicant had challenged the proceedings of the D.P.C presided over by the Collector himself. In the additional reply the respondents 2 to 4 have rebutted the applicant's averment that as Deputy Surveyor he had been working independently. Regarding induction of Draughtsman as one of the feeder category for promotion as Revenue Inspector, so far there had not been any objection about the amendment made in the Recruitment Rules making such provision. There were three vacancies of Revenue Inspectors of which two fell in the 67% quota of Deputy Surveyors. They have clarified that the Settlement Officer is the Head of the Office, but the Collector is the Departmental Head. They have denied any discrimination against the applicant. They have denied any malafide in fixing the date for convening the meeting. The respondents have not specifically denied the averment made by the applicant in the rejoinder that no information was given to the Director of Agriculture about the meeting.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the respondents produced the minutes in original of the proceedings of the Departmental Promotion Committee which met on 20.7.88, a copy of which has been annexed at Annexure-R1. Some other working papers were also produced. In accordance with the Recruitment Rules as notified on 21.8.87 (Annexure-B) the composition of the Departmental Promotion Committee is as follows:-

- (i) Collector-cum-Development Commissioner-
Chairman
- (ii) Secretary(Administration) - Member
- (iii) Director of Agriculture - Member

(iv) Assistant Executive Engineer - Member
(v) Settlement Officer - Member Secretary

Out of the five regular Members the meeting of the D.P.C held on 20.7.88 was attended to only by two Members, namely, the Collector-cum-Development Commissioner as the Chairman and the Secretary(Administration) as the Member. In place of the Assistant Executive Engineer(Electrical), the Assistant Engineer(S) and instead of the Settlement Officer, who is the Member Secretary, one Shri Renthidevan, a Research Officer holding the charge of the Settlement Officer vide Annexure-R2 and R3 attended the meeting. The Director of the Agriculture was not present. The ^{Director} applicant's contention that he was not informed about the meeting has not been specifically controverted by the respondents.

6. We feel that the meeting of the D.P.C on 20.7.88 did not have the necessary quorum as only two out of five regular Members attended. It has been held by the Supreme Court in Ishwar Chandra v. Satyanarain Sinha and others, AIR 1972 SC 1812, that where no quorum for D.P.C is ^{not} prescribed in the rules, majority is the quorum. Since the Assistant Engineer(S) and the Research Officer were not the Members of the D.P.C as prescribed in the Recruitment Rules, their presence cannot make up the quorum. The contention of the learned counsel for the respondents that the Assistant Engineer(S) was co-opted in place of the Assistant Executive Engineer(Electrical) cannot be accepted as there is no provision in the Recruitment Rules for such co-option. Further the Settlement Officer being the Member Secretary, his place could not be taken up by the Research Officer

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even though the latter was holding the additional charge of the Settlement Officer. It is established law that statutory duties and functions cannot be discharged by a person who is holding a temporary charge of the office. Annexures R2 and R3 produced by the respondents states as follows:-

" Shri K.S.Renthidevan, Research Officer, will hold additional charge of the Settlement Officer and Vigilance Officer during the leave period of Shri Sivasubramaniam, Settlement Officer."

It is clear that Shri Renthidevan was not appointed as Settlement Officer but was holding only the charge of the Settlement Officer who happened to be on leave from 9.5.88 to 22.7.88. It is surprising that the respondents could not wait for two days^{for} more ~~to~~ ^{for} the return of the regular Settlement Officer who is also the Member Secretary of the D.P.C and held the meeting of the D.P.C on 20.7.88. NO administrative reasons warranting such a haste to fill up a post which according to the applicant, ~~had~~ ^{vacant} been lying ^{for} years ~~as vacant~~, has been brought out by the respondents.

7. In the above circumstances we have no hesitation in finding that the D.P.C on 20.7.88 was not regularly constituted as enjoined in the statutory Recruitment Rules and its proceedings suffered from lack of quorum and presence of strangers who had no right to participate in the D.P.C. It has been held by the Bombay High Court in Dr.Gorakh Nath Mishra v. Goa University and others, 1989(1)SLJ 66, that the presence of outsiders in the Selection Committee vitiates the proceedings and renders the Select List prepared liable to be quashed.

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8. In the conspectus of facts and circumstances we allow the application, set aside the impugned order dated 8.8.1988 at Annecure-C in so far as respondent 4 is concerned and direct that a fresh selection for the post of Revenue Inspector as on 20.7.88 be made and the post held by respondent 4 filled up thereafter in accordance with law. There will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

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