

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION : 30.3.1990

P R E S E N T

HON'BLE SHRI N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.291/89

M.Sivasankaran Nair

.. Applicant

v.

1. Postal Services Board, represented by its Secretary, Department of Posts, Dak Bhavan, New Delhi.
2. Chief Postmaster General, Kerala Circle, Trivandrum.
3. Departmental Promotion Committee, represented by its Convenor, Office of the Secretary, Department of Posts, New Delhi.
4. Union of India, represented by its Secretary, Ministry of Communications, New Delhi.
5. P.Sankaran Nambiar
6. E.J.Paily
7. E.N.Sivaramakrishnan
8. A.S.Venkitaraman
9. K.Vasudevan
10. N.Sadanandan
11. P.Narayanan Nambiar
12. P.K Ramachandran
13. Smt. R.Santhakumari
14. P.K Balakrishnan Nambiar
15. M.Gopalan Nair
16. M.Balaganeshan
17. P.N Krishnan Nair .. Respondents

M/s. O.V Radhakrishnan, K.Radhamani Amma
Raju K.Mathew

.. Counsel for
the applicant

Mr.P.Santhalingam, ACGSC

.. Counsel for
R1 to 4.

JUDGMENT

Hon'ble Shri N.Dharmadan, Judicial Member

The applicant, who is working as Post Master Higher Selection Grade I, claims seniority over respondents 5 to 17 and seeks to quash Annexure A-7 order in this application. He also prays for a declaration that the recommendations of the third

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respondent and the consequent list prepared for promotion to the post of Postal Superintendent Service Group B is illegal. His further prayer is that a direction to respondents 1 and 2 may be issued to convene a Review D.P.C to consider the case of the applicant for promotion to the Postal Superintendent Service Group B along with other eligible officers after making a comparative assessment of the service records of all eligible officers.

2. The applicant entered service as Clerk in the P&T Department in April, 1951. He was promoted as Inspector of Post Offices with effect from 13.3.1967. A further promotion as Assistant Superintendent of Post Offices was given to him on a regular basis from 13.1.1981 as per Ext A1. While so, he was again promoted to the cadre of Post Master Higher Selection Grade I as per order dated 22.4.1987. By Ext A2 order dated 20th May 1987, he was posted as Post Master Higher Selection Grade I at Alleppey. He was also promoted and posted to the cadre of Postal Superintendent Service Group B on ad hoc basis for different spells of period from 18.3.86 to 3.4.88 as stated in the application.

3. In Ext A3 Circle Gradation List of officials of Kerala Circle as on 1.7.1982 the applicant's rank is 49 while that of respondents 5 to 17 are No. 50, 52, 53, 57, 58, 59, 60, 61, 63, 64, 65, 69 and 68 respectively. According to the applicant, though the selection to the cadre of Postal Superintendent Service Group B is made on an all India basis, seniority is the main criterion. The third respondent without considering his seniority prepared a list of officers for promotion in the meeting held in 1987 as Postal

Superintendent Service Group B. Respondents 4 to 6 were promoted after this meeting.

4. Aggrieved by the same, the applicant filed Ext A4 representation. Without considering the grievance of the applicant, respondents 1 to 3 again promoted respondents 7 to 16 to the post of Postal Superintendent Service Group B. Ext A-5 is the order promoting respondents 7 and 16 and Ext A7 is the order, by which respondent No.17 was promoted to the cadre of Postal Superintendent Service Group B.

5. According to the applicant, the promotion to the post of Postal Superintendent Service Group B is based on a selection procedure to be adopted by the Departmental Promotion Committee as contained in Ext A6 O.M No.1/1/55-RPS dated 17th March, 1955 and F.1/4/55-RPS dated 16th May, 1957. The relevant portion of the said O.M reads as follows:-

"The officers in the field of selection, excluding those considered unfit for promotion by Departmental Promotion Committee should be classified by the Departmental Promotion Committee as 'Outstanding', 'Very Good' and 'Good' on the basis of their merit, as assessed by the D.P.C after examination of their respective records of service. In other words, it is entirely left to the D.P.C to make its own classification of the officers being considered by them for promotion to selection posts, irrespective of the grading that may be shown in the CRs".

6. The applicant contended that the selection though based on merit can only be finalised with due regard to seniority. In the case of the applicant he had a good record of service except a sole adverse entry relating to the year 1983-84 which is only of a minor nature and can be ignored.

7. While he was working as Assistant Superintendent of Post Offices, Changnacherry Division for the period from 8.7.83 to 14.5.84 some delay was occasioned in the submission of inspection reports and the same

happened due to unavoidable administrative reasons.

Based on the same the aforesaid adverse entry was made in the confidential records, but there was no penalty for depriving him of any promotion. This adverse entry is inconsequential and not sufficient to render him unfit for promotion, according to the applicant.

8. The respondents 1 to 4 filed a counter affidavit in which they have stated that regular promotion to the cadre of Postal Superintendent Service Group B is made on the basis of recommendation of the D.P.C convened by the Postal Services Board. The applicant's case was considered for selection by the D.P.C held in 1987 and 1988. But he has not been recommended by the Departmental Promotion Committee. The D.P.C was held on 14th, 15th, 16th, 21st, 23rd, 28th and 29th September 1987 and considered the Character Rolls and assessed the suitability of 531 officials for preparing a panel of 177 names for filling up of the vacancies as shown below:-

(a) for 1987	..	98
(b) for 1988	..	49
(c) carry over from Junior Time Scale/Sr T.S.	..	<u>30</u>
		<u>177</u>

Communal composition of the vacancies were as follows:-

SC	..	27
ST	..	13
Others	..	<u>137</u>
		<u>177</u>

9. In Govt.'s counter it is stated that the applicant's case was also considered by the D.P.C. He was graded 'Good', but the OC officials having 'Outstanding', 'Very Good' grading could only find a place in the list prepared by the D.P.C. The applicant was given local promotions by virtue of his seniority purely on temporary and adhoc basis for short

spells of periods in leave or deputation vacancies from 1986 onwards. These promotions would not confer any right on him for regular promotion. The assessment records of the applicant's past service were unsatisfactory. They disclose entries such as 'just fair', 'several instances of lack of proper guidance' and 'failure to exercise proper supervision'. The applicant was pulled up on ^{etc.} few occasions for his lapses and sluggishness in discharge of duty. The reporting officers have found that there was no initiative or drive on the part of the applicant. His annual confidential reports would reveal these aspects. Out of the 531 officials considered by the D.P.C., only 26 of the officials including respondents 5 to 16 were from the Kerala Circle. The officials selected from the Kerala Circle are respondents 5 and 6. The seniority is not a criteria for selection. Hence the representation (Ext A4) submitted by the applicant was not considered.

10. Having heard the matter and perused the documents we are satisfied that the selection in this case is to be made by the Departmental Promotion Committee on the basis of merit after a proper evaluation of the service records of the officers in the field of choice. The Departmental Promotion Committee met in the year 1987 for about a week for assessing the merit of the officers and preparing a panel of 177 names for promotion in order to fill up the vacancies for the years 1987 and 1988. They have duly considered the service records of the officials and graded them in accordance with the relevant regulations. It is seen that the applicant has been graded only as 'Good' by the D.P.C. But the other

officers who had been graded as 'Outstanding' and 'Very Good' could only be selected and hence the applicant's name was not included in the panel.

11. The applicant has a case that his seniority over the respondents 5 to 17 had not been duly considered by the Departmental Promotion Committee while making assessment of the suitability for the post. But there is no material to come to the conclusion that the Departmental Promotion Committee failed to take into consideration any of the relevant criteria for assessing the merits of candidates while considering the service records of the officers.

12. It is an admitted fact that the applicant has adverse remarks in his confidential report relating to the year 1983-84. Having gone through the documents carefully, we cannot accept the contention of the applicant that his claim for promotion was never considered by the Departmental Promotion Committee while considering his service records. It is pertinent to note that the selection procedures mentioned in Ext A6 do not make any mention of consideration of the seniority in the matter of selection by D.P.C.

13. The learned counsel for the applicant brought to our notice para 2 in part VI - Procedure to be observed by the D.P.C- of Chapter III at page 88 of Swamy's Compilation on Seniority and Promotion in Central Government Service (First Edition) and contended that in the matter of selection by D.P.C, due regard should be given to the seniority of the officials. The applicant has produced the same para as Ext. A6.

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No separate procedures prescribed by regulations or executive orders pertaining to the selection process other than Ext A6 were brought to our notice. This is the instruction governing the matter.

14. Here in this case the applicant is senior to respondents 5 to 17. But Ext A6 procedures prescribe that in selection posts promotion should be made with due regard to the seniority which means that the inter-se seniority of officers belonging to any one category would be the same as their seniority in the lower grade. We are satisfied that the Departmental Promotion Committee have taken into consideration all the relevant matters as provided under the law and the applicant could not be selected because of the reasons mentioned in the counter affidavit filed by the Government. Normally the Court or the Tribunal would not interfere with the decision of the D.P.C which is considered to be an expert body to assess the merit of the candidates for promotion. But in exceptional circumstances, where there are serious allegations of malafide or irregularities which result in miscarriage of justice, the Court or the Tribunal may step in for correcting the errors or irregularities. Recently we have considered in a more or less similar case (OA 265/89) about the scope of the Tribunal's jurisdiction to interfere with the decisions of the D.P.C and held as follows:-

"Having examined the entire aspects of the matter we are satisfied that the D.P.C had followed the procedure contemplated in the relevant rules applicable to the selection. The D.P.C came to a definite conclusion and categorised the applicant as 'Unfit' after application of mind. The applicant was not eliminated merely on the basis of the penalty as contended by the applicant in this case,

in the year 1983. An assessment of the work of the applicant for the subsequent years was also made. The minutes bear out the fact that all the eighteen officers in the field of choice were considered and the list was drawn up after such consideration in the light of the available materials. The Court or Tribunal cannot sit in appeal over such matters when there are sufficient indications that the D.P.C had considered the over all circumstances and applied the mind before taking a final decision. The Kerala High Court in a similar matter considered the question and held in V.E.Thomas v. State of Kerala, 1978(1) SLR 593 as follows:-

" It is further stated in the minutes that the petitioner was superseded on a general assessment of his confidential records including the punishment awarded to him withholding increment for a period of two years. From this is evident that DPC did not weed out the petitioner from consideration solely on the basis of the punishment imposed on him without reference to the confidential records. The minutes bear out the fact that all the 48 members including the petitioner who were in the field of choice were considered and the list was drawn up after such consideration strictly in conformity with the directions contained in Government orders referred above. Therefore, the petitioner's contention that he was discriminated against by virtue of punishment imposed on him without taking into consideration his merit and ability have to be repelled ."

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" In the case on hand as well as in the Kerala case mentioned above we have sufficient materials to show that the DPC came to its decision after a clear application of mind in the task set out before it. This court cannot project into the rules relating to the promotion by the D.P.C requirement to record reasons for the supersession. From the materials in the file available I have no hesitation to hold that the DPC had complied with the legal requirements in coming to the conclusion in drawing up the list and was not influenced solely by the materials in the confidential records in excluding the petitioner on that sole ground."

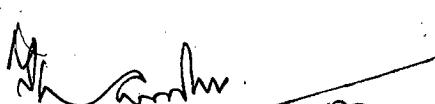
In the instant case there is no . . . serious allegations against the D.P.C except that the seniority of the applicant had not been considered while assessing his merits.

15. The applicant has raised a further contention in the rejoinder filed by him on 11th February, 1990 that the D.P.C which met in 1987 did not make its own classification of the officers for considering

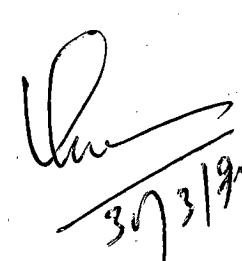
them for promotion to the Postal Superintendent Service Group B cadre as the evaluation of the Character Rolls was entrusted to a Committee headed by the Head of the Circle in each Circle. According to him, the officers in the field of choice should be graded as 'Outstanding', 'Very Good' and 'Good', on the basis of their merit and that should be done by the D.P.C itself after the examination of the Character Rolls of each officers in the field of choice. There is no provision for delegating part of the work by the D.P.C to any Committee, as has been done in this case.

16. The applicant had not raised such a ground in the application. Since the applicant has not even made out a prima facie case for persuading us to call for the entire D.P.C proceedings, we are not inclined to accept this request of the learned counsel in this behalf. Hence there is no substance in the above contention and we reject the same.

17. On the facts and circumstances, we see no merit in this application and it is only to be dismissed. Accordingly we do so. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

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(N.V KRISHNAN)
ADMINISTRATIVE MEMBER

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