

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

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O.A. 306/93

Friday, this the 4th day of February, 1994

Shri N.Dharmadan, Judicial Member

Shri S.Kasipandian, Administrative Member

Applicant:

Shri C.C.John,
L.D.Clerk,
INS Agrani,
Coimbatore.

By Advocate Shri M.Girijavallabhan

Versus

Respondents:

1. The Flag Officer Commanding-in-Chief,
HQSNC, Cochin.
2. The Commanding Officer,
INS Agrani, Coimbatore.
3. Smt. Ratna Vijaya Shankar,
LD Clerk, INS Agrani,
Coimbatore.

By Advocate Shri C.N.Radhakrishnan

O R D E R

S. Kasipandian, AM

The applicant is an ex-serviceman re-employed as a Lower Division Clerk and he is at present working in INS Agrani. He is aggrieved that his name has not been included in the panel for promotion as UDC even though he happens to be the seniormost of the 6 persons considered for promotion. The learned counsel for the applicant argued that the post of UDC is a non-selection post and that seniority-cum-fitness is the criteria for selection. The fitness is assessed by the DPC on the basis of ACRs of the eligible candidates. The DPC in the present case has erred

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in concluding that the applicant is not yet fit for promotion. They ought not ^{to} have considered the non-communicated adverse entries if any in the ACR of the applicant while coming to this conclusion. The very fact that the 1st respondent has found the applicant fit enough to be promoted as UDC on officiating basis on three occasions during the period 1992-93 as per Annexures A5, A6 and A7, goes to show that the DPC erred in concluding that the applicant is not yet fit for promotion while making the assessment of his GRs for the years 1987 to 1992.

2. The learned counsel for the respondents argued that the case of the applicant was considered by the DPC along with other eligible candidates and he was found not yet fit for promotion on the basis of his performance as reflected in his ACRs. The adhoc promotion given to the applicant during the period 1992-93 is not on the basis of any assessment of his performance by DPC or any other authority. He was asked to officiate as UDC on a purely temporary basis since he was the seniormost LDC available.

3. After having heard the arguments of the learned counsels on both sides, we called for the DPC proceedings as well as the ACRs of the candidates considered for selection. As may be seen from the ACRs of the applicant, there were adverse remarks in his ACRs for the year ending 31st December 1988 which were communicated to the applicant vide letter dated 23rd January 1989, even though there is no evidence to show that it was acknowledged by the applicant. The respondents in their reply statement have submitted ~~that~~ as follows:

"As regards uncommunicated adverse remarks are concerned, it is seen from the Annual Confidential Report for the year 1987 that a copy of adverse remarks were communicated to the applicant. But there is ~~no~~ acknowledgement that the adverse remarks were communicated to the applicant. As such Departmental Promotion Committee has not taken the uncommunicated adverse remarks in the Annual Confidential Report "as adverse remarks" as per the existing rules. The Departmental Promotion Committee had strictly followed the proceedings to be observed by them in accordance with the guidelines contained in DOPT OM No.22011/5/86 Estt(D)

dated 10 March 1989."

The adverse remarks referred to above relate to the year 1988 and not 1987 as mentioned above.

4. Even after excluding the uncommunicated adverse remarks for the year 1988 the performance of the applicant during the 5 year period under consideration works out to only 'average' performance. As rightly pointed out by the respondents in their reply statement, "while average may not be taken as an adverse remarks in respect of an officer, at the same time, it cannot be regarded as complementary to the officer, as 'Average' performance should be regarded as 'routine and undistinguished'. It is only performance that is 'Above average' and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards in the matter of promotion of non-selection post."

5. The learned counsel for applicant wanted the performance of the applicant to be compared to that of respondent-3 who happens to be junior to him and working in the same Wing of the Department. After perusing the ACRs of all the candidates considered for selection by the DPC including that of R-3, it is very difficult to conclude that the DPC erred in their assessment.

6. For the reasons above stated, we do not find any justification for interfering with the assessment made by the DPC and the appointment orders issued by the Respondents on the basis of the DPC recommendations. Hence the application is dismissed as devoid of merit. No order as to costs.

S. Kasi Pandian
(S. Kasi Pandian)
Member (A)

N. Dharmadan 4.2.94
(N. Dharmadan)
Member (J)