

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXXXX~~

358/1991

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DATE OF DECISION 30.4.92

P.K.Viswambaran Applicant (s)

Mr.M.Girijavallabhan Advocate for the Applicant (s)

Versus

The Union of India represented
by the Secretary, Min. of Defence,
New Delhi and six others. Respondent (s)

Mr.K.B.Subhagamani Advocate for the Respondent (s)

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? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

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

In this application dated 26.2.1991 the applicant who has been working as a U.D.C. under the Flag Officer Commanding-in-Chief, Headquarters, Southern Naval Command, Cochin has challenged the panel dated 21st February, 1991 at Annexure-B comprising the names of respondents 3 to 7 for promotion to the post of Office Superintendent Grade II and has prayed that respondents 1 to 2 be directed to include his name also in the panel and promote him as Office Supdt. Grade II with effect from the date the first named person at Annexure-B, i.e, the 3rd respondent is promoted as Office Supdt.

2. The applicant is a member of the Scheduled Caste and is third in the seniority list of U.D Clerks, a copy of which is at Annexure-A. Respondents 3 to 7 are junior to the applicant. The applicant's grievance is that his juniors respondents 3 to 7 have been made to supersede him by the D.P.C. which is wrongly constituted and has been influenced by the second respondent. He had no adverse marks communicated to him and he suspects that his supersession

is due to the fact that he had challenged the previous panel of Office Superintendent Grade II by approaching the Tribunal in O.A.187/89 which was dismissed by the Tribunal by the judgment at Annexure-C. He had approached the Tribunal in O.A. 205/89 also claiming special pay which had been allowed by the Tribunal. The second respondent, according to him, was displeased by his approaching the Tribunal and that is why, ~~according to him,~~ his name was excluded from the panel. He has argued that the overall gradings given to him should form the basis for preparation of the panel because the Chairman or the members of the DPC will not have any direct or indirect knowledge about his performance. Accordingly the candidates should have been arranged in the panel in the order of inter-se-seniority of candidates who cross the benchmark of the grading 'Good'.

3. In the reply statement the respondents have conceded that the applicant is a Scheduled Caste employee and is at serial No.3 in the seniority list of U.D.Cs and that respondents 3 to 7 who have been included in the panel are junior to him. They have, however, stated that the post of Office Superintendent is a selection post and the selection is made by a DPC consisting of a Chairman in the rank of a Commander and two members in the rank of Lieut. Commander/Lieut. The DPC met in February 1991 to prepare a panel for ^{the} five vacant posts of Office Superintendent Grade II and 15 UDCs in the seniority list including the applicant were considered. The respondents in the counter affidavit have observed as follows:-

" As per existing Government orders the DPC has to consider the Confidential Dossiers of 5 years in respect of each candidate and assess them as Outstanding, Very Good, Good, Average and Unfit. The assessment is made strictly based on the Confidential Dossiers. Once the assessment as aforesaid is over the persons assessed Good and above should be placed in the select list in the order of their inter-se seniority. The name of the applicant and others in the zone of consideration as per rule was referred to the DPC. The DPC assessed the Confidential Dossier of candidates referred and drew the select list as per existing rules on the subject. Based on the select list drawn by the DPC the panel at

Annexure-B of the original application has been promulgated. Based on his Confidential Dossier for the prescribed 5 years, the applicant was assessed as 'Average' and hence his name was not included in the panel. His juniors in the zone of consideration who were assessed as Good and above by the DPC were empanelled."

They have stated that the DPC was constituted strictly in accordance with the rules and denied any bias or influence by the second respondent who had no role to play in the selection process. They have conceded that the applicant had approached this Tribunal in O.A.187/89 and 205/89 and that while the first application was rejected, the second application was allowed and he was granted special pay. They have also conceded that in accordance with the instructions ^{the candidate} whose overall grading is equal to or better than the bench mark 'Good' will be arranged in the order of their interse seniority. Based on the Confidential Reports since the applicant was assessed as 'Average' his name was not included in the panel. They have further stated that based on the Annual Confidential Reports the DPC awarded the candidates the grading as Outstanding, Very Good, Good, Average and Unfit and thereafter prepared the panel. They have also argued that the applicant has not exhausted the departmental remedies against the Annexure-B order.

4. We have heard the arguments of the learned counsel for both the parties and gone through documents carefully. The learned counsel for the respondents produced the minutes of the DPC which considered the case of the applicant in February, 1991 and clarified that the DPC considered Confidential Reports of five years in respect of all the candidates and made its own assessment on the basis of the grading in various columns in the Confidential Reports. They have stated that "the Chairman allotted the marks to each column of Annual Confidential Reports with the consensus of other DPC members" and the Confidential Reports of each year carried 100 marks. From the proceedings it was further revealed that the DPC calculated ^{what has been termed as} the 'Command average marks' which came out to be 69.874 rounded to 70. This was considered to be the bench mark for being

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considered 'Good'. Those candidates who scored less than 70 marks were not considered 'fit' for promotion in accordance with the Government of India's O.M of 10th March, 1989. The proceedings further revealed that the applicant got 57.31 marks and was therefore, considered to be 'unfit' for promotion. Those who obtained between 60 to 69 marks were considered to be 'Average', those obtaining 70 to 79 marks were considered to be 'Good', those obtaining 80 to 89 marks were considered to be 'Very Good' and those obtaining 90 marks and above were considered to be 'Outstanding'.

5. To us it appears that for assessing the performance of the UDCs, allotment of ^{different} maximum marks ^{separately} for character assessment, professional and theoretical knowledge, actual performance of duties, amenability to discipline, public relations, integrity and general assessment will be too subjective and mathematical. For instance the DPC allotted 16 marks under the head 'character assessment', but only 8 marks on the 'general assessment' made by the Reporting Officer on the basis of all the previous ten columns. As against this, 10 marks were allotted in Col.25 where the Reviewing Officer has simply to say whether he agrees or disagrees with the Reporting Officer, which has nothing to do with the assessment of performance of the candidates. Further out of 100 marks only 5 marks have been allotted for integrity. All these assignments of marks make the assessment unduly subjective and destructive of the general assessment made by the superior officers under whom the candidate was working. The general assessment made by the Reporting Officer in Col.23, who is the immediate superior officer of the candidate carries only 8 marks out of 100 for each year. Thus the assessment of the Reporting Officer is relegated to the background and the subjective assessment of the DPC on the basis of the marks allotted to different columns according to their ~~common~~ ^{common} subjective judgment gets precedence. This, to our mind, is unwarranted and uncalled for. Further, by fixing a 'Command average'

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to be the bench mark as 'Good' an extraneous factor ^{of the quality of candidates as a group} not related to the intrinsic performance of individual candidates has been imported. All these have resulted in the applicant being considered to be 'Unfit' when according to the Reporting Officers and Reviewing Officers, under whom he had worked during the five years prior to 1991, his performance has been adjudged preponderantly as 'Very Good' and his integrity as of high order and in certain respects he had been adjudged as brilliant or exemplary. We have gone through the Confidential Reports of the applicant between 1986 and 1991 with the following results:-

<u>1986</u>	Very Good (7 items), Brilliant (1 item) General Assessment is mature, experienced and efficient.
<u>1987</u>	Very Good (5 items), Very Prompt, Punctual Integrity - high, hard-working, deserves to be considered for next promotion.
<u>1988</u>	Very Good (8 items), Brilliant (1 item) Most reliable, Very punctual, First to come last to go, Dependable.
<u>1988</u>	Very Good (5 items), Good (5 items), Exemplary (1 item) Personality - Average, Integrity - High General Assessment - Put in best efforts to run the office meticulously, Very Co-operative.
<u>1989</u>	Average (10 items), Good (3 items), Integrity - High, General Assessment - Calm and quiet Performance - Satisfactory, Amenable to discipline.
<u>1990</u>	Very Good (4 items), Good (5 items), Average (2 items) Overall assessment - Average. Has done most of the service tenure in higher formation and having good knowledge of Central Civil Services Rules and F.Rs. Recommended for further promotion.
<u>1990</u>	Very Good (12 items), Exemplary (1 item), Brilliant (1 item), Recommended for promotion Integrity - High.

From the above summary it is clear that by no stretch of imagination this Scheduled Caste candidate by the above performance can be adjudged to be 'Unfit' for promotion. His integrity has been always adjudged to be of high order. His over all performance can be taken to be 'Very Good'.

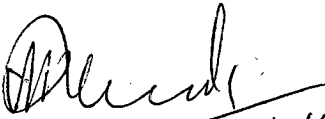
His earning as many as 10 'Average' entries in 1989 in the over all context of his performance before and after 1989 seems to be rather odd and unusual. Considering that he had moved the Tribunal twice during 1989 by O.A.187/89 and 205/89 gives one the feeling that the unusual 'Average' entries of 1989 may have something to do with the applicant's moving the Tribunal during that year. The DPC rejected him outright^{ly} as 'Unfit' because he had obtained less than the Command average which they took to be 'Good' and considering him to be less than 'Good' and following the Department of Personnel's O.M. of 10th March, 1989 of excluding those who are below the bench mark of 'Good', the DPC rejected the applicant.

6. This Bench of the Tribunal had an occasion to consider the validity of the bench mark criterion promulgated by the Department of Personnel in their O.M of 10.3.89, referred to above. In its judgment dated 28.2.91 in O.A.146/90 the bench mark criterion of the O.M of 10.3.89 was set aside as unconstitutional and the old criterion of preparing a panel on the basis of 'Outstanding', 'Very Good' and 'Good' in that order was directed to be restored. This order of the Tribunal was challenged before the Hon'ble Supreme Court in SLP No.11615 of 1991, but the SLP was dismissed by the Hon'ble Supreme Court vide their order dated 3rd September, 1991. In that context also the DPC's^{re} rejecting the applicant before us on the basis of the bench mark criterion of the O.M of 10.3.89 has to be rejected.

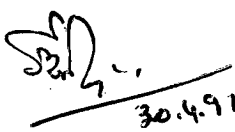
7. In the conspectus of facts and circumstances we allow the application, set aside the panel dated 21st February, 1991 at Annexure-B and direct the respondents to consider the cases of all eligible candidates strictly on the basis of the Confidential Reports without assigning any marks to each item but giving due weightage ^{to} ~~on~~ the over all assessment made by the Reporting Officer. The panel should be prepared by keeping the 'Outstanding'^{category of} candidates at the top, followed by 'Very Good' and 'Good' categories and maintaining the interse seniority amongst the candidates

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in each category. The applicant should be promoted as Office Superintendent Grade II, if he is included in the panel and comes within the zone of selection. His pay as OS Gr.II should be fixed as if he was promoted as Office Superintendent notionally from the date any of his juniors in the impugned panel at Annexure-B was promoted as OS Gr.II . However, he will not be entitled to arrears of pay for the period between ^{the} dates of notional promotion and actual promotion. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.


(A.V. Haridasan)
Judicial Member

30/4/92


(S.P. Mukerji)
Vice Chairman

30.4.92

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