

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 407  
C. A. No.

1991

DATE OF DECISION 30.4.92

M. Abdulkarim Applicant (s)

Mr. Sasidharan Chempazhanthiyil Advocate for the Applicant (s)

Versus

Dy. Director General, NCC (K&L) Respondent (s)  
Trivandrum and others

Mr. S. V. Balakrishna Iyer, ACGS Advocate for the Respondent (s) 1 & 2

CORAM :

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, 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? No
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

MR. N. DHARMADAN, JUDICIAL MEMBER.

The applicant has filed O.A. 107/91 against the penalty imposed on him reducing his pay by four stages as per order dated 16.7.90. We have considered the legality of the punishment and set aside the same as per our judgment date 30.4.92.

2. Based on the judgment in O.A. 107/91 this application which was heard along with that application deserves to be allowed.

3. The applicant is an LDC in the N.C.C. Directorate Trivandrum. He has been placed at Sl. No. 14 in the

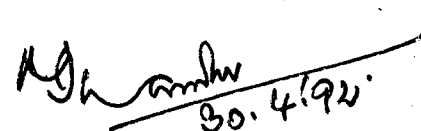
Annexure-I seniority list of LDCs as on 1.1.1988, while the third respondent who is junior to him has been placed at Sl. No. 13. The DPC which met for considering the promotion in 1989 did not recommend applicant's name but prepared Annexure-II list of persons with the recommendation for promotion to the post of UDC. The third respondent is also included in the list. His representation against the said list has been rejected by Annexure-III. The second representation submitted by him was also rejected by Annexure-IV proceedings of the Director General of NCC. The applicant is challenging Annexure-III list as well as the orders rejecting his representations.

4. In the reply statement filed by the respondents 1 to 2 they have admitted that because of the penalty order dated 16.7.90, he could not be considered for promotion by the DPC. It is after proper deliberations that the DPC decided not to recommend the applicant for promotion. The DPC had noted that the applicant 'is not yet fit' for promotion. The punishment imposed on the applicant has been <sup>up 2</sup> held in appeal but it is pending consideration in O.A. 107/<sup>91 2</sup> which is still pending and the applicant has no right to be considered for promotion.

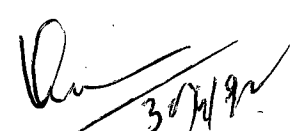
5. They have also stated that prior to 1988, the post of UDC was being filled up by promoting LDCs on seniority-cum-fitness basis. However, as per the Recruitment Rules published as per SRO No. 49 dated 18.8.88, 25% of the vacancies in the post of UDC are to be filled up by departmental

competetive examination and the balance 75% per cent by promotion based<sup>ly</sup> on seniority-cum-fitness basis. The applicant was allowed to appear in the limited Departmental Competitive Examination for promotion set apart for the 25% of the UDCs. He did not pass in the examination. He was also considered by the DPC by virtue of his seniority for promotion in the 75% quota but the DPC found that he 'is not yet fit' for promotion. Annexure-II panel of LDCs declared eligible for promotion as UDCs is based on the recommendation of the DPC held in September, 1989.

6. Having heard the matter, we are of the view that the penalty order imposed against the applicant has been set aside by us and the O.A. 107/91 is allowed as indicated above. Admittedly, the respondents have not adopted the 'sealed cover procedure' for consideration of the case of the applicant because of the punishment and the pendency of the matter before this Tribunal. In the light of our decision in the connected case in O.A. 107/91, a review DPC for consideration of the persons whose names are included in Annexure-II panel is necessary. Accordingly, we set aside the impugned proceedings and <sup>direct the respondents to</sup> reconsider the claim of the applicant for promotion to the post of UDC in the review DPC. This shall be held in accordance with law within a period of three months from the date of receipt of this judgment. The application is allowed to the extent indicated above. There will be no order as to costs.

  
(N. DHARMADAN)  
JUDICIAL MEMBER

KMN

  
(N. V. KRISHNAN)  
ADMINISTRATIVE MEMBER

30.4.92

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 407 of 1991.

DATE OF DECISION 30.11.92

M. Abdulkarim Applicant (s)

Mr. Sasidharan Chempazhanthiyil Advocate for the Applicant (s)

Versus

Dy. Director General, NCC (K&L) Respondent (s)  
Trivandrum and 2 others.

Mr. S. V. Balakrishna Iyer, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S. P. Mukerji, Vice Chairman

The Hon'ble Mr. N. Dharmadan, 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? No
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

MR. N. DHARMADAN, JUDICIAL MEMBER

This case was heard along with O.A. 107/91 on consent of parties. Both the cases are filed by the same applicant and the decision in this case will depend upon the decision in OA 107/91.

2. Both the cases were posted for judgment on 30.4.92. By order dated 30.4.92, due to difference of opinion, a question has been framed under Section 26 of the Administrative Tribunals Act, 1985 in O.A. 107/91 and case was referred to the Hon'ble Chairman, and this application was allowed. Later the judgment was vacated as per order dated 28.5.92 and ~~directed~~ <sup>was directed</sup> the registry to post the case for hearing because OA 107/91 was not finally disposed.

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3. As per orders of Hon'ble Chairman OA 107/91 was heard by a third Member, who agreed with the decision of the Judicial Member to set aside the penalty and remand the case to the Appellate Authority for a fresh disposal according to law. Accordingly the case was finally disposed of as per order dated 25.9.92 allowing the O.A.107/91. Consequently, this OA is also liable to be allowed.

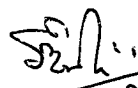
4. In the reply statement filed by the respondents 1 to 2 they have admitted that because of the penalty order dated 16.7.90, the <sup>applicant</sup> could not be considered for promotion by the DPC. It is after proper deliberations that the DPC decided not to recommend the applicant for promotion. The DPC had noted that the applicant 'is not yet fit' for promotion. The punishment imposed on the applicant has been upheld in the appeal but it is pending consideration in OA 107/91 which is still pending and the applicant has no right to be considered for promotion.

5. They have also stated that prior to 1988, the post of UDC was being filled up by promoting LDCs on seniority-cum-fitness basis. However, as per the Recruitment Rules published as per SRO No.49 dated 18.8.88, 25% of the vacancies in the post of UDC are to be filled up by departmental competitive examination and the balance 75% by promotion based on seniority-cum-fitness basis. The applicant was allowed to appear in the limited Departmental Competitive Examination for promotion set apart for the 25% of the UDCs. He did not pass in the examination. He was also considered by the DPC by virtue of his seniority for promotion in the 75% quota but the DPC found that he 'is not yet fit' for promotion. Annexure-II panel of LDCs declared eligible for

promotion as UDCs is based on the recommendations of the DPC held in September, 1989.

6. Having heard the matter, we are of the view that the penalty order imposed against the applicant has been set aside by us and the OA 107/91 <sup>was</sup> ~~is~~ allowed as indicated above. Admittedly, the respondents have not adopted the 'sealed cover procedure' for consideration of the case of the applicant because of the punishment and the pendency of the matter before this Tribunal. In the light of our decision in the connected case, OA 107/91, a review DPC for consideration of the persons whose names are included in Annexure-II panel is necessary. Accordingly, we set aside the impugned proceedings and direct the respondents to reconsider the claim of the applicant for promotion to the post of UDC in the review DPC. This shall be held in accordance with law within a period of three months from the date of receipt of this judgment. The application is allowed to the extent indicated above. There will be no order as to costs. But we make it clear that the respondents are free to take appropriate steps against the applicant in case the penalty is confirmed by the appellate authority while implementing the directions in OA No.107/91.

  
( N.DHARMADAN ) 30.11.92.  
JUDICIAL MEMBER

  
( S.P.MUKERJI ) 30.11.92  
VICE CHAIRMAN

v/-