

(20)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 433/87

~~Transfer Application No:~~

DATE OF DECISION: 21/3/94

Shri Mool Chandra Vidyarthee Petitioner

Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri A.I. Bhatkar for Advocate for the Respondent(s)
Shri M.I. Sethna,

CORAM :

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman,

The Hon'ble Shri R.Rangarajan, Member (A)

1. To be referred to the Reporter or not ? NO
2. Whether it needs to be circulated to other Benches of NO the Tribunal ?


(R. Rangarajan)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 433/87

Shri Mool Chandra Vidyarthee
 V/s.

... Applicant

The Union of India
 Through Secretary to the
 Government of India,
 Ministry of Defence^{AD} (Fy-I)
 Department of Defence
 Production (Ordnance
 Factories), South Block,
 New Delhi.

The Director General Ordnance
 Factories/ Chairman Ordnance
 Factory Board, 10-A, Auckland
 Road, Calcutta

The General Manager
 Ammunition Factory
 Kirkee, Poona.

The Director General
 Research & Development
 Department of Defence
 Research & Development
 Ministry of Defence
 Government of India
 Sena Bhavan, New Delhi

The Director General
 of Inspection,
 Department of Defence
 Production (Inspection)
 Ministry of Defence
 Government of India,
 D.H.Q.P.O. New Delhi.

The Senior Inspector of
 Armaments,
 Inspectorate of Armaments
 Kirkee, Poona.

... Respondents.

CORAM: Hon'ble Shri Justice M.S. Deshpande, Vice Chairman.

Hon'ble Shri R. Rangarajan, Member (A)

Appearance:

Applicant in person.

Shri A.I. Bhatkar for
 Shri M.I. Sethna ^{Counsel}
 for the respondents.

JUDGEMENT

Dated: 24/3/91

(Per Shri R.Rangarajan, Member (A))

The applicant joined as Senior
 Administrative Officer Grade II (hereinafter called
 SAO II) at Defence Laboratory, Jodhpur, under the

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Director General Research and Development (hereinafter called DGR &D) with effect from 31.12.76 in General Central Service Class 'A' in the pay scale of Rs. 700,- 1300. He was further promoted to Senior Administrative Officer Grade I (hereinafter called SAO I) (Exhibit A-2) dated 13.8.81 as per panel drawn by D.P.C. for promotion in R & D, DGI and DTD & P(Air) Organisations. On promotion the applicant was allocated to the Director General of Inspection (hereinafter called DGI) Organisation as per the orders issued by the DGR & D on 24.11.81 (Exhibit A-3),

2. The Government of India has accepted the recommendations of the Rajadhayaksha Committee relating to the transfer of certain officers from DGI Organisation to the Director General of Ordnance Factories (hereinafter called DGOF) with effect from 15.10.84 and Shri M.C. Vidyarthee, the applicant was also one of them. After the transfer the seniority was fixed as per the seniority list shown at Exhibit A-9. As per this Exhibit he was placed in between S/Shri N. Sundrapandian (Sl.No. 24) and P.M. Ranavainshaw (Sl.No. 25). He alleges that the fixation seniority as above is not as per rule and his further promotion ^{the post of} to Deputy General Manager is delayed because of the wrong fixation of his seniority. He also alleges that the reservation rules are not followed for ^{non-technical} promoting the applicant, when 12 candidates had been promoted in the year 1986 as DGM/P (Exhibit A-12).

3. This OA has been filed for setting aside the seniority list published on 1.4.85 circulated under letter dated 24.3.86 (Exhibit A-9) and to quash the promotion order dated 31.7.86 issued in respect of 12 Non- Technical officers as DGM

(Exhibit A-12) and to promote him to the post of DGM as per seniority following the policy of reservation for SC/ST in promotion to Junior Administrative Grade.

4. The main issues which arises in this case are (1) that whether the seniority of the applicant has been fixed correctly when he was transferred to DGOF and his seniority was correctly interpolated with respect to others Non-Technical Officers in the DGOF cadre. (2) whether policy of reservation has been correctly followed while giving promotion to 12 Non-Technical officers as shown at Exhibit A-12 to the post of DGM.

5. The twin issue indicated as above only needs examination. The learned counsel for the respondents submitted that as per seniority rule the seniority was fixed taking into account the length of service in the cadre of SAO, Grade I while he was transferred from DGI to DGOF. The learned counsel for the applicant relied on the decision of the Supreme Court in AIR 1988 SC 394 (Nirmal Kumar V/s. State of Bihar) dated 16.12.87, wherein it was held that " while preparing the combined gradation list for purposes of determining the seniority, the length of service test should be applied, but while doing so the inter-se-seniority of the incumbents in their respective departments should not be disturbed. In such a case, confirmation cannot be the basis for determining the seniority." While combining two wings it was also held by the Hon'ble Supreme Court that " the more equitable way of preparing the combined gradation list would be to take the total length of service in the common grade as the basis for determining inter-se-seniority." The learned counsel

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for the respondents submits that the seniority of the applicant has been fixed strictly in accordance with the above observations of the Supreme Court.

6. The applicant also agrees that length of service in the cadre will determine the seniority. However his contention is that his length of service in SAO Grade I, from the date of approval of the DPC promoting him to SAO Grade I was not adhered to and those who are empanelled by the DPC later than him, were given seniority above him. He contents that the DPC for promoting him to SAO Grade I has met and empanelled him for that Grade on 16.7.81, whereas his juniors were empanelled by the DPC held on 31.7.81. He has drawn our attention to Exhibit A-2 to prove that he was empanelled by the DPC held on 16.7.81 and hence he should be given seniority in SAO Grade I from that date and others who were empanelled later should be shown junior to him and not senior to him. He has specifically averred that the seniority given to S/Shri B. Pugazhendhi and R.K.S. Joshi as irregular as they ~~were~~ appointed to the post later than him i.e. 1.2.82, whereas he was promoted to that grade on 16.1.82. We have perused this Exhibit A-2. This Exhibit A-2 is dated 13.8.81. Nowhere in the Exhibit it has been indicated that the DPC met on 16.7.81 and the applicant was empanelled on the basis of DPC held on 16.7.81, though the applicant submitted that he was empanelled on the basis of DPC held on 16.7.81. There is no such pleadings anywhere in the application, Even Exhibit A-2 is only dated 13.8.81. Hence it will not be possible in the absence of any material on record to accept his contention that he was empanelled by the DPC held on 16.7.81 and that his promotion to higher grade should be regulated on the basis of DPC held on 16.7.81.

As stated earlier there is no such pleadings anywhere in the O.A. nor even a whisper regarding the empanelment date of 16.7.81 as submitted by him now. It would be highly improper to take his submission at the Bar at the time of hearing and allow him to amend the O.A. as the DPC was held over 12 years back and at this late stage he is bared from challenging the DPC proceedings.

7. As it is accepted that the seniority is decided on the basis of length of service, he has entered the service as SAO Grade I on 16.1.82 and as per the seniority list of IOFS Officers issued as on 1.1.87 his name is shown at Sl.No. 13 in Non-Technical Cadre (Page 39 of the Seniority List) and all those shown above him have appointed to that post earlier to him except S/Shri B. Pugazhendhi and R.K.S. Joshi. The reason for giving higher seniority to S/Shri B. Pugazhendhi and R.K.S. Joshi above the applicant has been indicated in the telex message No. 3204/CAT/A/G dated 4.10.93. As per this message it is seen that the seniority of serial No. 7 to 12 starting from Shri B. Pugazhendhi at Serial No.7 and ending with Shri N. Sundrapandian at Serial No.12, just above the applicant has been arranged on the basis of recommendation of the duly constituted DPC. It is also indicated in that message that seniority in the cadre depends upon the merit position as assigned by the duly constituted DPC within a particular grade. It is also stated in the above message that S/Shri B. Pugazhendhi and R.K.S. Joshi at Serial No. 7 and 8 though promoted on 1.2.82 will get notional seniority with effect from 31.7.81 i.e. the date on which his junior in IOFS at serial No. 9 was promoted, as S/Shri B. Pugazhendhi and R.K.S. Hoshi were senior to Shri V.M. Awati as per

recommendations of the DPC and as Shri Awati had joined the post on 31.7.81, both S/Shri B.Pugazhendhi and R.K.S.Joshi are senior to Shri V.M. Awati as per ~~his~~ ^{his} panel position as recommended by the DPC and deemed to have joined in that cadre notionally from 31.7.81. As Shri V.M. Awati is senior to Shri M.C. Vidyarthi, both Shri B. Pugazhendhi and Shri R.K.S. Joshi also became senior to Shri M.C. Vidyarthi. Hence the applicant has no cause to get aggrieved in view of the seniority position as explained above. The only main contention of the applicant is that he was empanelled earlier to ~~officers~~ officers serial No. 7 to 12. As we are not accepting his earlier empanelment in view of the position explained above we find no irregularity in drawing up of the seniority list and the seniority position given to the applicant in between S/Shri N. Sundrapandian and P.M. Ranavainshaw (Exhibit A-9) is in order. The first contention of the applicant that his seniority is not properly fixed is not borne by record and hence rejected.

8. The second contention of the applicant is that the promotion of 12 Non-Technical officers to DGM Cadre is irregular as the reservation rules are not followed. He submits that the DGM post being as selection post 36 candidates should have been considered for the selection for promotion to the cadre of DGM/P. As his name is ⁱⁿ between serial No.24 and 25 (Exhibit A-9) as per the seniority list he should have been considered for promotion. He being a Scheduled Caste community candidate, reservation rule will squarely apply and that makes him eligible for promotion to DGM/P Non-Technical cadre. He relies on the circular of Home Ministry No. 1969/Estt/SCT dated 26.3.70 to state that if these reservation rules have been followed his name would have been placed in the panel for DGM/P in the year 1986 itself. He also relied on the judgement of the Supreme Court in

CMP No. 3637/86 in Civil Appeal No. 680/85 and the decision of the Supreme Court dated 10.8.90 in 1990 (Supp) SCC 350 (Syndicate Bank Scheduled Castes and Scheduled Tribes Employees Association and others V/s. Union of India and others.)

9. The learned counsel for the respondents has submitted that the Ministry of Home Affairs letter dated 26.3.70 (Exhibit A-17) confers only certain concessions and facilities to Scheduled casts and Scheduled Tribes Officers for their promotions within Class I also. There is no roster for promotion in the higher echelons of Class I service except for promotion to lowest cadre of class I service.

10. We have perused this letter dated 26.3.70. As per this letter " in promotion by selection to posts within Class I, which carry an ultimate salary of Rs. 2000/- p.m. or less, the Scheduled Casts/Scheduled Tribes officers, who are senior enough in the Zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion." This would mean that reserved community candidate will be empanelled as per their turn, if they are found fit irrespective of the fact that their juniors were given higher grading. It has been submitted by the applicant himself at the Bar that none of his juniors had been promoted in 1986 as per exhibit A-12. We have also examined the decision of the Supreme Court quoted by him as above. C.M.P. No. 3637/86 in Civil Appeal No.680/85 only states that the members of SC/ST should be included in the select list provided they are not considered un-fit for promotion. There is no roster point maintained for promotion to the grade of DGM/P.

11. The Supreme Court decision dated 10.8.90 deals with promotion in the Public Sector Banks and hence may not be equally applicable to the employees in the Government service, who are governed by a set of rules issued by the Department of Personal. A perusal of this judgement will also reveal that there is no roster point for promotion to the rank of DGM/P which promotions are effected by selection, but SC/ST candidates if they are otherwise found fit for promotion, they will be promoted in preference to their juniors in the seniority list even if they had been given a higher grade. As stated earlier the applicant himself had admitted that none junior to him had been posted in the grade of DGM/P in the promotion list dated 24.3.86 (Exhibit A-9). Hence this citation also does not support the applicant's contention.

12. From the above discussions, we find that there is no material on record to prove that the applicant was empanelled by the DPC held on 16.7.81 and that his juniors who were empanelled later were placed above him. The reservation rule as contended by him is not followed in letter and spirit is also not proved. In view of the above we find no merit in the application and hence the application is dismissed. No costs.



(R. Rangarajan)
Member (A)



(M.S. Deshpande)
Vice Chairman