

(24)

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW BOMBAY BENCH

~~OXAXXXNo.~~

T. A. No. 131/87

198

DATE OF DECISION 11.10.1990

Shri Dinkar Dhanaji Donde Petitioner

Advocate for the Petitioner(s)

Versus

Union of India &amp; Ors. Respondent

Shri V.M. Pradhan Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. M.Y. Priolkar, Member (A)

The Hon'ble Mr. D.K. Agrawal, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓

*D.K.Agrawal*  
( D.K.Agrawal )  
Member (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

Tr. 131/87

25

Shri Dinkar Dhanaji Donde

... Applicant

vs.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A), Shri M.Y.Priolkar  
Hon'ble Member (J), Shri D.K.Agrawal

Appearances:

Applicant in person and  
Shri V.M.Pradhan, advocate,  
for the respondents.

JUDGEMENT:

Dated : 11-10-1990

(Per. Shri D.K.Agrawal, Member (J))

Regular Civil Suit No.852/82 filed in the Court of  
Civil Judge, ~~Nashik~~ Senior Division, Nashik, on transfer to  
the Tribunal under the provision of Section 29 of the  
Administrative Tribunals Act, 1985, <sup>was</sup> registered as Transfer  
Application No.131/87.

2. Originally the suit was filed claiming the relief that defendant No.1 and 2 and the Departmental Promotion Committee of the Indian Security Press, Nashik, be directed to refrain from cancelling or revoking the promotion given to the plaintiff on 10.4.82 and the defendants be directed to give the benefits attached to the post of Photo Litho Plate Maker Grade D2. Alternatively, the prayer was made that if it was found that the promotion of the plaintiff was found cancelled or revoked the decision of revoking or cancelling the promotion be set aside. By means of an amendment application one more relief was added claiming an amount of Rs.22,000/- on account of arrears of salary (difference in the post held by the plaintiff and deemed post of the plaintiff).

3. The suit was filed on 26.10.1982. Ad-interim injunction was also prayed ~~forwards~~ but the court below issued a show cause

*Dissenting* . . . 2/-

notice only and an injunction was granted on 6.11.82 to the effect that the defendants are restrained from effecting any change in respect of recommendations of promotion as held in the meeting of Departmental Promotion Committee dated 10.4.1982. The said order of injunction passed by Civil Judge, Nashik, was vacated by Extra Assistant Judge, Nashik, by an order dated 1.9.1984. What is most relevant is that the Departmental Promotion Committee in its meeting dated 30.10.82 revised its recommendations made in its meeting of 10.4.1982. Thus the exercises of grant of injunction by the Civil Judge was rendered futile.

4. The issue which calls for adjudication in this plain petition is whether the DPC was justified in reviewing its decision dated 10.4.82 in its meeting held on 30.10.82. In this respect we may first consider the procedure for making promotions and functioning of DPCs as provided in Appendix 29 of Civil Service Regulations, Vol.III. The DPC is a recommendatory body and the recommendations made by it are subject to approval by the appointing authority. There may be certain occasion when, for valid reasons, the appointing authority may find it necessary to disagree with the recommendations of the duly constituted DPC. The procedure to be followed in such cases is like this. Where the appointing authority, being lower than the President of India, does not agree with the recommendations of the DPC such appointing authority should indicate the reasons for disagreeing, and refer entire matter to the DPC for reconsideration of its earlier recommendations. In case the DPC reiterates its earlier recommendations, giving also reasons in support thereof, it should be open to the appointing authority either to accept the recommendations, if reasons adduced by DPC are convincing or if that authority does not accept the recommendations of the DPC it may submit the paper to the next higher authority with its own recommendations. The decision of next higher

authority should be taken as final. In the instant case the DPC which met on ~~19/10/82~~ 30.10.82 revised its own decision dated 10.4.82. The reason for revising the decision is contained in the minutes of DPC held on 30.10.82. It makes a mention that a scheduled caste <sup>Roster</sup> point No.14 is to be covered by the appointment of Shri R.P. Baste. Thus it is clear that the recommendations of the DPC dated 10.4.82 recommending the name of the plaintiff applicant for promotion on the basis of that roster point No.14 (meant for reserved candidate) was <sup>not carried</sup> ~~carry~~ forward. The defendants also have pleaded likewise that the DPC was misled in making recommendations <sup>in favour of</sup> ~~for~~ the plaintiff applicant on the ground that roster point No.14 (reserved for SC candidate) was <sup>carried</sup> ~~carry~~ forward while it was not so. Therefore, the recommendations of the DPC dated 10.4.82 were not accepted by the appointing authority and instead the correct facts were brought to the notice of DPC for making recommendations afresh in the light of the fact that roster point No.14 was not available for promotion of SC candidate. In this matter and for these reasons the DPC was made to meet again on 30.10.82 to reconsider its decision taken on 10.4.82 recommending the name of the plaintiff applicant a scheduled candidate for promotion to the post of Photo Litho Plate Maker "D2". The defendants have also pleaded clearly that the plaintiff applicant was never promoted at any point of time on ~~afte~~ or after 10.4.82. It is also clear from the facts narrated in the preceding paragraphs that the injunction granted by the Civil Judge, Nashik, was rendered futile because the ~~ERG~~ recommendations of the DPC dated 10.4.82 was already been revised on 30.10.82. We have not been ~~make~~ pointed out that there was any irregularity or illegality committed in the procedure prescribed in the rules for DPC. It is also evident that there was a valid ground for the appointing authority to disagree with the recommendations

*DKasrawi*

dated 10.4.82. It is also clear that the recommendations of the DPC dated 10.4.82 were not implemented <sup>at any part of</sup> ~~in~~ time.

Thus our obvious conclusion is that the plaintiff applicant has been harbouring under ~~in~~ the mistaken belief that merely by virtue of a resolution of the DPC held on 10.4.82 a right accrued to him to be promoted or paid the salary of the promoted post without being actually promoted. The matter of fact is that the resolution of DPC dated 10.4.82 in favour of the ~~any~~ plaintiff applicant was revised by a resolution dated 30.10.82 by a duly constituted DPC and in accordance with the procedure meant to be followed and that he was never promoted to the post of Photo Litho Plate Maker Gr. 2. Therefore he is not entitled to the salary <sup>of</sup> to the said post. We are also of the opinion that the decision of DPC dated 30.10.82 whereby the decision of DPC dated 10.4.82 was revised is not bad in law. The same does not suffer from the vice of <sup>malice</sup> ~~merit~~ or arbitrariness nor it offends the rules of procedure required to be followed by DPC.

5. In the result we hold that the suit of the plaintiff is likely to be dismissed and it is dismissed without any order ~~as~~ as to costs.

D.K. Agrawal  
11.X.90

( D.K.Agrawal )  
Member(A)

M.Y. Priolkar  
Member(A)