

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. (G) 47/87 198
T.A. No.

DATE OF DECISION 27⁹ 10 1989

Shri C.I.Badigannavar
Petitioner

Shri C.U.Singh
Advocate for the Petitioner(s)

Versus

Development Commissioner, Govt. of Goa,
Daman & Diu & four others
Respondent's

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

CORAM :

The Hon'ble Mr. M.B.MUJUMDAR, MEMBER (J),

The Hon'ble Mr. M.Y.PRIOLKAR, MEMBER (A).

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. Whether it needs to be circulated to other Benches of the Tribunal? *No*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.(G) 47/87.

Shri C.I.Badigannavar.

... Applicant.

V/s.

Development Commissioner,
Govt. of Goa, Daman & Diu,
Secretariat, Panaji & four others.

... Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:

Mr.C.U.Singh,
advocate for the
applicant and
Mr.M.I.Sethna,
Counsel for the
respondents.

JUDGMENT:

{Per Shri M.Y.Priolkar, Member(A)} Dated: 27.9.1989

The applicant in this case is a Junior Engineer (Electrical) in the Electricity Department of Government of Goa, Daman and Diu, who was promoted as Assistant Engineer (Electrical) on ad hoc basis by Government of Goa, Daman and Diu, Industries and Labour Department's order dated 19.4.1983. The grievance of the applicant is that although he has worked continuously on ad hoc basis for more than three years in a regular vacancy, he has been reverted to the post of Junior Engineer (Electrical) by order dated 5.1.1987 of Government of Goa, Daman and Diu.

2. The applicant's contention is, primarily, that his promotion as Assistant Engineer, though on ad hoc basis, was in a clear permanent vacancy and after following the regular procedure for promotion, based on merits and qualifications, and the order dated 19.4.1983 notifying his promotion was issued after considering the claims of

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all eligible persons at that time. The applicant's second contention is that the promotion of Respondents Nos.3, 4 and 5 by the same order dated 5.1.1987 is in contravention of rules and it has caused the reversion of the applicant. His last contention is that he has been working continuously as an ad hoc Assistant Engineer (Electrical) since 19.4.1983 and he had a legal right to be regularised as Assistant Engineer (Electrical) at least within one year.

3. The Government of Goa, Daman and Diu have filed their written reply opposing the application. We have heard Mr.C.U.Singh, learned Advocate on behalf of the applicant and Mr.M.I.Sethna, Senior Standing Counsel on behalf of the Government of Goa, Daman and Diu. We have also perused the relevant proceedings of the Departmental Promotion Committees(DPC).

4. According to the respondents, the posts were filled in on ad hoc basis as there was urgent need of Assistant Engineers for execution of works connected with the Commonwealth Retreat held in Goa in December, 1983. The delay in holding the meeting of the DPC for regular promotions was for the reason that certain pre-requirements like obtaining ~~of~~ no-objection certificates from Vigilance Department and updating the character rolls, etc. were required to be completed. The duly constituted DPC by its report dated 10.11.1986 communicated its recommendations for filling up the posts of Assistant Engineer on regular basis and, accordingly, regular promotions to the posts of Assistant Engineer were notified by Government by its order dated 5.1.1987. The DPC, which had taken into account the requisite qualifications and other factors, did not find the applicant a fit person for

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regular appointment to the post of Assistant Engineer. As only 25 regular appointments were required to be made and as the applicant was not selected within this required number, the Administration had no choice but to revert the applicant to his substantive position.

5. Mr.C.U.Singh argued that the applicant's appointment as Assistant Engineer by order dated 19.4.1983, though stated to be ad hoc, was in reality a regular appointment in a permanent vacancy, after selection by a duly constituted DPC in accordance with rules and this DPC had considered the claims of all contenders for promotion to the post of Assistant Engineer at that time. Therefore, Mr.Singh stated, ~~that~~ ^{the} constitution of another DPC in 1986 to consider the appointments of eligible officers to the same posts on regular basis was wholly without jurisdiction and illegal. Mr.Singh further argued that if at all the applicant was not found fit by the second DPC, this must be on the basis of certain adverse remarks for the period after 19.4.1983, his representations against which are still under consideration of Government and, therefore, the alleged finding on the applicant as unfit by this second DPC should be considered as illegal and unsustainable.

6. We have gone through the minutes of the meetings of the DPCs of 22.3.1983 as well as of 10.11.1986. In para 4 of the minutes of the DPC meeting of 22.3.1983 it is stated that "having regard to the fact that the promotions are to be made purely on ad hoc basis, the Committee was of the view that seniority-cum-merit subject to the rejection of the unfit, be adopted as the criteria for selection". After going through the Annual Confidential Reports of the eligible Junior Engineers this DPC

recommended the applicant, amongst others, for promotion as Assistant Engineer (Electrical) on ad hoc basis. In the minutes of the meeting of the DPC held on 10.11.1986 it has been noted that "according to the Recruitment Rules the posts are 'Selection' Posts". The DPC proceeded to consider candidates according to the prescribed field of eligibility and has recommended separate panels for yearwise vacancies, namely, 1 for 1975, 3 for 1978, 3 for 1979, 13 for 1980 and 25 for 1982. The applicant was admittedly eligible to be considered only for the vacancies for 1982. He was in fact so considered and his name appears at Sl. No.47 of the list of 60 eligible officers against 25 vacancies for the year 1982 whose Character Rolls were examined by the DPC. The applicant's name was not, however, included in the panel for 1982 of 25 officers recommended by the DPC on the basis of their assessment. It is seen from Annexure IV of the minutes of the DPC meeting that the candidates were graded after an assessment of their Character Rolls for the years 1977-78 to 1981-82. Mr.M.I.Sethna explained that any candidate who was categorised as unfit for promotion on the basis of any one or more of the Character Rolls for these 5 years was assessed as unfit by the DPC. The applicant who was categorised as unfit for promotion on the basis of his Character Roll for one of these 5 years (i.e. for 1977-78) was categorised as "unfit" by the DPC along with 3 of his seniors and some of the juniors, for the same reason. We have, therefore, to reject the applicant's contention that he was found unfit by the DPC because of adverse remarks relating to the period after 19.4.1983, since Character Rolls for the period upto 1981-82 only had been considered by the DPC in this meeting. We have also perused the applicant's character

roll for the year 1977-78 and, in our opinion, the DPC had rightly categorised him as unfit for promotion, on the basis of this character roll.

7. Mr.C.U.Singh cited in this connection the Supreme Court Judgment in State of Uttar Pradesh v. Sughar Singh (AIR 1974 SC 423) wherein it was held that where an employee is alone reverted from his officiating post to his substantive post allowing his juniors to retain their officiating posts and the basis for such reversion is admitted to be an adverse entry in his character roll, the order of reversion is by way of punishment and amounts to reduction in rank, and the order is also violative of Articles 14 and 16 of the Constitution. The facts in the case before us are, however, easily distinguishable. In the case decided by the Supreme Court, the reversion was admitted to be as a result of the adverse entry in the character roll but the applicant in the present case was reverted, as we have discussed above, not because of adverse entries relating to the period after 19.4.1983 as alleged by the applicant but on the overall assessment by the DPC of his character rolls for five years upto 1981-82. Mr.C.U.Singh also stated that since the first DPC which had met on 22.3.1983 had found the applicant fit for promotion after examining his Character Rolls upto 1981-82, ^{the finding} based on the same material as "unfit" by the second DPC which met on 10.11.1986 should be considered as perverse. However, the first DPC was concerned with promotions on ad hoc basis whereas the second DPC had to make recommendations for promotions on regular basis. There should be no dispute that the criteria for promotions on a regular basis will be more rigorous than purely ad hoc promotions. It is on record that the recommendation by the first DPC

were on seniority-cum-fitness basis whereas those for regular promotions by the second DPC were on the basis of selection. We do not, therefore, find anything arbitrary or perverse in the procedure followed and the recommendations made by the second DPC.

8. Mr.C.U.Singh also brought to our notice the judgment dated 5.1.1988 of the Hyderabad Bench of this Tribunal in the case of N.S.Galande v. Union of India (1988 LAB I.C. 764) in which it has been held that where a Junior Officer was to be preferred to a senior officer, it would be necessary to record the reasons for so doing. Since this has not been done in the present case, Mr.Singh argued that the second DPC's recommendations should not have been accepted. However, in a subsequent judgment *dated* 22-3-1988 ¹⁴ in the case of Union Public Service Commission v. Hiranyalal Dev [(1988) 7 ATC 72] the Supreme Court has observed that "... it is not necessary to record the reasons for not selecting a person who is in the arena". In view of this decision of the Supreme Court, Mr.Singh's contention has to be rejected.

9. The applicant's second contention is that the promotion of Respondents Nos.3, 4 and 5 by order dated 5.1.1987 is in contravention of the rules. It is alleged that Respondent No.3 is not a diploma holder in Electrical Engineering but is holding a certificate in Electrical Engineering from City and Guilds of London Institute which is not equivalent to Diploma in Electrical Engineering. Respondent No.4 is stated to be holding a Diploma in Mechanical Engineering but not in Electrical Engineering. It is further alleged that Respondents Nos. 4 and 5 were not included by any order in the list of Assistant Engineers (Electrical) Ad-hoc at any time. The respondents have, however, produced a copy of the letter

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dated 24.8.1982 from the Ministry of Education and Culture, New Delhi, informing that the certificate held by Respondent No.3 is recognized as equivalent to Diploma in Electrical Engineering. The respondents have also admitted that Respondent No.4 possesses only a Diploma in Mechanical Engineering but he fulfills the requirement prescribed in the Recruitment Rules for promotion, being a Junior Engineer (Electrical) having diploma with 7 years service. The respondents also state that Respondents Nos. 4 and 5 were duly considered by the second DPC for promotion as they fulfilled all the eligibility conditions prescribed in the approved Recruitment Rules. Since the applicant has not been able to establish which specific rule or eligibility condition has been violated in DPC considering Respondents Nos.3, 4 and 5, we have to reject the applicant's contention that their promotion is in contravention of the rules.

10. Mr.C.U.Singh argued that at least in the case of Respondent No.4, the DPC's recommendation should be deemed to be vitiated since a Diploma in Electrical Engineering and not in Mechanical Engineering should be considered essential for promotion as Assistant Engineer. He also cited the Supreme Court Judgment in the case of P.K.Ramachandra Iyer v. Union of India (SC 1984 LLJ 314) in which the selection of a candidate which was in violation of prescribed norms of qualification was quashed and set aside. In that case, the selection committee had rejected candidates who fulfilled all essential qualifications but selected a person who did not satisfy the essential qualification pertaining to

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experience, claiming non-existent power to relax the qualification. We have perused the modification dated 28.10.1980 of the Government of Goa, Daman and Diu prescribing the recruitment rules for the post of Assistant Engineer (Electrical) in the present case. The requirement laid down therein for promotion of departmental candidates is Junior Engineer (Electrical) and Foreman (Workshop) with 3/7 years regular service in the grade in the case of degree holders and diploma holders or equivalent respectively. Admittedly, Respondent No.4 is a Junior Engineer (Electrical) with 7 years regular service in the grade and has a Diploma in Mechanical Engineering. He was, therefore, correctly held to be eligible for consideration by DPC for promotion to the post of Assistant Engineer (Electrical). The facts of the present case are thus clearly distinguishable from those in the case decided by the Supreme Court.

11. Mr.C.U.Singh's last contention was that the applicant has been working continuously as an ad hoc Assistant Engineer (Electrical) since 19.4.1983 and he had a legal right to be regularised as Assistant Engineer (Electrical). It must be accepted that the ad-hoc appointment of the applicant was by its very nature a stop gap arrangement as the process of regular selection would have involved delay and the post could not be allowed to remain vacant in view of the Commonwealth Retreat works. No rule or instructions have been brought to our notice to ~~this~~^{the} effect that persons officiating on ad hoc basis for any specified period are exempted from the selection process. Even in the case of a Railway employee, where there are specific instructions

that no employee who has completed 18 months service on ad hoc basis in a promotional post should be reverted without disciplinary action, the Principal Bench of this Tribunal in a recent judgment of a Full Bench dated ^{in Sh. Jetha Nand and others v. Union of India and others} 5.5.1989, has held that such an employee if he has not qualified in the selection test, is liable to be reverted even after 18 months ad hoc service in the higher post. We have, therefore, to reject the applicant's contention that he has a legal right to be regularised though he has been found unfit by the duly constituted DPC.

10. On the basis of the foregoing discussions, we do not find any merit in any of the contentions made on behalf of the applicant. The application is, accordingly, dismissed but, in the circumstances of the case, with no order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(M.B. MUJUMDAR)
MEMBER (J).