

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 148/88

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198

DATE OF DECISION 3-6-1991

Shri Shilendra Kumar Shivliha Petitioner

Mr. A. B. OKA Advocate for the Petitioner(s)

Versus

Union of India, through Secretary Respondent
Min. of Defence, Dept. of Defence Prog.

and others. MR. RAMESH DARDA Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P. S. CHAUDHURI, MEMBER (A)

The Hon'ble Mr. T. C. S. REDDY, MEMBER (J)

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

P. S. Chaudhuri
(P. S. CHAUDHURI)
M(A)

(15)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

ORIGINAL APPLICATION NO.148/88

SHRI SHILENDRA KUMAR SHIVLIHA
Joint General Manager,
Ordnance Factory, Chanda,
Resident and Post-Ordnance
Factory, Chanda, Taluk and
District Chandrapur

.... Applicant

VS

1. UNION OF INDIA
through Secretary Min.
of Defence, Dept. of Defence
Production, South Block,
New Delhi.
2. Chairman, Ordnance Factory Board/
Director General Ordnance Factories
10 A, Auckland Road, Calcutta.
3. Member Personnel in the office of
Director General Ordnance Factories
Board, 10 A Auckland Road, Calcutta.
4. General Manager, O.F., Chanda,
Res. and Post Chanda O.F., Tq. Dist.
Chandrapur.
5. Union Public service Commission,
Dholpur House Shahajahan Road,
New Delhi-110001.
6. S.R.Nair
7. R.Sundaram
8. J.Thomas
9. E.S.Krishnamurthy
10. G.Gopakumar
11. D.K.Dutta
12. R.Jayaraman
13. S.K.Ramanathan
14. A.V.Dhekne
15. P.R.Rao
16. D.B.Bettigiri,

DAY NO. 148/88

CORAM : HON'BLE SHRI P.S.CHAUDHURI, MEMBER(A)

HON'BLE SHRI T.C.S.REDDY, MEMBER(J)

Appearance

Shri A.B.OKA, Adv.
for the applicant

MR.RAMESH DARDA, Adv,
for the respondents.

JUDGMENT

(PER: MR.P.S.CHAUDHURI, M/A)

DATED: 3-6-1991

This application under Section 19 of the Administrative Tribunals Act, 1985 was filed on 22.2.1988. In it the applicant who is working as Joint General Manager, Ordnance Factory, Chanda is seeking a direction that he be promoted to Senior Administrative Grade (integrated grade Level II and I) from Junior Administrative Grade(Selection Grade) from 3.9.1987 and connected and consequential benefits.

2. The facts may be briefly stated. By letter dated 20.7.1963 the applicant was offered appointment as Assistant Manager(on Probation)/Chemist/Metallurgist/ Engineer (Gazetted Class-I post) in the Ordnance Factory Organisation under the Ministry of Defence. He accepted this offer and joined service on 7.8.1963. He was subsequently promoted as Works Manager from 12.6.1967, Manager from 25.5.1971 and as Joint General Manager, which post is in the Junior Administrative Grade (Selection Grade), w.e.f.14.2.1983. From this grade the next promotion to which the applicant could was aspire/the post of Additional General Manager in Senior Administrative Grade(integrated grade, Level II and I).

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In the seniority list of officers of the Indian Ordnance Factory Service (for short, IOFS) in Junior Administrative Grade (Selection Grade) as on 1.1.1987 the applicant was at Sr. No.5 whereas respondents No.6 to 13 were at Sr.Nos.6 to 13 and respondents No. 14 and 15 were at Sr.Nos.15 and 16 respectively. A Departmental Promotion Committee (for short, DPC) was convened on 31.7.1987 to consider the promotion of suitable candidates from Junior Administrative Grade (Selection Grade) to the Senior Administrative Grade (integrated grade, Level II and I). Thereafter, by order dated 3.9.1987 certain promotions were ordered and respondents 6 to 15 were promoted as Additional General Manager or equivalent posts in the Senior Administrative Grade (integrated grade, Level II and I) whereas the applicant was not so promoted. Thereafter, by order dated 30.10.1987 respondent No.16 was also promoted as Additional General Manager. In the meantime, the applicant had submitted a representation against this supersession on 1.10.1987 seeking restoration of his original seniority and promotion. By letter dated 31.12.1987/4.1.1988 he was informed that his representation had been carefully examined but the request made in it could not be agreed to in view of the fact that S.A. Grade posts in IOFS are selection posts and for selection posts promotion is dependent on inclusion in the select panel by the relevant DPC and he had not been promoted as he was not included in the select list by the relevant DPC. Being aggrieved with this reply, he filed the present application.

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3. Respondents No.1 to 4 have apposed the application by filing their written statement. We have heard Mr.A.B.Oka, learned counsel for the applicant and Mr.Ramesh Darda, learned counsel for the respondents No.1 to 4. The other respondents No.5 to 16, have neither filed any written statement nor were they present or represented before us.

4. It is the applicant's case that he had an outstanding academic record and has displayed meritorious performance in his service career as a result of which he has received regular promotions as due in his normal turn as also commendatory remarks/certificates. He has no reason to believe that his performance could have been such as to earn him any adverse remarks in his annual confidential reports. The applicant has fairly placed on record two incidents that occurred during his service career. The first was way back in 1974 when the minor penalty of 'Censure' was awarded to him on the charge that he allowed a factory vehicle containing ammunition to be used by Ordnance Factory employees for travelling as passengers. The second was in 1984 when he received an advice note from the Director, Ordnance Factory Staff College regarding his leave application but he was assured that a copy of the said note was not placed on his annual confidential report record. It is the applicant's case that he has not been informed of any adverse entry ^{so} and his presumption is that there is none. Even the Advice Note of 1984 was not an adverse entry in his annual confidential report and so it would be an error and an illegality if the DPC had treated it as such. It is the applicant's further case that, in any case, his grading could only have been better than 'Good' because in terms of Ordnance Factory Board's circular dated 16.9.1983 "in case of individuals in the line of

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promotion to 'selection' post even average entries and 'Good' grading call for communication.' It is the applicant's contention that the non-inclusion of his name in the select list prepared by the DPC was not in accordance with the principles by which promotion is governed but was based on extraneous material. It is also his contention that the refusal of the promotion being challenged by him is violative of Articles 14 and 16 of the Constitution.

5: Respondents No.1 to 4 have refuted the applicant's contentions by submitting that it is not disputed that the promotion in question is to be made by the selection method and that for this purpose the DPC is required to classify the officers in the field of selection as 'Outstanding', 'Very Good' or 'Good' on the basis of their merit as assessed by the DPC after examination of their records of service, after excluding those considered unfit for promotion by the DPC. It is entirely left to the DPC to make its own classification of the officers being considered by it irrespective of the grading that may be shown in the confidential records. The panel is required to be drawn up to the extent necessary by placing the names of officers classified as 'Outstanding' first, followed by those classified as 'Very Good' and last by those classified as 'Good', with the inter-se seniority of officers belonging to the same classification being the same as their seniority in the lower grade. It was the contention of respondents No.1 to 4 that the DPC held in 1987 had followed these instructions precisely and having done so, had not been able to include the applicant's name in the panel.

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6. Respondents No.1 to 4 made available for our perusal the annual confidential report file of the applicant as also the proceedings of the DPC held in 1987. After going through this record we are satisfied that there has been no breach of the circular dated 16.9.1983 that has been relied upon by the applicant. In any case, it appears to us that this circular dated 16.9.1983 is not applicable to the applicant. This circular is not a policy directive giving instructions on how confidential reports of all individuals are required to be written. It is a circular addressed to General Managers of Ordnance Factories. It is, therefore, for the guidance of General Managers and officials below them. The Director General, Ordnance Factories' circular dated 6/9,11.1976 (Annexure IX at page 44 of the application) makes it clear that it is only when the annual confidential report on any official reaches the stage where adverse entries and/or grading become final enough to warrant communication that such entries are to be communicated. It also makes it clear that this stage is reached when the annual confidential report travels up to the accepting authority. In other words, the circular dated 16.9.1983 is applicable to the annual confidential reports of persons for whom the accepting authority is the General Manager or a lower authority. That is not so in the case of the applicant for whose annual confidential reports in question the Director General, Ordnance Factories was the accepting authority. Besides, the circular dated 16.9.1983 directs that a 'good' grading needs

to be communicated to individuals in the line of promotion to 'selection' posts. Two reasons have been adduced for doing so, namely, to improve the performance of the individual and to afford an opportunity to the individual to represent in case the report is likely to affect his career progression (emphasis supplied). But it is not only a 'good' grading which is likely to affect an individual's career progression. In the practice that is being followed at present, even individuals classified as 'Very Good' can and will be ~~superse~~ ^{over} ~~superseeded~~ by those classified as 'Outstanding'. Thus to achieve the stated objectives even individuals classified as 'Very Good' would require to be informed of this classification. The adoption of such a practice would virtually wipe out the confidentiality of the annual reports. Against this ^{back} ground we are unable to go along with the contention of the applicant in this regard.

7. After going through the proceedings of the DPC held in 1987 we are satisfied that the DPC examined the character rolls of all the eligible officers in order of seniority and made its own classification of the officers considered. It is now well settled that it is not for the Tribunal to substitute its own judgement for the assessment made by a DPC unless it is vitiated by some infirmity; ^{See} A.K.MONDAL and ORS V. UNION of INDIA and ORS, 1986(3) SLJ 313(CAT). We can find no such fault with the classification made by the DPC and hence see no reason to interfere with it. It is noted if the DPC found that the applicant was unfit for promotion. They drew up a panel to the extent necessary and all those who were included in it were classified higher than the applicant by the D.P.C. We may also mention,

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that two other officers, though junior to the applicant, were also superseded in the panel in question. Against this background, we can not hold that there is anything wrong or illegal in the conclusions of the DPC.

8. In this view of the matter, we see no merit in the application and are of the view that it deserves to be dismissed.

9. We accordingly dismiss the application. In the circumstances of the case there will be no order as to costs.

T.C.S. REDDY

(T.C.S. REDDY)
MEMBER(J)

P.S. CHAUDHURI

(P.S. CHAUDHURI)
MEMBER(A)