

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A.165/86

Dorwel Madre Pillay,
25, T.S.Depot Lines,
Khadki,
Pune - 411 003.

.. Applicant

vs.

1. Union of India

2. Armament Research & Development
Establishment,
Pashan,
Pune - 411 021.

3. The Scientific Advisor to
the Minister of Defence &
Director General Research &
Development,
Research & Development Orga-
nisation,
Ministry of Defence,
New Delhi - 110 011.

.. Respondents

4. Shri D.A.Jagtap,
Draughtsman Gr.I, ARDE, Pashan,
Pune-411 021. Coram:Hon'ble Member (A) Shri P.Srinivasan

Hon'ble Member (J) Shri M.B.Mujumdar

Appearances:

1. Shri J.M.Chitale,
Advocate for the
applicant.

2. Shri J.D.Desai
Advocate for the
respondents.

JUDGMENT

Date: 16-6-1988

(Per M.B.Mujumdar, Member (J))

In this application filed under

Section 19 of the Administrative Tribunals Act,
the applicant Shri D.M.Pillay has challenged his
reversion from the post of Draughtsman Gr.I to
the post of Draughtsman Gr.II, by the order dtd.

19-9-1985.

2. The applicant was initially appointed
as a Tracer in 1964 in the Armament Research & Deve-
lopment Establishment(ARDE) at Pashan. In 1969 he
was promoted as Draughtsman Gr.III and in 1981 he was
promoted as Draughtsman Gr.II.

3. The higher post of Draughtsman Gr.I was to be filled by promotion. Generally a Departmental Promotion Committee(DPC) holds its meeting twice a year for preparing the panels for promotion to different promotional posts. Two posts of Draughtsman Gr.I were notified to the DPC which held its meeting on 15-3-1985. One of these vacancies (ST) was reserved for Scheduled Tribe/candidate. The DPC recommended the name of one Shri S.K.Pethkar for the general vacancy. He was senior to the applicant. For the vacancy reserved for ST candidate the DPC recommended the name of the applicant as no suitable ST candidate was available. Accordingly by order dtd. 20-4-1985 the applicant was promoted as Draughtsman Gr.I on officiating basis, with effect from 15-4-1985. It was mentioned in the order that his promotion was purely on adhoc basis against the existing vacancy but subject to deservation of the reserved vacancy by the competent authority.

4. However, the proposal from the Director of ARDE for dereserving the vacancy was not accepted by the competent authority, viz., the Director General of the Research and Development. By his letter dtd.30-8-1985 the Director General, informed that the promotion of general candidate against reserved ST vacancy when eligible SC candidate was available against an older SC vacancy was irregular. Hence instructions were given for holding review DPC for rectifying the situation. Accordingly a meeting of the regular DPC as well as review DPC were held on 16-9-1985. No vacancy of Draughtsman Gr.I was notified. Hence the regular

DPC did not recommend any name for that post. The review DPC, however, recommended the name of Shri D.A.Jagtap(Respondent No.4), a Scheduled Caste(SC) candidate working as Draughtsman Gr.II, for promotion as Draughtsman Gr.I in the ST vacancy. Accordingly directions were given for making amendment in the panel prepared by the DPC on 15-3-1985. In pursuance thereof the applicant was reverted with immediate effect by order dtd. 19-9-1985. The applicant has challenged that order in this application.

5. The respondents have filed the affidavit of Shri M.V.Venkataraman, Accounts Officer of ARDE, Pashan on 8-12-1986. He has explained how the reversion of the applicant had become necessary in view of the directions given by the Director General Research and Development, in his letter dtd. 30-8-1985.

6. Subsequently the applicant filed an amendment application and we allowed it by our order dtd. 19-1-1987. According to the amendment, when the DPC held its meeting on 15-3-1985 in all, ~~three~~ vacancies for the post of Draughtsman Gr.I were available but only two posts were notified to the DPC. According to the applicant the third vacancy was available upto December, 1985 with prospects of continuance beyond 1985. It is pointed out that the vacancy was in fact continued beyond 1985. According to the applicant, if three vacancies would have been notified to the DPC when its meeting was held in 15-3-1985 the applicant could have been appointed to the additional post and in that case his reversion would not have become necessary. It is further alleged

that the third vacancy was also not notified to the DPC when it held its meeting on 16-9-1985. Hence by the amendment the applicant has requested for quashing the order of his reversion dtd.19-9-1985 and for declaring that he continued as Draughtsman Gr.I after that date. He has also requested that the promotion of Shri Jagtap should be declared as null and void.

7. The respondents have filed additional affidavit of Shri M.V.Venkataraman, Accounts Officer, in reply to the amendments. It is stated therein that one vacancy of Draughtsman Gr.I was caused with effect from 1-6-1985 due to retirement of Shri P.A.Bolagir, Draughtsman Gr.I, on superannuation. However, as per adhoc promotion rules in case of regular vacancy caused due to retirement for a period extending one year the vacancy is required to be filled by regular method and not by adhoc appointment. Therefore the applicant was not adjusted against the vacancy caused due to the retirement of Shri P.A.Bolagir.

8. We have heard Shri J.M.Chitale, learned advocate for the applicant and Shri J.D.Desai, learned advocate for the respondents. We have also heard Shri M.V.Venkataraman, Accounts Officer, who has filed his affidavit twice in this case.

9. After hearing them and considering the legal position we do not find any force in the argument that the respondents should not have promoted Shri Jagtap, a SC candidate, against a ST vacancy. The Director General of Research and Development in his letter dtd.30-8-1985 has explained

how it was necessary to fill the vacancy which was reserved for ST candidates by giving it to a SC candidate. As a SC candidate was available promotion of the applicant was not approved. It was by this letter that ~~the~~ direction ~~was~~ given for holding review DPC to rectify the situation. Indisputably Shri Jagtap was SC candidate and hence the DPC recommended his name against the vacancy reserved for ST candidate and that is how an amendment was made in the panel which was prepared by the DPC in its meeting held on 15-3-1985.

10. However, we find force in the submission of Shri Chitale that when three vacancies for the post of Draughtsman Gr.I were available, including one which ~~was to~~ arose on Shri Bolagir's retirement on 1-6-1985, the authorities notified only ~~to~~ two posts to the DPC when it held its meeting held on 15-3-1985. According to Shri Chitale, if three posts would have been notified the applicant could have been appointed to the additional post and ^{✓ in that case} ~~hence~~ his reversion would not have become necessary. Shri Venkataraman has stated in his subsequent affidavit that a vacancy did occur on 1-6-1985 due to retirement of Shri Bolagir, Draughtsman Gr.I, on superannuation. He was a general candidate. It was also not disputed before us that, that vacancy was not notified to the DPC which was held on 15-3-1985. It was submitted on behalf of the respondents that, that was an anticipatory vacancy and hence it was not notified. But from the record we find that even anticipated vacancies ~~were~~ being notified to the DPC. The vacancy was also not notified to the DPC which held its meeting on 16-9-1985. At that time there was a clear vacancy, but according to the respondents it was not notified because the posts were likely to be reduced by the end of December, 1985.

This was challenged on behalf of the applicant.

According to him there was a vacancy upto the end of December, 1985 with prospect of its continuance and in fact that vacancy was continued thereafter. For want of sufficient material we are unable to decide the position regarding vacancies beyond December, 1985. But it was not disputed on behalf of the respondents that the vacancy was available upto the end of December, 1985.

11. We are of the view that if the third vacancy would have been notified to the DPC which met on 15-3-1985, the applicant would have been appointed against that vacancy. Even if it was notified to its next meeting held on 16-9-1985 his reversion would have become unnecessary.

We may point out that subsequently the applicant is promoted as Draughtsman Gr.I in September, 1986 and now he is holding that post. We are, therefore, inclined to set aside his reversion with certain directions.

12. In result we pass the following order:

- (i) The reversion of the applicant from the post of Draughtsman Gr.I by the impugned order passed on 19-9-1985 is hereby set aside; with consequential benefits according to rules;
- (ii) The respondents are however, at liberty to review the position regarding vacancies for the post of Draughtsman Gr.I thereafter and if at any time no post was available to accommodate him, revert him from that date.
- (iii) Parties to bear their own costs.

(M.B. MUJUMDAR)
Member (J)

P. Srinivasan
Member (A)