

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
NEW BOMBAY

Transferred Application No.344/86

Shri K.T. Bandal,
1482, Shukrawar Peth,
Pune 411 002.

.... Applicant
(Original Plaintiff)

V/s.

1. Union of India
through
The Secretary,
Government of India,
Ministry of Defence.
2. The Director General,
Armed Forces Medical Services,
Ministry of Defence,
New Delhi 110 001.
3. The Commandant,
Armed Forces Medical College,
Pune 411 040

.... Respondents
(original Defendants)

Coram: Hon'ble Member (A) J.G. Rajadhyaksha.

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

Appearances:

1. Shri V.B. Rairkar, Advocate for the Applicant.
2. Shri S.R. Atre (for P.M. Pradhan) for the Respondents.

ORAL JUDGMENT

Date:21.08.1987

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

The applicant had filed Civil Suit No.425 of 1985
in the Court of Civil Judge, Senior Division at Pune and
it is transferred to this Tribunal under Section 29 of the
Administrative Tribunals Act, 1985.

...2.

2. The applicant is working as an Upper Division Clerk in the Medical Record Section of the Hospital Administration, Armed Forces Medical College, at Pune. It is his case that he should have been promoted as Office Superintendent (O.S.) since 1975, but the Departmental Promotion Committee (D.P.C.) held in 1975 onwards did not select him as Office Superintendent but selected his juniors. Hence, on 21st of February, 1984/1985 he filed the present suit for a declaration that he is entitled to be promoted as Office Superintendent on the basis of his seniority in the department, whenever such vacancies occurred. He has asked for a further declaration that he is entitled to receive a special pay of Rs.35/- per month with effect from 6.10.1982 and also difference of cash allowance @Rs20/- per month for the period from 15.4.1976 to 5.9.82 when he handled cash, more than Rs.1 lakh per month.

3. The respondents have filed their written statement and they have explained how and why the applicant was not recommended for promotion to the post of Office Superintendent by the Departmental Promotion Committees held from time to time.

4. It is pointed out that the post of Office Superintendent is a selection post. On our directions the respondents have produced the recruitment rules and it will be useful to refer to the relevant rules at this stage. The rules are called "Recruitment rules for the post of Office Superintendents, in the Lower Formations of the Defence Services". Clause 4 of the Rules show that the post is a selection post. Appendix 29 of CSR Vo.II Part I shows the method by which the selection for such selection post is to be made.

It says that officers in the field of selection should be categorised as 'Outstanding', 'Very Good', 'Good' and 'Unfit' on the basis of their merit as assessed by the Departmental Promotion Committee after examination of respective records of service. Thereafter, the panel is to be drawn by placing the names~~ss~~^{es} of 'Outstanding' officers first, followed by the officers categorised as 'Very Good' and so on. It is necessary to point out that the inter se seniority of the officers belonging to any one category would be the same as the seniority in their lower grade. Regarding period of validity of panel the relevant provision shows that the panel drawn by the Departmental Promotion Committee is normally valid for one year and in any case it will cease to be valid on the expiry of one year and six months or when a fresh panel is prepared, whichever is earlier. We may point out that these are the general principles which are followed while making promotions to a selection post.

5. Mr. Rairkar, the learned advocate for the applicant brought to our notice^a_k xerox copy of a letter dated 11th July 1987 written by the Assistant Administrative Officer. It states that the Office of the Director General of Armed Forces Medical Services is required to frame the recruitment rules for the following categories of this College, Viz.
(a) Office Superintendent, (b) Upper Division Clerk,
(c) Lower Division Clerk and (d) Cashier. The letter further states that the duties attached to the above posts may please be forwarded to the office for further action.

Though the suit was pending in the Civil Court for a long time, it was~~as~~ never argued on behalf of the applicant that the rules for the post of Office Superintendent are not in existence.

On the contrary, as pointed out above, the rules are in existence and the copy was shown to us. It is on the basis of the copy shown to us that we have stated the provisions in the ^{rules} ~~lines~~. Hence we shall have to ^{assume} ~~presume~~ that the rules for the posts of Office Superintendent are in existence and they are as stated earlier.

6. We find from the record that one Mr. P.C.K. Nambiar retired as Office Superintendent in 1976 and the Departmental Promotion Committee held in that year promoted Mr. H.N. Pandhre who was senior to the applicant. The next vacancy of the post of Office Superintendent arose in 1978 as in that year Mr. Pandhre was reverted because he was found 'unsatisfactory' in performance. The Departmental Promotion Committee held in 1978 recommended Mr. R. D'Monte. He was also senior to the applicant. Hence regarding the promotions of 1976 and 1978 the applicant should have no grievance and in fact he did not make any grievance before us.

7. The Departmental Promotion Committee held on 3rd April, 1981 considered the cases of 6 Upper Division Clerks. The Departmental Promotion Committee found that Shri V.K. Nair was "Very Good" and the applicant who was senior to him was "Good". Two more Upper Division Clerks were found 'good', but they were junior to Nair. Hence the Departmental Promotion Committee recommended Nair for promotion as Office Superintendent, but at the same time recommended that the applicant be promoted as Office Superintendent with effect from 1.8.1981 after the retirement of Mr. Pritam Chand who was then working as Office Superintendent. The record shows that Nair could not be promoted immediately because according to the higher authorities, there were available only two posts of Office

Superintendents. Hence actually Nair was promoted with effect from 1.3.81, the date on which Pritam Chand retired on superannuation. Hence the question of giving promotion to the applicant in that vacancy did not arise.

8. As already pointed out, the panel was valid for 18 months. But during that period no vacancy in the post of Office Superintendent arose. However, a vacancy arose on voluntary retirement of Mr. R. D'Monte in January, 1983. The Departmental Promotion Committee held on 27.1.83 considered the cases of six Upper Division Clerks. The Departmental Promotion Committee considered the record for the period of 5 years. All the six persons were found fit to be promoted as Office Superintendent including one Mr. Pandhre and the applicant. However as Pandhre was admittedly senior to the applicant, he was promoted with effect from February, 1983.

9. After considering the proceedings of the above mentioned Departmental Promotion Committees we do not think that they have violated any of the relevant rules regarding promotion. After all it is for the Departmental Promotion Committee to consider who was the fittest person to be promoted. We are not sitting in appeal against their decisions. The only grievance which was put forth by the learned advocate was regarding the Departmental Promotion Committee held in 1981. According to him, the applicant should have been promoted with effect from 1.8.1981, on which date Mr. Pritam Chand retired on superannuation. But as already pointed out, only two posts were available then and one Shri V.K. Nair was required to be promoted with effect from that date. It appears that the Departmental Promotion Committee had wrongly estimated vacancies in the posts of Office Superintendent as being three. The letter dated 22.9.1981 from the Raksha Mantralaya shows that its letter dated 27.2.81 was regarding
ratio between

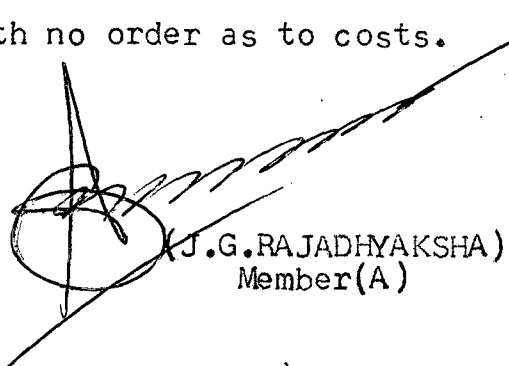
~~was regarding~~ revision of ratio between Upper Division Clerks and Lower Division Clerks of various Defence Establishments and not about any changes in the authorisation of Office Superintendents. It appears that the respondents had wrongly thought that there were three posts of Office Superintendents from 1973. The mistake was required to be corrected in 1981 and that is why the applicant could not be promoted in the vacancy of Pritam Chand.

10. We are, therefore, satisfied that the applicant was not wrongly rejected by the Departmental Promotion Committees. In fact he has merely sought a declaration that he is entitled to be promoted as Office Superintendent on the basis of his seniority in the department whenever such vacancy occurred. As already pointed out the promotion to the post of Office Superintendent is by way of selection where merit has to be given preference over seniority.

11. Regarding the claim of not giving special pay it was resisted by the respondents on many grounds. It is the case of the applicant that he is entitled to the special pay of Rs.35/- with effect from 6.9.1982 and also to the difference of cash allowance @ Rs20/- per month for the period 15.4.76 to 5.9.82 because he was handling cash of more than Rs.1 lakh. But the letter from the Ministry of Defence dated 31st March, 1983 shows that the point was referred to the Ministry of Defence which clarified that the selection has to be made by the Controlling authority on the basis of suitability of an officer to handle the work in a post carrying discernible duties of complicated nature. The case of the applicant was considered along with some others by the Board of Officers. He was not selected while some others were selected.

12. Regarding the difference @ Rs.20/- per month for the period 15-4-76 to 5-9-1982 we find that the applicant was admittedly handling cash of more than Rs.1 lakh per month and he has a good case. If the applicant's predecessor as well as the successor who were doing the same work were getting Rs.50/- as such allowance, then there is no reason why the applicant should not get it. Hence the respondents should ascertain whether the applicant's predecessor prior to 15-4-76 as well as his successor after 5-9-82 were getting Rs.50/- per month for handling cash of more than Rs.1 lakh per month, and if it is so, shall pay the difference to the applicant.

With these directions the application(i.e. the suit) is disposed of, with no order as to costs.


(J.G. RAJADHYAKSHA)
Member(A)


(M.B. MUJUMDAR)
Member(J)