

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.74/86 & O.A.260/86

P.A.Jaykar,
C/o.Mr.Jose,U.D.C.,
N.A.D.Colony,
Mankhurd,
Bombay - 400 088 & 6 Others.

... Applicants

vs.

1. Union of India,
Ministry of Defence,
New Delhi.
2. The Chief of the Naval Staff,
Naval Headquarters,
New Delhi.
3. The Flag Officer Commanding-in-Chief,
Headquarters,
Western Naval Command,
Shahid Bhagatsingh Road,
Bombay - 400 001.
4. The Naval Armament Supply Office,
Naval Armament Depot,
Gun Gate,
Naval Dockyard,
Bombay - 400 001 and

7 Others.

... Respondents

O.A.260/86

P.A.Jaykar & 6 Others.

... Applicants

vs.

1. Union of India,
Ministry of Defence,
New Delhi.
2. The Chief of the Naval Staff,
Naval Headquarters, New Delhi.
3. The Flag Officer Commanding-in-Chief,
Headquarters,
Western Naval Command,
Shahid Bhagatsingh Road,
Bombay - 400 001.
4. The Naval Armament Supply Office,
Naval Armament Depot, Gun Gate,
Naval Dockyard,
Bombay - 400 001.

... Respondents

Coram: Hon'ble Member (A) S.P. Mukerji

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

Appearances:

1. Mr.C.S.Thakore
Advocate for the
applicants in
both the applications.
2. Mr.S.R.Atre(for
Mr.P.M.Pradhan)
Advocate for the
Respondents in
both the applications.

JUDGMENT

Date: 05.01.1988

(Per S.P.Mukerji, Member (A))

Since the reliefs sought in the above cited two applications filed by Shri P.A.Jaykar and six others under Section 19 of the Administrative Tribunals Act are organically linked they are being disposed of by a common judgment as follows:

2. The applicants Shri P.A.Jaykar and six others who were working as Chargeman(Ammunition Workshop) of the Naval Armament Supply Organisation have challenged the manner in which the respondents have been holding qualified examinations and thereafter preparing select lists through the Departmental Promotion Committees for promotion as Senior Chargeman in the same organisation. It is admitted that for promotion from the post of Chargeman to Senior Chargeman one has to pass a qualifying examination and only those who qualify in that examination and have completed atleast three years of service in the grade of Chargeman become eligible for consideration by the DPC for promotion as Senior Chargeman. The DPC prepares a select list on the basis of selection on merit from amongst the qualified and eligible candidates who come within the zone of consideration. The contention of the applicants is that the respondents have been holding from

year to year qualifying examinations ^{but} ~~and~~ not holding the meetings of the DPC to match with every qualifying examination to fill up the vacancies arising in each year in which the qualifying examination is held. As a result of this mismatch between the qualifying examinations and the meetings of the DPC and the large gap between the meetings of the DPC, the applicants who had qualified in the examination much earlier had to yield places in the eligibility lists to those who failed in the qualified examination but subsequently qualified ^{but} ~~and~~ placed above them on the basis of seniority. According to them if the DPC had met on a year to year basis atleast in the same year in which the vacancy ^{was} occurred, the applicants would not have lost places to those who qualified subsequently and ^{they} thus would have had a better chance of selection. In the second application No.O.A.260/86 they have challenged the holding of qualified examinations annually without reference ^{occurrence of} to the vacancies and in the first application (O.A.74/86) they have challenged the select list of 1986 which had been prepared by bunching the vacancies ^{of} ~~on~~ a number of years.

We have heard the arguments of the learned counsels for both the parties and gone through the documents carefully. In accordance with the Navy Order No.69 of 1977(Exhibit 'B') ~~to the~~ second application) Departmental qualifying examinations are to be held "from time to time subject to the availability of vacancies in the respective grades and necessity to fill the same". Thus it is clear that the qualifying examinations are to be held with reference to the availability of the vacancies. It is admitted that

whereas qualifying examinations were held in 1974, 1976, 1977, 1978 and 1980 etc., the vacancies were filled up through the DPC only in 1977, 1979, 1981, 1983, 1984 and 1986. Thus there has been an obvious mismatch between the qualifying examinations and the filling up of the vacancies through the DPC. It was argued that some of the applicants qualified in the examination held in 1974 when there were three vacancies. These three vacancies should have been filled up by convening a meeting of the DPC in 1974 or so and considering those eligible candidates who had qualified in 1974. No such meeting of the DPC was held in 1974, 1975 and 1976 and still another qualifying examination was held in 1976 when two more candidates qualified. Therefore between 1974 and 1976 when there were vacancies and qualifying examinations were held, there was no meeting of DPC. The DPC met in 1977 and on the basis of their recommendations seven vacancies were filled by bunching the vacancies which had arisen in various years during or prior to 1977. The contention of the learned counsel for the applicant is that if the DPC had met in 1974 those only who had qualified by 1974 could have been considered for promotion and some of the applicants could have got the vacancies which they had to yield to others who were either not eligible in 1974 or became so through the 1976 examination or were not within the zone of consideration in 1974. He has also argued that by inducting candidates from the examinations of subsequent years, those who had qualified earlier were pushed down in the eligibility list and might have gone out of zone of consideration altogether. The learned counsel for the applicant pertinently drew our attention to the Department of Personnel & A.P., O.M. No. 22011/3/76-Estt(D)

dated 24th December, 1980 and referred to in para 12 of the first application, in which it has been laid down very emphatically that where DPCs could not meet annually, they should prepare yearwise select lists without bunching the vacancies of more than one year. This salutary principle has been laid down to protect the eligible candidates from being overtaken by the new inductees who would not have otherwise competed with them if the DPC had met in the year of the vacancies. This salutary principle has obviously been breached in the instant case before us.

The question however is whether the promotions made between 1977 and 1984 can be set aside at this juncture. The applicants had not moved the Courts earlier challenging the promotion made between 1977 and 1984. Even in the first application before us they have challenged only the select list of 1986 prepared on the basis of the DPC which met in 1985. We are thus quite hesitant to reopen the promotions made earlier even though the learned counsel for the applicants made a plea to that effect. In *Giansingh Mann vs. The High Court of Punjab & Haryana*, AIR 1980 SC 1894, *S.S. Moghe and Others vs. Union of India and Others*, AIR 1981 SC 1495 and *K.R. Mudgal vs. R.P. Singh*, AIR 1986 SC 2086 the Supreme Court has discouraged taking up of stale and delayed cases in service matters in general and promotions and select lists in particular in order to avoid sense of insecurity and demoralisation in the services. Since in the instant case the applicants have challenged the select list of 1986 only we need not reopen the promotions made by the earlier select lists ending in 1984.

In the facts and circumstances we allow the two applications to the extent indicated below :

(a) The select list of 1986 for promotion as Senior Chargeman is set aside with the direction that the respondents should re-convene the meeting of a Review DPC in accordance with the prescribed procedure and get yearwise select lists prepared for the vacancies arising in the years 1985, 1986 and 1987. In the preparation of yearwise select list only those who stood qualified in each of these years and not in subsequent years should be considered subject to their fulfilling other eligibility conditions. The Confidential Reports upto the respective years only should be considered by the DPC. The detailed provisions laid down in the Department of Personnel & A.R. O.M.No. 22011/3/76-Estt(D) of 24-12-80 and of 20th May, 1981 should be followed.

(b) The departmental qualifying examinations need not be held in a routine manner without reference to the number of vacancies to be filled up in that year. If the number of eligible candidates who are already qualified is sufficient to cover the prescribed zone of consideration (3 to 5 times the number of vacancies), the qualifying examination in that year need not be held.

-: 7 :-

If, however, the ^{qualifying} examinations are held or have been held annually, in the preparation of select list on a year to year basis as directed above only those eligible candidates who stand qualified ^{till} ~~in~~ the year of vacancy and not in subsequent years should only be considered for the preparation of that year's select list.

(c)

There will be no order as to costs.