

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 797/96

Transfer Application No.

Date of Decision 30/12/96

Vishwambhar Singh

Petitioner/s

Smt. N. W. Masurkar

Advocate for
the Petitioners

Versus

The Administrator of U.T. of Daman Respondent/s
& Diu and Dadra and Nagar Haveli & Ors.

Shri R.K. Shetty


Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S. Hegde, Member (J)

Hon'ble Shri. P.P. Srivastava, Member (A)

- (1) To be referred to the Reporter or not ? ☒
- (2) Whether it needs to be circulated to
other Benches of the Tribunal ?


(B.S. Hegde)
Member (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6,FRESCOT RD,4TH FLR,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO: 797/96.

DATED THIS 26th DAY OF DECEMBER, 1996.

CORAM : Hon'ble Shri B.S.Hegde, Member (J).

Hon'ble Shri P.F.Srivastava, Member (A).

Wishwambhar Singh,
Junior Engineer,
Electrical Department, Sub-Divn-I.
Nani-Daman.

... Applicant.

By Advocate Mrs.N.V.Masurkar

w/s.

1. The Administrator of Union Territory
of Daman and Diu and Dadra and Nagar Haveli,
Administration of Daman and Diu and Dadra
and Nagar Haveli,
Secretariate,
Daman.

2. The Development Commissioner,
Administration of Union Territory
of Daman and Diu and Dadra and Nagar
Haveli Secretariate,
Daman.

... Respondents.

By Advocate Shri R.K.Shetty.

3. Shri Antonio Fernandes,
Assistant Engineer,
Electricity Department,
Sub-Division No.II,
Gandhipara - Diu.

... Private Respondents.

By Advocate Shri G.S.Walia

ORDER

{ Per Shri B.S.Hegde, Member(J) }

Aggrieved by the Impugned Order passed by

respondents dated 25/7/96, the applicant is challenging the
same by filing this OA to quash the DPC proceedings promoting
respondent No.3 to the vacancy for the year 1990 to the
post of Assistant Engineer(Electrical).

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2. The applicant joined the service in the erstwhile Government of Goa, Daman and Diu as direct recruit Junior Engineer(Elect) on 29/3/80. He has been confirmed in that post and has been working to the satisfaction of all his superiors, and no adverse remarks has been passed against him till now. After Bifercation of the Goa State, the service of the applicant was transferred to Union Territory of Daman and Diu and now is a regular employee of Union Territory of Daman and Diu.

3. The respondents department finalised the seniority list of Junior Engineers and published in the year 1992 in which the respondent No.3 is senior most and the applicant stands at Sr.No.3. It was further submitted that the applicant was promoted to the post of Assistant Engineer(E) on adhoc basis on 8/5/90 against the vacancy of 1990 on the recommendations of Departmental Promotion Committee. Aggrieved by the said promotion of the applicant, the present respondent No.3 whose name appear at Sr.No.1 of seniority list approached this Tribunal by filing OA-298/87 with a prayer of directing the respondents to promote the present respondent No.3 being senior on adhoc basis w.e.f. 31/12/87. The Tribunal directed the respondents to promote the applicant on adhoc basis w.e.f. 30/12/87 together with all consequential benefits. Thereby the applicant was reverted as on 13/1/95. The applicant filed OA-61/95 and the said OA was finally decided by the Tribunal on 7/4/95 directing the respondents to take necessary action to fill all the post of Assistant Engineer(E) on regular basis within 4 months time. Pursuant to the direction of the Tribunal, the respondents convened a DPC on 12/9/95.

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However, the DPC result could not be declared due to stay granted by Tribunal in OA-1089/95. The OA 1089/95 was finally decided by judgement of Tribunal dated 17/4/96 directing the respondents to fill up three vacant posts of Assistant Engineer(E) on regular basis of which 2 vacant posts being of year 1987 and one vacant post being of the year 1990, in accordance with the rules. Thereafter, regular DPC was held on 25/6/96, selected two persons for the vacancy of 1987 one Shri N.M.Makwana and Shri N.N.Tandel and for the vacancy of the year 1990, respondent No.3, Shri Antonio Fernandes have been recommended.

4. In this OA, the applicant is challenging the findings of the DPC dated 25/6/96 on the following grounds.

1. The non-promotion of the applicant though he is found fit is wrong and illegal and violative of Article 14 and 16 of the Constitution of India.
2. Post of Assistant Engineer(E) being a selection post and the eligibility requirement for the same is Junior Engineer(E) and Foreman Electrical with 3/7 years regular service in the case of Degree/Diploma Holder in Electrical Engineer respectively.

The applicant is entitled for the said single post of year 1990 since respondent No.3 could not be found fit to be promoted on the ground that his ACRs for the preceeding 7 years are not good and above average and contains adverse remarks., whereas the applicant's performance record is ranging between Good and Very Good, therefore the judgement of DPC held on 25/6/96 on the relative merits of applicant and respondent No.3 is faulted and that the action of DPC is patently perverse and vitiated by malafides and therefore liable to quashed and set aside.

[Signature]

5. The applicant also prays that Respondent No.3 is to be judged unsuitable for promotion on consideration of the entire records of service before taking decision in the matter and if the adverse remarks are there in Confidential Reports then it is the duty of the Departmental Promotion Committee to take note of them and come to a decision on consideration of them.

6. Respondents in their reply have denied the various contentions of the applicant and submitted that the DPC was required to be convened pursuant to the direction of the Tribunal to the various OAs filed by respective parties and ultimately considering the facts and circumstances of the case, the DPC arrived at a particular decision.

7. During the course of hearing, the Learned Counsel for respondents furnished a copy of DPC proceedings of 25/6/96 and further stated that ~~that~~ the DPC having followed the binding rules and guidelines and arrived at the decision and since promotion is a management function in which this Tribunal is not authorised to interfere in this decision, it is contrary to the rules and guidelines. Therefore they submit that the promotion granted to respondent No.3 is in accordance with the binding rules.

8. It may be recalled that the respondent No.3 has been promoted initially on adhoc basis to the post of Assistant Engineer pursuant to the direction of the Tribunal since he happens to be the seniormost in the cadre of Junior Engineers. Thereafter, again with the direction of Tribunal in OA-1089/95 regular DPC was held to consider the eligible candidates to the post of Assistant Engineer for the vacancies for the years 1987 and 1990. Accordingly, DPC has assessed the respective merits of the candidature and selected respondent No.3 for the

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vacancy of 1990.

9. The DPC followed the DBPT guidelines of 1989 and the recruitment rules of 10/11/80. Further it is submitted that the method of promotion on adhoc and that of regular basis are quite different and that they cannot be merged with one another. But the Tribunal in its order dated 17/4/96 only directed the respondents to fill up three vacant posts of Assistant Engineer (Electrical) on regular basis of which 2 vacant posts being of year 1987 and one vacant post being of the year 1990.

10. Heard the Learned Counsel for parties. Mrs. Masurkar for applicant, Shri R.K. Shetty for official respondents 1 and 2 and Shri G.S. Walia for respondent No.3. The only question to be determined in this OA is whether the decision of the DPC is justified in the facts and circumstances of the case.

11. In this application, the applicant challenges the findings of the DPC either on the ground of malafides or it is found arbitrary. Normally decision of the DPC is not to be looked into. As rightly pointed out by the respondents, so far as promotion is concerned, it is a management function but it may be recognised there may be occasions when the Tribunal may interfere with the promotion, where it is felt that persons superseded have been so superseded on account of malafides or victimisation. Even after a finding of malafides or victimisation, it is not the function of a Tribunal to consider the merits of various employees itself and then decide whom to promote or whom not to promote. *

12. Apex Court in State of Mysore v/s. C.R. Seshadri further held that power to promote belongs to the executive and though judicial power may control or review the Government action, they cannot act as if they were executives and they cannot promote or demote any officer. They can only demolish a bad order or

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direct reconsideration of the order in correct principles.

13. In another case, the Apex Court in State of M.P. v/s. Shrikant Chapekar (1992) (1992-A3 SLJ page 73 SC) held

"It is not the function of the Tribunal/Court to assess the service record of Government servants and order his promotion on that basis."

14. During the course of hearing, the Learned Counsel for respondents furnished the DPC records for our perusal and on going through the same, it is observed as per the CAT directions at para-17 of the judgement vide its order dated 17/4/96, in the absence of ACRs, summary of the ACRs available to the earlier DPC held on 14/12/87 are to be taken into consideration for pragmatic reasons. We find that the ACRs in respect of the two candidates (1) Shri N.M.Makwana and (2) Shri N.N.Tandel are missing for the relevant period. In view of the directions of CAT, DPC decided to adopt the ACRs classification made in the earlier DPC dated 14/12/87, a copy of which is enclosed as Annexure-I. Thus the DPC gave an overall grading to the eligible officers as follows:-

- | | |
|---------------------------|------------|
| 1. Shri Antonio Fernandes | Good. |
| 2. Shri N.M.Makwana | Very Good. |
| 3. Shri Vishwambhar Singh | Good |
| 4. Shri N.N.Tandel | Very Good. |

As stated earlier Shri Makwana and Shri Tandel were considered for the post of year 1987 and only one post that was for the year 1990, for which the respondent No.3 has been promoted.

Considering the overall assessment of Junior Engineer/ Foreman (Electrical), Assistant Engineers have been selected by DPC against the vacancy for the year 1990. DPC also considered the candidature of the applicant in this OA for want of vacancy the applicant could not be accommodated for the year 1990.

15. It is a well settled principle that the comparative

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merits cannot be gone into by the Tribunal, it is only for the competent authority/D.P.C. to consider the comparative merits of the candidates and it is also well settled principle that judicial review is against a process and not against a decision taken by the competent authority.

16. We do not find any substance in the contention of the Learned Counsel for the applicant, that the D.P.C. proceedings are to be quashed. However, in the absence of any material placed before us for quashing the same nor any decision has been cited in support of the contention of the applicant, we cannot interfere with the decision taken by the D.P.C. in the selection of candidates.

17. In the result, we do not find any merit in the O.A. and in the facts and circumstances of the case, we dismiss the O.A. at the admission stage itself. No orders as to costs.



(P.P. SRIVASTAVA)

MEMBER (A).



(B. S. HEGDE)

MEMBER (J).