

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.67/2000.

Dated: 21.6.04

J.S.Kalsy

....Applicant(s)

Shri Prasad Rao

....Advocate for
applicant(s).

Vs.

Union of India & Ors.

....Respondent(s)

Shri Avinash Avhad

....Advocate for
Respondent(s)

Coram: Hon'ble Shri Anand Kumar Bhatt, Member (A),
Hon'ble Shri Muzaffar Hussain, Member (J)

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

Anand Kumar Bhatt

(ANAND KUMAR BHATT)
MEMBER (A).

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.67/2000.

Dated: 21.6.04

Hon'ble Shri Anand Kumar Bhatt, Member (A),
Hon'ble Shri Muzaffar Husain, Member (J).

Jairaj Singh Kalsy,
Z/8, Konark Pooram,
Kondhwa,
Pune - 411 048.
(By Advocate Shri Prasad Rao)

...Applicant.

Vs.

1. The Union of India,
through the Secretary to
the Government of India,
Ministry of Health and Family
Welfare, Nirman
Bhavan,
New Delhi - 110 011.
2. The Director General,
Indian Council of Medical Research,
Medical Enclave,
Ansari Nagar,
New Delhi - 110 029.
3. The Director
National Institute of Virology,
20-A, Dr. Ambedkar Road,
Pune - 411 001.
(By Advocate Shri Avinash Avhad for
Shri B.E. Avhad)

...Respondents.

: O R D E R :

{Anand Kumar Bhatt, Member (A)}

The following relief has been sought by the applicant.

(A) This Hon'ble Tribunal be pleased to call for the entire records of the Applicant and after examining the legality and proprietary thereof be pleased to quash the impugned orders dated 9.9.1997 and 6.4.1999.

(B) This Hon'ble Tribunal be pleased to direct the Respondents to review the case of the Applicant for the promotion to the post of Senior Research Officer from the date he was due i.e. 6.3.1996 and grant subsequent benefits which is illegally stopped and all other consequential benefits of AD and above thereon.

[Signature]
...2.

(C) Any appropriate relief as this Hon'ble Tribunal may deem fit and proper in the above facts and circumstances of the case of the Applicant.

(D) Cost of the application be provided for."

2. Facts of the case, in brief, are that the applicant joined as Assistant Research Officer in the National Institute of Virology (for short, NIV), Pune on 22.8.1983 in the pay scale of Rs.650-960. The applicant got an appreciation letter from Assistant Director, Head, Biochemistry and Molecular Virology which is annexed as Annexure - 'G'. According to the applicant he should have been confirmed in the post of ARO w.e.f. 21.8.1985 and he was confirmed only on 5.9.1990. Later, the applicant was promoted as Research Officer Gr. 'V' on the basis of one time assessment promotion which was considered by a Selection Committee. He was promoted as Research Officer w.e.f. 6.3.1991. He should have been confirmed after two years. However, the applicant's probation was extended by another year. The applicant's probation was extended without any notice and without any reasonable cause. The applicant was later transferred to un-connected departments even though he was recruited to carry out research in biochemical aspects of viruses in a virus laboratory. Because of his posting he was deprived of research work and their publication. The applicant was superseded twice in the five yearly assessment promotion. The applicant states that one Miss S.P.Verma was working as a Statistical Assistant and was not involved in any research/laboratory work. However, she was promoted. Similarly one Miss. C.Dayaraj was given a five yearly assessment promotion even though her name was not included in the list of eligible Scientific Officers which was issued by letter dt. 26.11.1998. The applicant did well in the

personal discussion and he was not communicated any adverse remarks in his ACRs. He has been deprived for from the promotion for no valid reasons.

3. The grounds taken by the applicant are that his performance was excellent and ^{was} appreciated by the Reporting Officer. He feels that R-3 i.e. Director of NIV is responsible for giving him unsatisfactory remarks. The applicant has come to the Tribunal with the prayer for promotion to the post of Senior Research Officer (SRO) from the date he was due i.e. 6.3.1996 without consequential benefits.

4. In reply filed by the respondents it has been stated that Ms. S.P.Verma who has been named by the applicant was initially appointed as Statistical Assistant in 1978 and before the applicant. She was later appointed to the post of Assistant Research Officer (Biostatistics) w.e.f. 1.4.1982. They have stated that Ms.S.P.Verma and the applicant were both considered for the post of promotion to Gr. V Research Officer. The applicant's performance during the probationary period was found to be unsatisfactory and his probation was extended by one year. The Respondents have denied that the applicant was transferred to in un-connected Department as there is nothing like un-connected Department in NIV. As far as the letter of Dr.F.M.Rodrigues dt. 19.4.1994 is concerned they have stated that this is only a reference letter and not an entry in the ACR and not binding. The Respondents have also stated that Ms.C.Dayaraj was promoted to the post of Research Officer on the basis of her performance and while she went to US to carry out a research assignment. The scheme of 5 yearly assessment promotion is based on performance,

ACRs and personal discussion with the selection committee which is constituted for this purpose from time to time. The selection committee consists of 5 Scientists out of which two experts do not belong to ~~ICMR~~^{NIV} who are chosen by the Director General (R-2). The selection committee assessed the present applicant first for the period 6.3.1991 to 5.3.1996. After the assessment, the selection committee did not recommend the case of the applicant for promotion to the post of SRO. The assessment committee further assessed the applicant for the period ending 31.12.1997. The said committee again did not recommend the name of the applicant for promotion to the post of SRO for the year ending 31.12.1997. This promotion in the Institute is in situ promotion and is based on the merit of the individual and the achievements during the candidate's service and it cannot be claimed on the basis of tenure of service/seniority.

5. In oral submissions Shri ^aPrasad Rao for the applicant stated that the applicant was promoted as Research Officer on 6.3.1991 because the post of ARO was abolished and this has to be considered as upgradation only. No adverse ACR was communicated to him, the presumption is either the adverse entries were not communicated or they were down-graded by the Selection Committee.

6. The applicant was shifted from post to post and therefore, his work could not be taken into account.

7. He stated that the applicant's work has been mentioned in the two annual reports of 1999-2000 and 2000-2001. He has also mentioned the three recommendation letters which has been enclosed in the O.A.

7. For the respondents Shri Avinash Avhad said that the

...5.

assessment committee saw his ACR from 1991-92 to 1995-96. He stated that the applicant has sought relief against the order dt. 9.9.1997. However, the OA was presented by the applicant on 24.1.2000 and therefore this relief is barred by limitation. This kind of promotion is a merit promotion based on personal discussion, ACR and Research carried out by the applicant and achievements. He was considered twice by a regularly constituted Selection Committee, but he was not found fit for promotion under the scheme.

8. We have considered the case. The scheme of merit promotion is a kind of Flexible Complementing Scheme. The promotion is in situ and it is based on assessment of 5 years' performance and record. The respondents produced the ACR folder of the applicant, the proforma for the 5 yearly assessment filled by the applicant and his Controlling and Supervisory Officers and the proceedings of the Selection Committee. The applicant was examined on the basis of ACR and his performance. His ACR for the period 1991-92 to 1995-96 were considered. The applicant has got average ACR for the period 6.3.1991 to 15.10.1991. For the period 16.10.1991 to 5.3.1992 there is an entry by the Reviewing Officer which can be considered adverse. However, it does not seem to have been communicated. Again for the period 1992-93 the grading given by the Reporting Officer is 'very good'. However, there is adverse entry by the Reviewing Officer. It is not known whether this was communicated to the applicant. For the year 1993-94 he has been given average grading and again the report by the Reviewing Officer can be considered adverse. For the year ending 31.3.1995 his grading by the Reporting Officer is average.

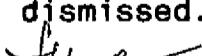
to good, but the Reviewing Officer has not considered him fit for promotion. Almost the same is the case in the report for the year ending 31.3.1996. The ACR folder does not show anywhere that these adverse entries have been communicated to the applicant so that he ~~should~~ represent against them. However, in addition to the adverse entries in the ACR which ~~is~~ ^{strictly} directly speaking should not be considered if they have not been communicated to the applicant, the applicant has not been able to show any ~~complete~~ achievement or research work ^{work the same} during this period. The applicant was duly assessed by assessment committee and it is difficult to believe that the committee did not take into account any research work which the applicant could put across to the committee so that he could be considered for promotion under the scheme. The applicant's contention is that he did work on Whole Body Section of the experimental animals. However, he must have mentioned the work which was being performed by him to the committee. If the work had been upto the mark, inspite of the ACR entries he could have been considered for promotion under the scheme which is not the case here. The assessment is based on ACR entries, performance and achievements and personal discussion before the Expert Committee. So even if the ACR entries are not taken into account, otherwise also his work was not found adequate for the promotion by the Expert Committee which consisted of outside experts also. We do not find any evidence of ~~descent~~ ^{dissent} by any member of the committee in regard to the assessment of the applicant. The conclusion arrived at by the committee is unanimous.

9. In Secretary (Health), Department of Health & FW v. Anita Puri {1996 AIR SCW 4041}, the Apex Court has held that the Courts should be slow to interfere with the evaluation and selection made by an expert body like Public Service Commission unless allegations of mala fide are established. The relevant portion of the said order is as follows :

" It is too well settled that when a selection is made by an expert body like Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by the experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions on such matter to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, than the court should not ordinarily interfere with such selection and evaluation."

It is undisputed that the scheme of 5 yearly assessment for promotion to the next higher grade/advance increments requires assessment by Expert Committee consisting of 5 members and apart from ACRs they have to assess the performance and achievements of the Officer, as well as, personal discussion. Even if the fact that the ACRs where adverse comments^{were} not communicated to the applicant should not have been taken into account by the assessment committee, the committee did assess the applicant on the other two criteria and did not find him suitable for promotion. In the light of the observation made in the above case by the Apex Court we do not find adequate reasons to interfere with the assessment made by the selection committee.

O.A. is dismissed. No costs.


(MUZAFFAR HUSAIN)
MEMBER (J)

B.


(ANAND KUMAR BHATT)
MEMBER (A).