

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 558/2001.

Thursday, this the 28th day of February, 2002.

Hon'ble Shri Justice Ashok Agarwal, Chairman,
Hon'ble Smt. Shanta Shastry, Member (A).

1. V.K.Nair,
 2. S.S.Bhosle,
 3. D.A.Jadhav,
 4. S.G.Telkar,
 5. C.S.Ghorpade,
 6. G.P.Manoli,
- Chargeman Grade - II,
Controllerate of Quality Assurance (A),
Kirkee, Pune - 411 003.
(By Advocate Shri S.P.Saxena)

...Applicants.

v.

1. The Union of India,
through the Secretary,
Ministry of Defence,
DHQ, PO,
New Delhi - 110 011.
 2. The Director General of Quality
Assurance, Ministry of Defence,
South Block,
DHQ, PO,
New Delhi - 110 011.
 3. Director of Quality Assurance
(Armaments), 'H' Block,
DHQ, PO, New Delhi.
 4. The Controller,
Controllerate of Quality
Assurance Establishment (A),
Nehru Road, Kirkee,
Pune - 411 003.
 5. The Sr. Quality Assurance Officer,
Sr. Quality Assurance Establishment (A),
Kirkee,
Pune - 411 003.
- (By Advocate Shri R.R.Shetty)

...Respondents.

: O R D E R (ORAL) :

Smt. Shanta Shastry, Member (A).

The applicants are working as Chargeman Gr.II under the
Respondents No.4 and 5. A DPC was held in the year 1999 for

...2.

preparing a panel for promotion from Chargeman Gr. II to Gr.I posts for the vacancies in the year 2000. Accordingly, after proper selection, a panel was published by the Respondents on 31.12.1999. The applicants though eligible and in the zone of consideration as per their seniority were not included in this panel. Further promotion orders were issued on 11.4.2000. Some junior SC / ST employees were also included in the panel. According to the applicants, while preparing such a panel, the respondents had not calculated the vacancies of Chargeman Gr.I for the year 2000 properly. They failed to take into account some anticipated vacancies caused by way of retirement, promotion in higher grades or non-consideration of promotions in the lower grade posts. This was in contravention of the model calendar of DPC.

2. The Learned Counsel for the applicant submits that the Non-Gazetted Officers Association had filed OA No.302/2000 before the Bangalore Bench of the Tribunal for redressal of the above said grievance. The Tribunal allowed the OA by directing the respondents to take into consideration the vacancies that would have arisen due to anticipated promotions in the higher grades also and to prepare a panel by constituting a Review DPC and take further consequential action. An order was passed on 13.12.2000 by virtue of the aforesaid decision of the Tribunal, the Respondents held review DPCs and issued promotion orders. The main grievance of the applicants now is that they should have been included in the panel of the year 2000 and should have been promoted from the date from which those in the panel of 31.12.2000 were promoted earlier i.e. from 11.4.2000. The applicants have also made another prayer in the OA in para (e)

...3.

12

seeking a direction to the Respondents to promote the employees including the applicants to the post of Chargeman Gr.I on the basis of the Single Panel and to direct the respondents to promote the applicants from 11.4.2000 when their juniors Shri Shetty and Shri Lavande had been promoted. The Learned Counsel for the applicants is not now pressing for promotion from the date applicants juniors Shri Shetty and Shri Lavande who belong to the reserved category were promoted. They are not challenging their promotion. All that the applicants are asking for is that the Respondents should have published only a single panel for all the vacancies that arose in 2000. In short, the applicants have now been selected in the review DPC's held on 19.2.2001 and 16.4.2001 and have been promoted on later dates than those selected in the panel of 31.12.1999. Instead of being promoted w.e.f. 23.3.2001 and 23.5.2001 they should have been promoted from 1.4.2000.

3. The Respondents are opposing the same. According to them, they held the review DPCs and the applicants have been rightly promoted after having been declared successful in the selections held in the review DPCs held on 19.2.2001 and 16.2.2001, they cannot claim promotion with retrospective effect. Also no juniors to the applicants have been promoted. Further, the Learned Counsel for the Respondents submits that the applicants have been granted due seniority. Therefore, they should have no grievance whatsoever. Not having worked in the vacancies of 2000 and the respondents having kept those vacancies without being filled, applicants cannot get retrospective promotion going by the principle of "No Work No Pay". The Learned Counsel

...4.

M

for the respondents has also taken us through OM dt. 10.4.1989 of the DOP & T wherein guidelines have been prescribed by the DOP & T for holding of review DPC's and the procedure has been laid down. According to the Learned Counsel, therefore, it would be going against the guidelines, if the applicants were to be granted promotions w.e.f. the date of the vacancies. Learned Counsel also pleaded that the applicants have approached this Tribunal beyond the period of limitation as the cause of action arose in 1999 when the first DPC was held and the panel was declared on 31.12.1999. Therefore, the OA does not deserve to be considered.

4. We have heard the Learned Counsel for both sides and have given careful consideration to the arguments advanced. We find that there was a mistake on the part of the Respondents in not calculating the vacancies properly. It is by virtue of the Judgment of the Bangalore Bench of the Tribunal that the Respondents tried to rectify the mistake by holding the Review DPC's as directed by the Bangalore Bench. The Judgment of the Bangalore Bench is dated 13.12.2000. The subsequent panels which were prepared on 19.2.2001 and 16.4.2001 in pursuance of the aforesaid Judgment have given them the real cause of action and therefore, it cannot be said that the application is barred by limitation. Secondly, it is not the applicants' fault that in spite of the vacancies, the respondents did not consider them for selection for the year 2000 itself. It was entirely the respondents mistake which they have rectified. Having rectified the mistake, the applicants cannot be now placed in a panel other than the one which was prepared for the vacancies of the year 2000. The Learned Counsel for the applicants, in fact,

...5.

M

argued that the applicants are not being considered for promotions in normal course even for the vacancies of 2001 on the ground that review DPCs have been held for them separately. So they are not eligible for being considered for regular panel of 2001. In the circumstances, they have to belong to the panel of 2000 only when the vacancies accrued and therefore their promotion should be w.e.f. 11.4.2000 when the candidates on the part panel were promoted. In our considered view, the respondents' stand is not acceptable nor is it justified. We are of the considered view that the applicants should have been placed in the same panel as that of 2000. They cannot be discriminated against as the panel was supposed to be for the year 2000 based on the vacancies of 2000. We, therefore, hold the applicants entitled to be promoted from 11.4.2000 when the selectees of the earlier panel were promoted. Accordingly, the Respondents are directed to promote the applicants from 11.4.2000 with all consequential benefits. The OA is allowed. No costs.



(SHANTA SHASTRY)
MEMBER(A)



(ASHOK AGARWAL)
CHAIRMAN

B.