

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 167/90.

~~XXXXXX Application XXXX~~

DATE OF DECISION: 12-9-94

Patrick A.D. Fernandes, Petitioner

Shri V. S. Masurkar with  
Smt. N. S. Masurkar, Advocate for the Petitioners

Versus

Union Of India & Others, Respondent

A.  
Shri S. Rao for  
Shri R. M. Agarwal, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri M. R. Kolhatkar, Member (A).

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

M.R.Kolhatkar

(M. R. KOLHATKAR)

MEMBER (A).

OS\*

(16)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH.

O.A. NO.: 167/90.

Shri Patrick A. D. Fernandes ... Applicant

Versus

Union Of India & Others ... Respondents.

CORAM :

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

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Shri V. S. Masurkar with  
Smt. N. S. Masurkar,  
Advocate for the applicant.

2. Shri S. Rao for  
Shri R. M. Agrawal,  
Advocate for the respondents.

JUDGEMENT :

DATED : 12-9-94

( Per. Shri M. R. Kolhatkar, Member (A) ).

1. The applicant was appointed as Assistant Lineman/Wireman in the Union Territory of Goa, Daman & Diu on 07.09.1968. He was promoted as Junior Lineman/Wireman on 03.07.1974. He was deputed for training in the year 1985. He is impugning the order dated 15.02.1990 at page 15, which reads that on recommendations of the Departmental Promotion Committee, the respondent nos. 3 and 4 were promoted to the post of Foreman in the scale of Rs. 1400-2300 in the Electricity Department, Daman.

It is an admitted position that the respondent no. 3 is senior to the applicant. The grievance of the applicant is that the respondent no. 4 Raman Mauji, who is junior to the applicant, was <sup>illegally</sup> promoted to the post of Foreman. According to the applicant, the D.P.C. which met on 22.01.1990, has departed from established norms and practices and made a selection which is discriminatory, ~~betrays~~, non-application of mind and is biased. The applicant represented against the denial of promotion to him but there was no reply. He has therefore sought the relief of quashing the Impugned Order and ~~of asking~~ the Daman & Diu administration to review the matter.

2. The respondents have ~~resisted~~ the claim of the applicant. ~~There is no~~ dispute as to the recruitment rules, which envisage recruitment of 65% by promotion of which, 15% should be from the grade of Lineman/Wireman, to which the applicant belongs. It is contended by the Respondents that there were ~~two~~ posts and it was decided to fill up ~~both~~ the posts by promotion from among the Lineman/Wireman with ten years' experience as per rules. The Departmental Promotion Committee considered the confidential reports of all the candidates and after making assessment of their performance, as reflected in the confidential reports, the D.P.C. graded the applicant as 'Good' and Raman Mauji, Respondent no. 4 and Naran B. Patel, who ~~is~~ not joined as a party, ~~both~~ of whom are junior to the applicant, were categorised as 'Very Good'. They found a place in the panel and since there were only two vacancies, Shri F.P.S. Nunes, Respondent no. 3, who is senior to the applicant and

Shri Raman Mauji, respondent no. 4, who is junior to the applicant, came to be appointed. According to the respondents, there is no merit in the contentions of the applicant, as everything has been done as per rules.

3. According to the applicant, the Departmental Promotion Committee has failed to follow the guidelines on Departmental Promotion Committees, of which a copy has been produced. These guidelines envisage in para 6.2.1 (e) that the D.P.C. should not be guided merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that some times the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.

4. As requested by the applicant, the respondents were directed to produce the original Confidential Reports of the employees in question. On perusal of the C.Rs., there does not appear to be any scope for re-classification of the grading given by the D.P.C. However, the Learned Counsel for the applicant, brought to our notice the following provisions of the guidelines on Departmental Promotion Committees, which according to him, have not been complied with. They are reproduced below :-

"6.3.1 The list of candidates considered by the DPC and the overall grading assigned to each candidate, would form the basis for preparation of the Panel for promotion by the DPC. The following principles should be observed in the preparation of the panel :

(i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts a bench mark grade would be determined for each category by selection method. For all Group 'C', Group 'B' and Group 'A' posts ~~upto~~(and excluding) the level of Rs. 3700-5000 (excepting promotions for induction to Group 'A') posts or services from lower groups, the bench mark would be 'Good'. All officers whose overall grading is equal to or better than the bench mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained in each of them provided that each one of them has an overall grading equal to or better than the bench mark of 'Good'.

5. These guidelines apply to the post~~upto~~ the level of Rs. 3700-5000. There is no dispute that the present post is below this level. The guidelines envisage that the officers are to be arranged in the order of their inter se seniority, provided that each one of them has an overall grading equal to or better than the bench mark of 'Good'.

6. There is no doubt that the applicant has the overall grading of 'Good'. He therefore satisfies the bench mark. There is no explanation forthcoming as to why the D.P.C. departed from the guidelines and promoted respondent no. 4, who is 'very good' but who is junior to the applicant, above the applicant in the panel. This action of the D.P.C. is clearly in violation

M of the guidelines. There is therefore, no doubt that the name of the applicant, on the basis of the material before the D.P.C. and in the light of the guidelines, was required to appear at Sl. No. 2 and as there were two vacancies only, he ought to have been promoted from 15.02.1990. We therefore dispose of this O.A. by passing the following order :-

Order :

- (i) The O.A. is allowed.
- (ii) Respondent No. 1 and 2 are directed to consider the applicant for promotion in view of what is stated by us, with effect from 15.02.1990 and if promoted, to give him all consequential benefits including pay fixation and arrears of pay on the basis of pay fixation with interest @ 12% P.a.
- (iii) Incase the applicant has been denied further promotion, on the basis of his non-promotion in 02/1990, he may also be considered for that promotion by calling a further Review D.P.C.
- (iv) There would be no order as to cost.

M. R. Kolhatkar

(M. R. KOLHATKAR)

MEMBER (A).

B. S. Hegde

(B. S. HEGDE)

MEMBER (J).

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