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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 123/91

Transfer Application No: _____

DATE OF DECISION: 12.1.1995

Shri V.Srinivasan & Ors. _____Petitioner

Shri S.Natarajan _____Advocate for the Petitioners

Versus

Union of India & Ors. -----Respondent


Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

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

1. To be referred to the Reporter or not ? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *no*


(P.P.SRIVASTAVA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 123/91

Shri V.Srinivasan & Ors. ... Applicants

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

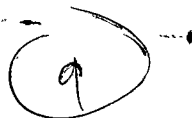
Shri S.Natarajan
Advocate
for the Applicants

ORAL JUDGEMENT

Dated: 12.1.1995

(PER: M.S.Deshpande, Vice Chairman)

By this application the applicant challenges the process of selection conducted by the respondents for filling up the post of Security Officers and the list prepared in pursuance thereof as referred in the letter dated 9.1.1991. The applicant was employed as Assistant Security Officer (Group C) with Bhabha Atomic Research Centre. By Circular dated 29.8.1990, it was made known that the post of Security Officers in the scale of Rs.2000-3200 were to be filled, the eligibility for being considered was minimum of 5 years of continuous service on regular basis as Assistant Security Officer. 30 Assistant Security Officers of the Research Centre were called for interview on 6th and 7th December 1990 and the select list was finalised in the first week of January, 1991. The only challenge pressed in this petition by learned counsel for the applicant was that the selection process was conducted by holding interviews though there was no rule enabling the selection committee to hold interview



and allowing the performance at the interview to weigh the assessment of the candidates and secondly placing the persons who had secured same Bench Mark "Good" in the select list according to merits, i.e. on the basis of marks secured and this was in violation of the rules prescribed.

2. The respondents did not dispute the position that interviews were held by the selection committee for the purpose of selecting the candidates and that the panel was prepared on the basis of marks obtained by the candidates. This is being justified on the basis that the interviews were being held from time to time and since the panel was to be prepared on the basis of selection, it was open to the respondents to give ratings to the candidates for being placed in the panel on the basis of marks secured by them at the interview.

3. We heard this case for considerable length of time and adjourned it for today at the instance of learned counsel for the respondents in order to enable him to produce before us the record of DPC proceedings. Though the matter was Part-Heard, neither the learned counsel for the respondents appeared before us nor the DPC proceedings were made available to us for our perusal and we are, therefore, obliged to proceed in this case on the basis of the pleadings of the parties.

4. Our attention was drawn on behalf of the applicants to the Guidelines on Departmental Promotion Committees prescribed by the Department of Personnel & Training O.M. No. 22011/5/86-Est.(D), dated 10.4.1989. Para 4 prescribed the procedure to be observed by DPC and Para 5 thereof reads as follows :-

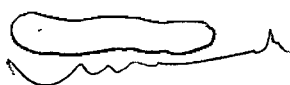
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"5. No personal interview unless specifically provided in the Rules — Each Departmental Committee should decide its own method and procedure for objective assessment of the suitability of the candidates. No interviews should be held unless it has been specifically provided for in the recruitment rules for the post/service. Whenever promotions are to be made by the method of 'Selection' by D.P.C. and the Administrative Ministry desires that an interview should form part of the selection process, necessary provision should be made in the recruitment rules."

By the Circular dated 29.8.1990 (Ex.A-1) applications were invited from eligible candidates who were interested in being posted to the Department of Atomic Energy for the post of Security Officers. Clause 2.3 states that:-

"2.3 In the case of candidates on deputation from other Departments, their applications may be forwarded to Dy. Establishment Officer (R-III) and simultaneously the lending Department may be addressed for obtaining their concurrence, without which the applicant is not likely to be admitted for interview."

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The statement on behalf of the respondents that the candidates will be interviewed for the purpose of their selection was made known and the applicants had prepared for the interview. The interviews were being held for such selection even before and all the applicants were required to undergo the interviews, no prejudice will be caused to the applicant. It is, however, clear from Para 5 of the Guidelines which we have extracted above that holding of interviews was specifically forbidden and interviews can be held only after rules were framed for forming interviews as a part of selection process. The respondents admitted that there were no rules framed for the purpose in the present case. The respondents drew our attention to the Circular issued on 11.8.1978 by the Department of Atomic Energy, at the end of Para 3, it was mentioned that "after screening all the applications, Controller, BARC will convene a meeting of the respective




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Selection Committee and the Committee will take necessary steps to fill up the vacancies." The contention was that this enables the Selection Committee also to hold interviews. Since no rules were framed and no specific provisions were made by the Office Memorandum dated 11.8.1978 for holding of interviews, ~~the prohibition~~ to hold the interviews would still apply and no refuge can be taken under the last sentence of Para 3 because the necessary steps to be taken by the Committee will be subject to rules already in force. We, therefore, find that it was not permissible for the respondents to hold interviews which were strictly forbidden as a step for filling up the vacancies. We were anxious to know whether any marks were given at the time of holding interviews and therefore we had called for the record of DPC and they were not produced. Even the learned counsel for the respondents was not in a position to give us the details. However, the pleading of the respondents in Sur-rejoinder, Para 9 filed on 10.4.1992 would make the position obvious.

"9. With reference to paragraph 8, I say that the post of security officer is a selection post and the meritorious candidates will find a place in the panel depending on the performance in the interview. In such cases juniors may rank above the seniors in the select list. Hence, the contention of the applicant is not maintainable."

It is, therefore, clear that the assessment of the candidate was based on the performance and interview which unmistakably point out that interviews played a major role in the selection process though it was forbidden.



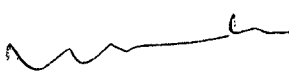
5. The next rule 6.3.1 is regarding Principles to be observed and preparation of panel :-

"The list of candidates considered by the D.P.C. and the overall grading assigned to each candidate, would form the basis for preparation of the panel for promotion by the D.P.C. 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 of posts for which promotions are to be made by selection method. For all Group 'C', Group 'B' and Group 'A' posts up to (and excluding) the level of Rs.3,700-5,000 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 by each of them provided that each one of them has an overall grading equal to or better than the bench-mark of 'Good'."

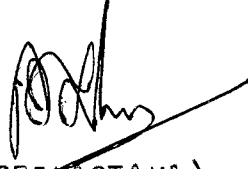
6. The position therefore is that ^{if} any of the candidates gets a Bench-Mark of 'Good' or above, the panel has to be prepared in the order of original seniority in the lower cadre. This rule was not followed because admittedly the respondents prepared the panel and gave the ranking on the basis of marks obtained by the candidates selected at the interview. The order of seniority was not maintained while preparing the panel and this was obviously contrary to the rule cited above.

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7. The learned counsel for the applicant urged that we should direct the respondents to prepare the panel by ignoring the marks obtained by the candidates at the interview. Since we have already indicated that interviews played a significant role in the process of selection and the selection was made on the basis of the interviews, the entire selection process was vitiated and cannot be supported. It is not merely a question of re-arranging the candidates who were selected in the interview in the order of seniority, but following a vitiated selection process amounting to an illegality by holding interviews and that would go to the root of the selection. We, therefore, quash the selection resulting in the panel prepared on 9.1.1991 and direct the respondents to hold a fresh selection again in accordance with the rules.

8. Shri M.I.Sethna, Counsel for the respondents appeared before us when the judgement was being dictated and we heard him before the judgement was being pronounced.



(P.P.SRIVASTAVA)
MEMBER (A)



(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

R.P.No. 51/95
in

OA.NO. 123/91

Shri V.Srinivasan & Ors.

... Applicants

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Tribunal's Order By Circulation
(PER: P.P.Srivastava, Member (A))

Dated: 31.5.95

By this review petition the original respondents have submitted that the judgement passed in OA.123/91 dated 12.1.1995 may be reviewed. The respondents had been instructed to produce the proceedings of the DPC. However, even though the matter was adjourned and was kept as Part-heard for producing the proceedings of DPC, the same were not produced when the case was called again. This has been brought out in the judgement in Para 3.

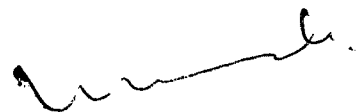
2. The only challenge in the original petition was that the selection process was conducted by holding interviews while there was no rule enabling the selection committee to hold interview and allowing the performance at the interview to weigh the assessment of the candidates. Nothing new has been brought out in the review petition which was not substantially brought out in the written statement of the respondents in the original OA, except that the original respondents have brought out that the marks of the interview have not substantially altered the result and out of the applicants in the original application



except Shri D'Souza none would have been affected. This position does not in any way affect the basic premise which has been held in the original judgement. Since we have held that the interviews could not be held in terms of the rules and the selection was made on the basis of interviews, the entire selection process was vitiated and cannot be supported. We do not find any new material in the review petition which would warrant any change in the above position. The review petition is, therefore, dismissed in-lemine.



(P.P.SRIVASTAVA)
MEMBER (A)



(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.