

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 922/92

~~Transferred Application No.~~

Date of Decision : 8.6.95

R.K. Balani

Petitioner

Applicant in person

Advocate for the
Petitioners

Versus

Union of India & Others

Respondents

Shri Sureshkumar for Shri M.I. Sethna

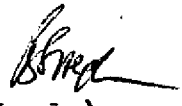
Advocate for the
respondents

C O R A M :

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 ? y
- (2) Whether it needs to be circulated to y
other Benches of the Tribunal?


(B.S. Hegde)
Member (J)

ssp.

BOMBAY BENCH

R.K. Balani	Applicant
v/s			
Union of India & Others	Respondents

APPEARANCE

- ### JUDGEMENT

Dated: 8.6.95

(Per: Hon'ble Shri B.S. Hegde, M(J)).

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'SG' i.e. to the pay scale of Rs. 5100-6300 in the year 1989. His main grievance is that though he is the senior most scientific officer, he has been overlooked and his juniors have been promoted. He has not cited any rule under which the Department has not adhered to such rules in giving promotion to others nor any malafide has been alleged against any individual officer.

2. In reply, the Respondents have contended that the allegations made in the Application are vague and he has praised his own work without being recorded in his A.C.Rs. The Respondents vide their impugned communication informed the Applicant that his allegation is found to be baseless and his contention that he has not been sent on foreign deputation and has not been appointed as Section Head is misconceived because the Applicant has not established that he had a right to be promoted to the scale of Rs. 5100-6300 and that they have denied most of his contentions which are surmises and not based on facts. It is not a matter of right that he should be appointed as Section Head; that depends upon various conditions including the foreign deputation which depends upon performance and calibre of the officer concerned.

3. We have perused the pleadings of the parties and heard the Applicant in person and Shri Sureshkumar counsel for the Respondents. The Tribunal vide its order dated 5-4-1995, after hearing the parties, directed the Respondents to produce the proceedings of the Scrutiny Committee/Selection Committee and the guidelines prescribed for promotion. Accordingly, the Respondents during the course of the hearing produced the proceedings of the

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Screening Committee and the ACRs of the Applicant and his juniors Shri J.G. Gupta and Shri Sudhirkumar Jain who have been promoted at the appropriate time. We have perused the ACRs of the Applicant as well as Shri Gupta and Shri Jain. Shri Gupta was appointed as 'SF' in 1987 and he was eligible to be promoted as 'SG' in 1991; however, Shri Gupta has taken voluntary retirement on 20-11-1991. In so far as Shri Jain is concerned, he was eligible to be promoted ^{in 1992} and he was promoted on the basis of his excellent performance. On perusal of the ACRs, we find that the ACRs of both Shri Gupta as well as Shri Jain are far superior than the Applicant. As a matter of fact, the Applicant's performance has gone down after 1991 onwards. It is not the contention of the Applicant that he has not been considered by them in 1989 as well as in 1990. His name was considered but not selected on the basis of his ACRs and the performance of the Applicant. It is a well known fact ^{that} it depends upon the performance of the official. We have perused the procedure in giving the promotion and making appointments in DAE Establishments and the guidelines in this regard. The Department has laid down various guidelines for promotion of the officers which is crystal-clear that a further promotion is not depending upon filling up of vacancy but depending upon the performance of the officer. It clearly says that in the system described therein a post with a particular pay scale is not filled simply because it has fallen vacant, and its functions may be discharged by a new incumbent carrying a lower pay scale. Conversely, a scientist deserving promotion because of the merit of his work is never denied promotion because no vacancy exists. A suitable post is always created at the level at which the particular scientist should be, etc.

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The guidelines have laid down various procedure for promotion to higher posts which is a well established principle not being challenged by the Applicant in this O.A. In other scientific departments, further promotion of scientist is called 'Flexible Complementing Scheme' where promotions of scientists are made in situ irrespective of availability of the vacancy on the basis of performance and merit of the scientist. The post itself is upgraded in case the candidate is found suitable for being given higher pay scale. The selected candidate is first considered by the internal screening committee before they are sent upto the Trombay Scientific Committee with a note giving reasons for such recommendations and pay record sheet of the scientist. The Selection Committee interviews the candidates together with report of the Head of the Division and the work of the candidate during the last few years as revealed in his confidential report. The recommendation of the selection committee is sent to the Director of the Establishment for promotion or appointments to higher grades etc. As stated earlier, the Applicant has failed that he had right to be promoted nor was required to be sent on foreign deputation. The appointment as Section Head depends upon calibre of the officer irrespective of seniority. All these things such as appointment as Section Head, sending on foreign deputation are self-proclaimed claims and not based on any violation of any rules nor right existing to claim such posts.

4. It is well established principle that whenever promotion to higher post is to be made on the basis of merit, no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone

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It is not sufficient that in his ACRs he has recorded that his service is satisfactory. An officer may be capable of discharging the duties of the post held by him but he may not be fit for higher post. The Court is not by its very nature competent to appreciate the abilities or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled up by selection, especially scientists. The duties of such posts may need skills of different kinds. The methods of evaluation of the abilities or the competence of persons to be selected for such posts have also become now-a-days very much refined and sophisticated and such evaluation should, therefore, in the public interest ordinarily be left to be done by the individual or a committee consisting of persons who have the knowledge of the requirements of a given post to be nominated by the employer. It is true that the process of selection adopted by the committee is always just and fair. It is only when the process of selection is vitiated on the ground of bias, malafide or any other vitiating circumstances other considerations will arise. In the instant case, where the Applicant's name was considered but found not suitable on the basis of performance and the confidential reports.

5. For the reasons stated above, we find that the Applicant has not made out any case for our interference, since further promotion of the Applicant is based on merits and performance (selection) and the same was done

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on the basis of Applicant's merits vis-a-vis others. In the circumstances, we find no merit in the contention of the Applicant and the same is liable to be dismissed. Accordingly, the O.A. is dismissed with no order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

ssp.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No. 77/95 in
Original Application No. 922/92

R.K. Balani

... Applicant

V/s.

Union of India and others.

... Respondents.

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

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

Tribunal's order on Review Petition No. 77/95 by
Circulation.

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

Dated: 3

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This Review Petition has been filed
by the applicant himself seeking review of the
judgement dated 8.6.95 in Original Application No. 922/92.

2. On perusal of the judgement we find that
O.A. has been disposed of on the material evidence
on record and the applicant's further promotion is
based on merits and performance (selection). We
do not find any lacuna or loop hole in the selection
made by the respondents on the basis of applicant's
merits viz-a-viz others. As rightly pointed out in
the judgement that whenever promotion to the higher
post is to be made on the basis of merit, no officer
can claim promotion to the higher post as a matter
of right by virtue of seniority alone. On perusal
of the ACRs we came to the conclusion that the juniors
who were promoted/selected
were far superior than the applicant, therefore,
he could not be considered. In the Review Petition
the applicant has not pointed out any error apparent
on the face of the record.

3. The law is well settled, that the scope of
the Review petition is very limited and the Review
Petition is maintainable only if there is an error

apparent on the face of the record or some new evidence has come to notice which was not available even after exercise of due diligence or any other sufficient reason. The Review Petition cannot be utilised for rearguing the case traversing the same ground again.

4. On perusal of the Review Petition it is clear that none of the ingredients referred to above, have been made out to warrant a review of the judgement especially when the O.A. was disposed of on merits and on the materials available on the record. This Review petition has not brought out any new facts ^{but} ~~stating~~ ^{ed} the same which ^{were} ~~was~~ agitated in the O.A.

5. In the circumstances, we are of the opinion, that neither an error on the face of the record has been pointed out nor any new facts have been brought to our notice calling ^{for} the review of the judgement. Keeping in view of the provisions of the order 47 Rule 1 read with section 115 of the GPC, the grounds raised in the Review Petition are more germane for an appeal against the judgement referred to above, and not for review of the judgement. The Review Petition is, therefore, dismissed.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

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