

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 943/92 /199

Date of Decision: 6.2.97

Gangadhara Rao

Petitioner/s

Mr. V M Bendre

Advocate for the
Petitioner/s

V/s.

U.O.I. & 8 ors.

Respondent/s

Mr. R K Shetty for R.1-4

Advocate for the
Respondent/s

CORAM:

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

Hon'ble Shri D.C. Verma, Member(J).

- (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
Member(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GUIDESTAN' BUILDING NO.6
PREScot ROAD, MUMBAI 400001

O.A. NO. 943/92

DATED: 6th FEBRUARY, 1997

CORAM: Hon. Shri M R Kolhatkar, Member(A)
Hon. Shri D C Verma, Member(J)

Shri Gangadhara Rao
1/1 Type D CGS Colony
Ghatkopar West
Bombay 400086
(By Adv. Mr. V M Bendre)

Applicant

v/s.

1. Union of India
through Secretary
Ministry of Labour
Shram Shakti Bhavan
Rafi Marg
New Delhi 110001 & 8 ors.
(Respondents 1 to 4
By Mr. R K Shetty, Counsel)

Respondent

ORDER
[Per: M R Kolhatkar, Member(A)]

Heard Mr. V M Bendre, counsel for the applicant and Mr. R K Shetty, counsel for the Respondents Nos. 1 to 4. None for the private respondents. We have also perused the proceedings of the DPC dated 3.2.88.

2. This is a second round of litigation. In O.A. No. 531/96 decided by this Tribunal on 4.2.92 the selections made as a result of the DPC dated 30.5.91 were quashed and set aside on the short

ground that the Government order for constitution of DPC includes a Deputy Secretary, DGE&T who is a Member of DPC, but the respondents failed to invite him for the DPC and therefore he did not attend and thus the DPC was not validly constituted. So far as the selections which were quashed are concerned, respondents state that proposals for convening a fresh DPC have been sent to the UPSC. This was stated in the reply dated 23.10.1992. It might be that the DPC might have been held but that is not material for deciding the grievance in this O.A.

3. The Applicant has challenged the selections made to the post of Director in the scale Rs.4100-5300 vide order dated 24.8.1992 at p.23. The grievance in particular is that V.Ananthanarayan whose selection as Joint Director was allegedly quashed and set aside by the Tribunal vide its judgment dated 4.2.92 in OA.No.531/91 has been promoted from the post of Joint Director to the post of Director. The Counsel for Applicant contends that when the Review DPC in terms of the direction of the Tribunal has not taken place the question of considering Ananthanarayan for the next post of Director does not arise.

4. The grounds for challenging the Office Order dated 24.8.1992 are set out in the O.A. as under:

1. The applicant states and submits that the respondents have not amended the recruitment rules which was mandatory and the said recruitment rules cannot be said to have been in force as on today for the post of Director/Additional Director of Training/Regional Director, in terms of the today's conditions of service. No amendments in the recruitment rules as required under relevant law, to have statutory force for implementing under Article 309 of the Constitution of India has been carried out and notified in the Gazette.

2. The DPC is constituted and convened for violating Article 14 and 16 of Constitution of India as such the entire process is ultravirous to Article 14 and 16 of the Constitution of India and is liable to be struck down.

3. The constitution of DPC is not made following rules in force and also the same has not been approved by the Department of Personnel and Training. In addition to the above the DPC constitution is not notified in the Gazette thus rendering it a mere committee rather than a statutory body for making appointments on behalf of President of India.

4. None of the reverted officers could have been considered by the DPC and promoted under the Recruitment Rules, as neither they will be in the seniority list after their reversion nor in the zone of consideration.

5. The applicant states and submits that the reverted officers could have been considered only after relaxing the Recruitment Rules by the Department of Personnel and Training and the Union Public Service Commission, after following due process of law and no approval is obtained by the Respondents in this regard.

5. In our view none of the grounds is material excepting the ground at Sr.No.4. So far as other grounds are concerned the department has stated that the question of amendment of rules is under examination. The applicant does not dispute that the selections which had taken place are in terms of unamended rules. What the counsel for the applicant appears to mean is that the Review DPC has not taken place in terms of the Tribunal's order and the respondents were required relax the relevant rules for consideration of Mr. V Ananthanarayan to the post of Director and that no such relaxation appears to have been made. In our view, the consideration of Mr. Ananthanarayan's case did not involve any relaxation at all. On

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perusal of the written statement of the Respondents it appears that they did commit certain errors in filing Annexure R-4 to the O.A.No.531/91 wherein the name of Ananthanarayan is shown in the list of officers in the zone of consideration for the 1987 vacancies. The relevant para of the reply reads as under:

It is a fact that in their written reply to the application in O.A.No.531 of 1991, the Respondents had enclosed as Annexure R-IV, a list of officers in the zone of consideration for the 1987 vacancies containing the name of Shri Ananthanarayan also. This was an inadvertant clerical mistake since the respondents should have attached with their written reply the revised eligibility list forwarded to the UPSC on 26.2.1991 (Present Annexure R-II). The mistake is deeply regretted. It is, however, submitted that the wrong eligibility list enclosed to the written reply of the Respondents in OA.NO.531 of 1991 would not have in any way affected the decision of this Hon'ble Tribunal.

6. The whole case of the applicant rests on consideration of Shri Ananthanarayan to the post of Director when his selection as Joint Director was set aside by the Tribunal vide its judgement dated 4.2.92. This point has been clarified by the respondents on page 7 of their written statement which reads as below:

It is submitted that the DPC at its meeting held on 3.2.1988 recommended 3 officers for promotion to the post of Joint Director of Training against 3 vacancies of 1986 and 5 officers against 4 vacancies of 1987 panel. The extra name was recommended for promotion as Joint Director of Training in the event of one of the officers recommended against the 1986 vacancies -

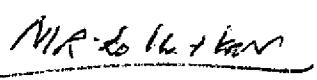
Shri A.K. Gayen - did not Join. Shri Gayen, who had left the DGE&T could not be considered for promotion. Mr. V.Ananthanarayan was at Sr.No.1 of the panel

of four officers recommended against the vacancies for the year 1987. Shri Ananthanarayan was, therefore, promoted as Joint Director of Training against the 1986 vacancy in place of Shri Gayen who did not join.

Respondents in their written reply on page 16 have committed a further error inasmuch as they have not included the name of Mr. Ananthanarayan in the list of officers recommended by the DPC dated 3.2.88. It must be considered that this stand of respondents is hyper-technical because on perusal of the Review DPC dated 3.2.88 we find that the name of Ananthanarayan figures in the panel for 1987 at Sr.No.1. It may be that Ananthanarayan was considered for the panel of 1986 in place of Mr. A K Gayan and this is what is clarified by the respondents in the written statement reproduced above. But the respondents ought to have included the name of Ananthanarayan as in the panel of 1987 since they had already clarified that Ananthanarayan was eventually considered for the panel of 1986. In any case the contention of the respondents that Ananthanarayan was not a candidate for the post of Joint Director in the DPC of 30.5.91 is thus borne out and this takes away the very foundation of attack of the applicant on the Office Order dated 24.8.92 which has been impugned.

7. We are, therefore, of the view that there is no merit in the challenge to the Office Order mounted by the applicant particularly that Ananthanarayan could not be considered for the post of Director and is wrongly promoted to that post by the DPC held on 24.7.1992. O.A. is therefore devoid of merit and is dismissed with no order as to costs.


(D.C.Verma)
M(J)


(M.R. Kolhatkar)
M(A)