

(4)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NOs. 190/92 & 265/92

1) Shri Saleem F.Desai ... Applicants
2) Shri Madan Dhondu Bharade

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 G.R.Menghani
Advocate
for the Applicants

Shri Suresh Kumar
for Shri M.I.Sethna
Advocate
for the Respondents

JUDGEMENT

Dated: 26/5/95

(PER: P.P.Srivastava, Member (A))

(i) OA.No. 190/92 Shri S.F.Desai vs. Union of India &Ors.

The applicant was appointed as a Preventive Officer in 1973 and was considered for promotion for the post of Superintendent of Customs (Preventive) in the DPCs of 15.3.1991 and 26-6-1991. However, the applicant's result was kept in Sealed Cover. The applicant filed OA.NO. 480/91 and according to the directions of the Tribunal the Sealed Covers were opened and it was found that in both the DPCs the applicant was graded not equal to the Bench Mark and therefore he was not promoted to the cadre of the post of Superintendent. However, two other employees, i.e. S/Shri N.C.Manglani and W.S.Borkar were promoted by order dated 4.11.1991 placed at Annexure-'D'. The applicant was informed vide letter dated 13.11.1991 placed at Annexure-'E' that

he was not graded by the DPCs equal to the grade of Bench Mark and therefore he cannot be promoted to the post of Superintendent of Customs. Aggrieved by this order, the applicant has approached this Tribunal by this OA. seeking the relief that he should be promoted to the post of Superintendent of Customs (Preventive) with retrospective effect from the date his immediate juniors have been promoted as Superintendent of Customs.

2. The main submission of the applicant is that the respondents have not followed the guidelines and the yardstick laid down by the Department in their Circular No. 22011/5/86-Estt.(D), dated 10.4.1989 which are the consolidated instructions for Departmental Promotion Committees. The main point brought out by the applicant is that the respondents have failed to consider the guidelines given for DPC in respect of Para 6.3.1 which lays down the principles to be observed and preparation of panel. According to the principles laid down for promotion to the post of Superintendent, the Bench Mark should be "GOOD". The guidelines laid down in Para 6.3.1 are :-

"(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'.

The grievance of the applicant is that instead of the bench-mark Good as envisaged in the guidelines quoted above, the respondents have made arbitrary guidelines for the successful candidates that they shall have three "VERY GOOD" remarks out of the confidential reports to be considered by the DPC. The applicant has submitted that this criteria is against the guidelines laid down in the rules and therefore ^{the criteria} they are illegal and bad in law.

3. On this point the respondents have submitted that the DPC has been authorised by the same rules to decide its own method and procedure for objective assessment of suitability of candidates as laid down in Para 5 of Part IV on the procedure to be observed by Committees. The DPC in this case has decided that the criteria of having three "VERY GOOD" reports out of the 8 reports under consideration would be taken as a Bench-Mark 'Good' and the DPC had decided this Bench-Mark before hand and then have judged the suitability of all the candidates on the basis of this Bench-Mark. The counsel for the respondents has argued that when DPC is considering large number of officers, it is desireable to have objective criteria to decide the Bench Mark which has been done in the present case.

4. We had called for the proceedings of the DPC held on 15.3.1991 and 26.6.1991 which have been seen by us. We find that the Bench-Mark was pre-determined by the DPC and they have graded the officers on the basis of this Bench-Mark.

5. After considering all the records and arguments of the counsel, we are of the view that the DPC has conducted the selection within the frame work and instructions laid down in Circular dated 10.4.1989. Since the instructions lay down that DPC should decide its own method and procedure for objective assessment of suitability of the candidate, we do not see any infirmity in the Bench-Mark criteria laid down by the DPC of treating 3 very good reports out of the 8 as equal to "Good" Bench-Mark. After perusing the record, we are satisfied that this criteria has been applied by the DPC consistantly. The applicant has not secured three Very Good gradings out of the 8 years CRs. which were considered by the DPC and therefore has not been graded as "Good" (the bench mark). We have also seen the CRs. with a view to see if the gradings given by the different authorities are consistent with what has been recorded in the DPC proceedings and we are satisfied that the gradings have been correctly reflected in the case of the applicant.

6. The second point raised by the counsel for the applicant is that the DPC has failed to follow the instructions laid down concerning confidential report in Para 6.2.1 (a) which reads as under :-

"The DPC 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 sometimes the overall grading in a CR may be inconsistent with the grading under various parameters or attributes."

7. The counsel for the applicant Shri Menghani has argued that the DPC Members should have gone through the confidential report and should have assessed the confidential report and should have arrived at their own grading for the each confidential report rather than accepting the assessment made in the CRs.

8. We are, however, not inclined to accept this argument. The confidential reports were available with the DPC and they would have made their own assessment/grading, however, it is not obligatory on the part of the DPC to record their own assessment in each case separately if they are satisfied with the gradings which have been given by the concerned officers in the confidential reports.

9. We, therefore, do not find force in the pleadings of the applicant that the DPC has not followed the procedure laid down in the instructions dated 10.4.1989. We, therefore, dismiss the OA. with no order as to costs.

10. OA.NO. 265/92 Sh.M.D.Bharade vs. Union of India & Anr.

The applicant Shri Bharade has raised the question of his promotion by the Departmental Promotion Committee which has also been considered in OA.190/92. held on 15.3.1991. The applicant in this case was working as a Preventive Officer, Grade I in the scale of Rs.425-700 from May, 1975 and was promoted as Preventive Officer Gr.I in the Selection Grade. The applicant belongs to reserved community and is a Scheduled Caste candidate. The applicant in this OA. has challenged the proceedings of the DPC on the grounds of Bench-Mark which should have been as 'Good' while according to the applicant the DPC has applied a

different criteria of treating Bench-mark equal to three 'Very Good' reports out of the reports being considered. This question has already been considered by us in the above paragraphs and we have already given our conclusions on this issue raised by the applicant in para 5 that there is no informity in deciding the bench-mark by DPC.

11. In this OA. the applicant being a SC candidate has also raised the question of his consideration as SC candidate and has pleaded that the provision of Para 6.3.2 (ii) has not been followed by the respondents while considering his case. The applicant has stated that being a SC candidate he is required to be promoted irrespective of merit and Bench-Mark if he is fit for promotion. Para 6.3.2 (ii) reads as under :-

"In promotion by selection to posts/services in Group 'B' within Group 'B' and from Group 'B' to the lowest rung in Group 'A' selection against vacancies reserved for SCs and STs will be made only from those SCs/STs officers, who are within normal zone of consideration prescribed vide the Department of Personnel and A.R. O.M.No. 22011/3/76-Estt.(D) dated 24th December, 1980. Where adequate number of SCs/STs candidates are not available within the normal field of choice, it may be extended to five times the number of vacancies and the SCs/STs candidates coming within the extended field of choice should also be considered against the vacancies reserved for them. If candidates from SCs/STs obtain on the basis of merit with due regard to seniority, on the same basis as others, lesser number of vacancies than the number reserved for them, the difference should be made up by selecting candidates of these communities, who are in the zone of consideration irrespective of merit and 'bench-mark' but who are considered fit for promotion."

12. The respondents have mentioned that the selection committee has considered SC and ST candidates separately and they have said that in the selection zone there were 16 SC and 1 ST candidates whose names are appearing in the proceedings. Out of the SC candidates since sufficient number of officers were rated as 'Good' and above, they

were placed on panel while the applicant was rated as 'Average' by the DPC and therefore his name was not in the panel. We have seen the proceedings of the DPC held on 15.3.1991. We find that the applicant has been rated as 'Average'. The 16 SC and 1 ST officers have been considered whose names are appearing at Sl.No. 94 to 110 in the list. The selected panel contains the name of SC officers who have been rated as 'Good' while the applicant has been rated as 'Average'. Since sufficient number of SC candidates were available with the requisite Bench-mark, the question of application of latter part of the rule laid down in Para 6.3.2 (ii) according to which if candidates from SCs/STs obtain on the basis of merit with due regard to seniority, on the same basis as others, lesser number of vacancies than the number reserved for them, the difference should be made up by selecting candidates of these communities, who are in the zone of consideration, irrespective of merit and 'bench-mark' but who are considered fit for promotion' does not arise.

13. We have also seen the CRs of the applicant and two others who have been selected in the zone of consideration and we find no infirmity in the grading given in reports & those given in DPC. confidential/ In the circumstances, we are of the opinion that the issues raised by the applicant in this OA. do not have any merit and the OA. is dismissed. There will be no order as to costs.

(P.P.SRIVASTAVA)

MEMBER (A)

(M.S.DESHPANDE)

VICE CHAIRMAN

mrj.