

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 272/92.

Date of Decision : 12.3.92

Shri Bhaskar S. Desai Petitioner.

Shri D. V. Gangal Advocate for the Petitioner.

VERSUS

Union Of India & Others Respondents.

Shri S.S. Karkera for
Shri P.M. Pradhan. Advocate for the Respondents.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI P.P. SRIVASTAVA, MEMBER (A).

(i) To be referred to the Reporter or not ?
(ii) Whether it needs to be circulated to other Benches of the Tribunal ?


(B. S. HEGDE)

MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 272/92.

Dated this 17/2, the Friday day of March, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Shri Bhaskar Sahadev Desai,
C. G. S. Colony,
Flat No. 175,
Wadala,
Bombay - 400 031.

... Applicant

(By Advocate Shri D.V. Gangal)

VERSUS

1. Union Of India through
the Secretary,
Ministry of Finance,
Department of Revenue,
Jeevan Deep Bhavan,
New Delhi - 110 001.

2. The Secretary,
Central Board of Excise
& Customs,
Jeevan Deep Building,
New Delhi - 110 001.

3. The Principal Collector
of Central Excise,
Central Excise Building,
M. K. Road,
Bombay - 400 020.

4. The Collector of Central
Excise, Bombay-I,
M.I. Road,
Bombay - 400 020.

5. The Collector of Central
Excise - Bombay-II,
Piramal Chamber,
Parel,
Bombay - 400 012.

... Respondents

(Shri S.S. Karkera for
Shri P.M. Pradhan).

: ORDER :

(PER.: SHRI B. S. HEGDE, MEMBER (J))

Heard Shri D. V. Ganga-I for the applicant and
Shri S.S. Karkera for Shri P.M. Pradhan, Counsel for the
respondents.

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2. In this O.A., the applicant has challenged the D.P.C. proceedings held for promotion of Inspectors to the grade of Superintendent Group 'B' on 28.06.1991 and 11.10.1991 respectively, wherein the applicant's name has not been shown as selected candidate, thereby, he contends that the Annual Confidential Report written by the competent authorities is contrary to law and violative of articles 14 and 16 of the Constitution of India and the same is required to be quashed. He further contends that the Annual Confidential Report should be based only on the ~~remarks~~ of the Reporting Officer, since he is closely acquainted with the work of the applicant and not the Reviewing Authority, who has no nexus with the work carried out by the applicant. Therefore, the Reporting Officers remarks should be taken into consideration for the purpose of promotion to the post of Superintendent Group 'B' coupled with consequential reliefs. On the last occasion, when the matter came up for hearing, we had directed the respondents to furnish the A.C.Rs. of ~~the~~ applicant as well as the D.P.C. proceedings for our perusal. Accordingly, the learned counsel for the applicant has submitted the D.P.C. proceedings as well as the A.C.Rs. of the applicant for our perusal. On perusal, we find that the Departmental Promotion Committee consists of senior officers - i.e. 6 Collectors and one Principal Collector. In the first D.P.C., at that point of time, 24 vacancies existed and anticipated vacancies were 64, thereby, the total vacancies were 88. Accordingly, the D.P.C. decided to draw a panel of 88 Inspectors for promotion to the grade of Superintendent Group 'B'. The panel of 88 Inspectors will cover the roster point. The D.P.C. adopted the norms laid down by the D.O.P.&T. O.M. dated 10.03.1989 and they decided on a bench mark of

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"Good" for two "Very Good" remarks out of total of 8 years report (qualifying service). Further, five "Very Good" reports out of 8 reports are graded as "Very Good" and all "Very Good" for 8 years are graded as "Outstanding". Accordingly, the D.P.C. had drawn an eligibility list of candidates for the purpose of promotion to the grade of Superintendent Group 'B', in which the applicant is shown at Sl. No. 48 and his category has been treated as 'average'. In the second D.P.C. held on 10.11.1991, consisting of the same number of senior officers as D.P.C. members and on the basis of the same yardstick involved earlier, the D.P.C. considered the eligible Inspectors in the consideration list i.e. twice the no. of vacancies plus 4 vacancies, which covers the roster point, in which the applicant is shown at sl. no. 31 and is treated as "average". Pursuant to the D.P.C. recommendations, we have gone through the A.C.Rs. of the applicant carefully but on verification we find that all through the A.C.Rs. he is shown as "Good" from the year 1983 to 1991, except in one year, in which he is shown as "average". The contention of the learned counsel for the applicant is that the promotion should be based on the recommendations of the Reporting Officer and not on the basis of the remarks of the Reviewing Officer, who has no nexus with the work of the applicant. The very purpose of the O.M. is to view the work and the performance in an impartial way and on the basis of the output rendered by the particular individual,

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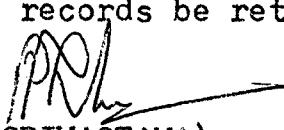
therefore, the contention of the learned counsel for the applicant that the applicant's promotion should be based on the recommendations of the Reporting Officer cannot be accepted and the same is rejected. As stated earlier, the contents of the A.C.R. will not go contrary to the guidelines laid down by the D.P.C., as they are governed by the D.O.P.&T. circular dated 10.03.1989. It cannot be said that the D.P.C. cannot make their own assessment other than the A.C.Rs. It is an well established principle that D.P.C. can evolve their own principle in arriving at a conclusion, which cannot be questioned unless the decision of the D.P.C. is challenged on the ground of malafide or arbitrariness, which is not the case here. Infact, the applicant has retired from service on 31.03.1992 and the A.C.Rs. of the respective applicants have been considered for a period of 8 years and the D.P.C. has come to its own conclusion. Admittedly, it is a selection post, therefore, it is a well settled principle that no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors are promoted. It is not sufficient that in his confidential reports it is recorded that his services are satisfactory. An officer may be capable of discharging the duties of the post held by him satisfactorily but he may not be fit for the higher post. Therefore, it is for the management to consider the case of the officer concerned on the basis of the relevant materials available before them. Since the

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post of Superintendent is a Selection grade post, that itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the Gradation List but the question of merit enters in promotion to selection posts. It is a well established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is, therefore, available.

3. Since the applicant has been considered on both the occasions but he could not be promoted, ~~thereby, he cannot~~ agitate the selection made by the D.P.C. because his selection is based on merit. Since the applicant has not made out any malafide or arbitrariness, we see no merit in the O.A. and the same is dismissed. There will be no order as to cost. The A.C.Rs. and the D.P.C. records be returned to the department.


(P.P. SRIVASTAVA)
MEMBER (A).


(B. S. HEGDE)
MEMBER (J).