

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.730/92

Tuesday this the 20th day of July, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member(A).

D.S.Ranade,
Assistant Project Officer,
Maharashtra State Social Welfare
Advisory Board, Mehta Chambers,
Kalyan Street, Dana Bunder,
Bombay - 400 009.Applicant.
(By Advocate Mr.G.S.Walia)

Vs.

1. Union of India through
Executive Director/Secretary,
The Central Social Welfare Board,
Samaj Kalyan Bhavan,
B-12, Institutional Area,
South of I.I.T.,
New Delhi - 110 016.
2. Chairman
Maharashtra State Social Welfare
Advisory Board,
Mehta Chambers,
Kalyan Street, Dana Bunder,
Bombay - 400 009.Respondents.
(By Advocate Mr.V.D.Vadhavkar for
Mr.M.I.Sethna).

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply opposing the application. We have heard the learned counsels appearing on both sides.

2. The applicant was earlier working as Welfare Officer in the Office of the 2nd Respondent. The next promotional post is that of Assistant Project Officer. He was not promoted in the year 1982, presumably on the basis of adverse remarks. The

applicant challenged his non-promotion by filing a Writ Petition in the High Court which came to be transferred to this Tribunal and re-numbered as Tribunal as Transferred Application No.32/89. This Tribunal noticed that the applicant's representations against the adverse remarks had not been disposed of and in the meanwhile the DPC had considered the case of the applicant and found him not fit for promotion. This Tribunal by order dt. 3.5.91 set aside the DPC Proceedings of June, 1982 so far as they pertain to the applicant, with a further direction to the respondents to consider and dispose of the applicant's representations dt. 4.10.1982 and 30.10.1982 regarding adverse remarks and then after disposal of the representations a Review DPC will have to be constituted to consider the case of the applicant for promotion on the basis of seniority-cum-suitability. In pursuance of the directions of this Tribunal, the Administration disposed of the two representations of the applicant by order dt. 16.9.1991 by partly expunging the words 'not fit for promotion' and retaining the remaining adverse remarks against the applicant in the ACRs for 1979 and 1980.

Then a Review DPC was held on 13.12.1991. The Review DPC examined the records and came to the conclusion that the applicant is not fit for promotion and an endorsement was issued to the applicant. Aggrieved by the non-promotion by the Review DPC, the applicant has filed this OA challenging the same. His main ground is that the adverse remarks made against the applicant are not true and correct and they were made by the then Chairman maliciously. He has, therefore, attacked his non-selection and non-promotion.

3. The respondents in their reply have stated that the applicant's case was considered by the Review DPC and he was found not suitable or fit for promotion and therefore he has not been promoted. The other allegations in the O.A. are denied.

4. As far as the first ground of attack by the learned counsel for the applicant that the adverse remarks were unwarranted and they were maliciously made by the previous Chairman, except some bald allegations in the OA there is nothing to substantiate the allegations made by the applicant. Mere allegation is not sufficient to interfere with the adverse remarks made against an Officer. It is also well settled that the Court or Tribunal cannot sit in appeal over a challenge about adverse remarks on mere allegations of mala fides or malicious act on the part of an Officer. There are no sufficient materials to support the contentions of the applicant that the act of the then Chairman was mala fide or malicious.

5. Another ground of attack made by the learned counsel for the applicant that the promotion in question was a non-selection or non-promotion and therefore DPC could not have been held. In our view, this argument cannot be accepted for more than one reason.

The learned counsel for the respondents placed before us the Rules which clearly shows that the post in question is a Selection Post and a particular DPC and Constitution of Members of the Committee are mentioned which clearly shows that it is a selection post. Even otherwise, by judicial orders, this Tribunal has given a direction to the respondents to the respondents to call for a Review DPC and consider the case of the applicant for promotion. Therefore, either way a Review DPC had to consider

the case of the applicant for promotion. The learned counsel for the respondents placed before us the DPC Proceedings of the Review DPC Meeting held on 13.12.1991. The Review DPC Members have mentioned in the proceedings that they have gone through the entire records including the adverse remarks of the applicant, excluding the expunged portion of the adverse remarks and that they have considered the case of the applicant and found *him* unsuitable for promotion.

It is also well settled that a Court or Tribunal cannot sit ^{on} appeal over the findings of the DPC. The DPC has followed the Rules and applied its mind to the facts of the case and has come to the conclusion that the applicant was not fit for promotion at the relevant time. We do not find any illegality or irregularity in the proceedings of the DPC.

6. We may also place it on record that the applicant has since been promoted by order dt. 17.8.1987 and has subsequently retired from service. After going through the materials on record, we do not find that any case is made out for interfering with the order dt. 10.6.1992 which is challenged in this OA.

7. In the result, the application fails and is dismissed.
No order as to costs.

B.N.Bahadur

(B.N.BAHADUR)

MEMBER(A)

R.G.Vaidyanatha

(R.G.VAIDYANATHA)

VICE-CHAIRMAN

B.