

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 414/93

Date of Decision:

10-10-97

R.C.Singh

Applicant.

Shri S.P.Saxena

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.K.Shetty.

Advocate for
Respondent(s)

CORAM:

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

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

(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

(M.R.KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 414/1993.

Pranam, this the 10th day of October 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

R.C.Singh,
P-IV/2, Ordnance Factory
Estate, Dehu Road,
Maharashtra - 412 113. ... Applicant.

(By Advocate Shri S.P.Saxena)

V/s.

1. Union of India
through the Secretary
Department of Defence Production
Ministry of Defence, DHQ P.O.
New Delhi-110 011
2. The Chairman,
Ordnance Factory Board,
10-A,Auckland Road,
Calcutta - 700 001.
3. The Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi - 110 011. ... Respondents.

(By Shri R.K.Shetty, Counsel)

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

This is a second round of litigation. Earlier
in O.A. No.2612/90 decided on 11.10.1991 by the
applicant
Principal Bench challenged the adverse entry in the C.R.
consideration of
for 1988-1989 which affected his promotion by the DPC
in 1990. The Tribunal disposed of the matter by giving Q

direction as below :

"In the instant case, the representation submitted by the applicant was pending with the authorities concerned, when the DPC met in 1990. To that extent, the proceedings of the DPC are vitiated. Accordingly the application is partly allowed and it is disposed of with the direction to the respondents to hold a review DPC to consider the case of promotion of the applicant without taking into account the adverse ACR of 1988-89. If the applicant is found suitable, he should be promoted as Deputy General Manager and be entitled to all consequential benefits including seniority above his next junior and the difference in pay and allowances from the due date. The respondents shall comply with the above directions within a period of three months from the date of communication of this order."

In terms of this direction, action was taken and communicated to the applicant by letter dt. 20.7.1992 (at page 13). This communication is somewhat cryptic, but it does indicate that the review DPC had considered the matter, but had not found the applicant fit for promotion. It is not disputed that the applicant has been promoted to the Junior Administrative Grade from 25.5.1993. The essential grievance of the applicant ^{prayer is that} is that the DPC has misdirected itself and therefore L Tribunal, after perusal of the corrected record, direct the respondents to promote the applicant from the date his juniors are promoted viz. from 4.10.1991 and give all consequential benefits.

2. The contention of the applicant is that he has not been communicated any adverse remarks except in relation to the ACR for the year 1988-89 which the R

Principal Bench of the Tribunal directed to be ignored because the representation remained undisposed of at the time of the meeting of the DPC. Secondly, the applicant feels that probably the Review DPC has not considered the directions of the Tribunal appropriately and appears to have failed to work out the consequences of ignoring the adverse remarks.

3. The counsel for the applicant further contends that the Bench Mark for the JAG is 'Very Good' and assuming that he ~~might~~ not have been selected earlier because he did not make the Bench Mark, his grading being less than 'Very Good', then this down-gradation from 'Very Good' to 'Good' amounts to adverse remarks and ought to have been communicated to the applicant in terms of Department's instructions dt. 16.9.1983 (at page 27) ~~and especially~~ on the subject of and especially "ACRS - Completion of" ~~L~~ the guideline under para 2(iii) read as below :

"In case of individuals in the line of promotion to 'selection' post even average entries and 'Good' grading call for communication."

4. The counsel for the applicant contends that in of above guidelines, ~~terms~~ the grading 'Good' ought to have been communicated to him because it is less than 'Very Good' and as such adverse and since the department has not communicated the same to him, therefore this would be a case of non-communication of adverse remarks which would be a state-of-affairs ~~more~~ worse than non-disposal of representation against

delayedly communicated adverse remarks and therefore his case warrants requisite relief.

5. The respondents have opposed the O.A. The counsel for the respondents stated that the applicant did not have the requisite three 'Very Good' gradings and therefore he could not be considered earlier. According to him the contention of the applicant relating to the Review DPC not having applied its mind is without foundation and the O.A. deserves to be dismissed.

6. We have perused the CR file of the applicant and DPC/Review DPC file. We have perused the minutes of the DPC dt. 4.2.1992 which was held after the decision on O.A. 2612/90 was available. We notice from the minutes that the committee has duly taken note of the decision in the O.A. 2612/90 and in fact the operative portion of the Judgment is part of the minutes. The committee had considered the case of the applicant for vacancies of 1990 without taking into consideration the ACR of 1989 as directed by the Tribunal and has assessed him to be 'Good'. On that basis, the Bench Mark being 'Very Good', the applicant could not be promoted. We have also seen the relevant CR file of the applicant. We are therefore, of the view that there is no merit in the contention of the applicant that the Review DPC did not apply its mind to

to the matter in the light of the Judgment of the Tribunal. ~~We next come to the contention of the applicant regarding the grading 'Good' being required to be communicated as adverse in terms of the guidelines dt. 16.9.1983.~~ We first of all note that this Circular refers to DPAR Memo dt. 20.5.1972 and it is only a gloss on the earlier instructions of the Board dt. 15.11.1979 and is purely in the nature of Executive Instructions. These Executive Instructions of the Ordnance Factory Board did not have the same weight as is enjoyed by the instructions issued by the nodal department viz. Department of Personnel and Administrative Reforms or the provisions of Rules. The guidelines envisage that average entries and good grading call for communication. Admittedly, in the case of the applicant, the grading was not 'Average' but it was 'Good'. The question, then, is whether the fall in the grading from 'Very Good' to 'Good' calls for communication. We have noticed that the grading of the Officer in 1984-85 was 'Very Good' but it went down in 1985-86 to 'Good'. On perusal of the C.R. file for the years 1985-86 we note that there is an entry that short-comings should be communicated and we also note that the short-comings/communicated to the applicant by the letter No.5200/GM/G dt.20.8.86 were in fact communicated from the General

Manager's Office. Another communication has been addressed to him from Dy. General Manager (Production) on 24.8.1986.

7. In this connection, we refer to the Judgment of the ~~Supreme Court~~ Hon'ble Supreme Court in U.P. Jal Nigam & Ors. V/s. Prabhat Chandra Jain and Ors. (JT 1996 (1) SC 641). In this case the assessment of the employee was downgraded. The High Court allowed the appeal. The contention of the Nigam that down-grading entries cannot be termed as adverse of the L, was not accepted by the High Court. The High Court observed that the entry 'Outstanding' being downgraded to 'Satisfactory' would certainly be adverse and hence must be communicated. The Hon'ble Supreme Court however, felt that the High Court had given an extreme example. An alternative example considered by the Supreme Court was downgrading from 'Very Good' to 'Good'. The Hon'ble Supreme Court observed that the grading 'Good' is still positive grading and that reason for downgrading should be recorded on the personal file of the Officer and he should be informed of the change in the form of advice. If there is a sting of aduerseness, the remarks should be communicated. It appears to us that there was a fall in the performance of the applicant in the year 1985-86 and after the end of the year, the applicant was cautioned by the communications dt. 20.8.1986 and 24.8.1986 as observed by us above and it would not be correct to say that when

there was a fall in performance of the Officer he was not suitably advised and that he was not put on guard. We notice that the applicant continued to be graded as 'Good' in 1986-87, ~~and~~ 1987-88 and 1988-89. It was in 1988-89 that apart from grading remaining constant there were certain adverse remarks in the C.R. of the Officer and they were communicated to him. Even after ignoring those adverse remarks the grading of the CR for the years 1988-89 remained as 'Good' and that was not enough for the officer to earn his promotion. But that is how the record of the officer read, ~~and~~ we do not see that the department has in any way dealt unfairly with the Officer.

8. We are therefore of the view that the O.A. has no merit and the same is therefore dismissed with no orders as to costs.

MR Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.S. Hegde

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

B.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNALBOMBAY BENCH

REVIEW PETITION NO.

/1997

IN

O.A. NO. 414/93

R.C. SINGH

... APPLICANT

v/s

UNION OF INDIA & OTHERS

... RESPONDENTS

RE AFFIDAVIT

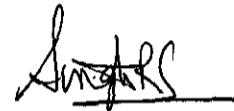
xx I, R.C. Singh, aged about 41 years,
 presently working as DGM at the Ordnance Factory, Dehu
 Road, Poona, do hereby state on solemn affirmations
 that :-

1. That I have filed the above mentioned O.A. No. 414/93 before the Hon'ble Tribunal, which was decided on 10th October 1997.
2. That, in the said judgement dt. 10.10.97, there are certain factual errors. Hence I have filed the Review Petition before this Hon'ble Tribunal.

...2...

3. That the contents of this Review Petition
are true and correct as per my informa-
-tion.

Hence, solemnly affirmed on the 18th
day of November 1997 at Pune.



AFFIANT

Identified by :-


18.11.97(S.P. SAXENA)
Advocate.