

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 646/94.

Date of Decision : 08.12.1998.

D. K. Ghosh, Petitioner.

Shri M. M. Sudame, Advocate for the Petitioner.

VERSUS

Union Of India & Others, Respondents.

Shri R. G. Agrawal, Advocate for the Respondents.

CORAM :

HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

(i) To be referred to the Reporter or not ? *yes*

(ii) Whether it needs to be circulated to other *no*
Benches of the Tribunal ?

Reported
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 646/94.

Dated this Tuesday, the 8th day of December, 1998.

CORAM :

HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

D. K. Ghosh,
Regional Controller of Mines,
Indian Bureau of Mines,
Nagpur.

... Applicant

(By Advocate Shri M.M. Sudame)

VERSUS

1. Union Of India through
The Secretary,
Department of Mines,
Ministry of Mines,
Shastri Bhavan,
New Delhi.

2. The Controller General,
Indian Bureau of Mines,
Nagpur.

3. Departmental Promotion Committee
constituted by Union Public
Service Commission,
Dholapur House,
New Delhi.

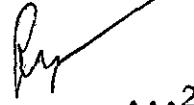
... Respondents.

4. S. V. Ali,
Regional Controller of Mines,
Indian Bureau Of Mines,
Nagpur.

(By Advocate Shri R.G. Agrawal).

: OPEN COURT ORDER :

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN


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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 Counsel for the applicant and the Learned Counsel for Respondent Nos. 1 to 3. Respondent No. 4 is a private respondent, whose promotion is being challenged by the applicant. Respondent No. 4 has filed his written statement separately but he has not appeared before us today at the time of final hearing.

2. In view of the short point involved in this case, it is not necessary to consider the detailed pleadings. We are only mentioning the brief facts which are necessary for proper determination of the point under dispute between the parties.

The applicant, respondent no. 4, S.V. Ali and three others were working as Regional Controller Of Mines at the relevant time. The next promotion for them was the post of Controller of Mines. It is also admitted that this next higher post of Controller Of Mines, is a selection post, where candidates will have to be selected on the basis of relative merit and not on the basis of only seniority. According to the applicant, he was the senior-most in the feeder cadre of Regional Controller of Mines and he had 'Very Good' record in service and he had 'Very Good' grading in the confidential reports and therefore, he was most eligible for being promoted to the cadre of Controller of Mines. But he came to know that Respondent No. 4 had been selected by the Departmental Promotion Committee.

Therefore, the applicant has approached this Tribunal challenging the selection of Respondent No. 4. The applicant himself has gathered the comparative grading given to him and to Respondent No. 4 in the A.C.Rs. and according to him, he has better grading than the Respondent No. 4. He has given the comparative grading. According to the applicant, he had 'Very Good' grading for four years and in one year, he had partly 'very Good' grading and partly 'Outstanding' grading. It is alleged that Respondent No. 4 had 'Very Good' grading in one year, partly 'Very Good' grading and partly 'Outstanding' in one year, 'Outstanding' in one year and no confidential reports were available for two years.

It is, therefore, stated that in the absence of confidential reports for two years, Respondent No. 4 could not have been given higher grading than the applicant and if at all the two confidential reports were not available, then the confidential reports of previous years or of lower grade should have been taken into consideration. His grievance is that, the D.P.C. has committed serious error in selecting the Respondent No. 4 for promotion to the post of Controller of Mines. Therefore, the applicant has filed this O.A. for quashing the selection of Respondent No. 4 for promotion to the post of Controller of Mines, and for a direction to the official respondents to hold a review D.P.C. in accordance to law and consider the case of the applicant for promotion.



3. Both, the official respondent nos. 1 to 3 on the one side and the private respondent, namely - the Respondent No. 4 on the other side, have filed separate written statements. It is stated that Respondent No. 4 had gone on deputation during the relevant years, namely - 1989 to 1992, when his confidential reports need not be written and the D.P.C. has based its grading on the basis of the performance report sent by the foreign employer. It is also stated that Respondent No. 4 got over-all grading as 'Outstanding' and since it is a selection post, he was preferred in preference to the applicant and other three candidates and, therefore, Respondent No. 4 has been rightly promoted.

4. The fact that the applicant had 'Very Good' grading in four years and in one year partly 'Very Good' grading and partly 'Outstanding' grading is not in dispute. On the basis of these gradings, the overall grading given to the applicant is 'Very Good' by the D.P.C. Therefore, the D.P.C. has rightly given 'Very Good' grading to the applicant on the basis of A.C.Rs.

The Learned Counsel for the official respondents has placed before us the copy of the D.P.C. proceedings dated 07.02.1994. The D.P.C. consisted of a Member of the U.P.S.C., who was the Chairman and consisted of two more Members, namely - the Additional Secretary, Ministry of Mines and the Controller General Of Indian Bureau of Mines. The Committee has mentioned in the minutes that five candidates, including the applicant, were considered and then over-all grading was given on the basis of the confidential reports.

The applicant is no doubt the senior-most in the feeder cadre and the assessment given or grading given is 'Very Good'. Similarly, two other seniors above Respondent No. 4 were also given over-all grading as 'Very Good' by the D.P.C. The last candidate was also given the grading as 'Very Good'. The Respondent No. 4, Mr. S. V. Ali, who is at Sl. No. 4, has been given grading as 'Outstanding'. The Committee has mentioned that, in view of the grading given to Mr. S. V. Ali as 'Outstanding', he is being recommended for promotion.

5. It is true that for two or three years there is no regular and formal confidential reports so far as Respondent No. 4 is concerned. The reason is, during that relevant time he was on deputation at Tanzania for a U.N. Job. He was on deputation for the period from 01.04.1989 to 31.03.1990 and again from 01.04.1991 to 31.03.1992. The Learned Counsel for the applicant invited our attention to the D.O.P.T. guidelines for D.P.C. which is dated 10.04.1989. In particular, he drew our attention to para 6.2.1 (c) which pertains to cases where confidential reports have not been written for any reasons and in such cases, the D.P.C. should consider the confidential reports of preceding years and if the confidential reports of preceding years are also not available, then the confidential reports in the lower grade should be taken into account. The Learned Counsel for the applicant submitted that in view of this rule, in the absence of confidential reports for the period from 1989 to 1992, the D.P.C. should have considered the A.C.Rs. of Respondent No. 4 for previous years

or atleast the A.C.Rs. of lower grade, for the purpose of considering his case for promotion. In our view, this argument has no substance for the simple reason that it is not a case of confidential reports not being written for any reason within the meaning of para 6.2.1(c). On the other hand, this is a point which is covered by a separate rule, which is found in Government Official Memorandum dated 22.02.1985, which is annexed as R-1 to the written statement of the official respondents. There the circular clearly mentions that in case of officers sent on deputation abroad, there is no necessity of writing a confidential report and a note to that effect should be kept in the confidential report dossier.

As far as the period from 1989 to 1992, the performance report given by the High Commissioner of India dated 18.11.1992 in respect of Respondent No. 4 has been kept in the C.R. dossier. It may be that his performance report is not in the format of confidential report. We must bear in mind the object of writing confidential report. The object is, to know the performance of an officer during the year in question. It can be written in a regular form or it can be written in any other manner, but the point is, the officer writing the report must give an indication ~~of~~ about the performance of the officer for the relevant year. The fact that it is not written in a particular format, is not material. But the point to be seen is, whether it contains the actual performance of the officer for the year in question. The remarks made by the High Commissioner gives a clear indication that the work of Respondent No. 4 was excellent

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during those years. The D.P.C. which has considered all the A.C.Rs. including his performance report, has given over-all grading to Respondent No. 4 as 'Outstanding'. It is now well settled that a Court or Tribunal cannot sit in appeal over the findings of the D.P.C. or the grading given by the D.P.C. We are only to see whether the D.P.C. has followed the proper procedure or whether they have taken into consideration all the relevant materials. Judicial Review does not mean ^{that} we can sit in appeal over the findings of the D.P.C. It is now well settled that D.P.C. need not give reasons for giving gradings. Since the D.P.C. has applied its mind in giving an over-all grading as 'Outstanding' to Respondent No. 4, we do not find that ^{the} D.P.C. has committed any illegality or irregularity in selecting Respondent No. 4 for the purpose of promotion to the post of Controller of Mines.

6. After going through the materials on record ⁱⁿ the D.P.C. proceedings and the A.C.Rs. which ^{are} now furnished by the Learned Counsel for the respondents, we are satisfied that the D.P.C. has followed the proper procedure and they have considered the relevant materials and on the basis of overall grading, they have preferred Respondent No. 4 for promotion to the post of Controller of Mines. Since it is a selection post, the comparative merit has to be considered and we do not find any illegality or irregularity in the D.P.C. proceedings. The applicant did not get 'Outstanding' grading and, therefore, he was not selected. Hence, we find that the applicant has no case for challenging the promotion of Respondent No. 4. It is also brought to our notice that the applicant has been subsequently promoted ^{in the} JW subsequent years.

7. In the result, the application fails and is dismissed. In the circumstances of the case, there will be no order as to costs.

D. S. Baweja
(D. S. BAWEJA)
MEMBER(A).

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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