

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1325/94

DATE OF DECISION: 28th Nov, 2000

Shri J.S. Sundaresan Applicant.

Shri S.P. Saxena Advocate for
Applicant.

Versus

The Union of India and others Respondents.

Shri R.K. Shetty. Advocate for
Respondent

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member(J)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to No
other Benches of the Tribunal?

(3) Library. Yes

S.L.JAIN
(S.L.JAIN)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 1325/95

Tues - day the 28th day of NOVEMBER 2000

CORAM: Hon'ble Shri B.N. Bahadur, Member (A)

Hon'ble Shri S.L. Jain, Member (J)

J.S. Sundaresan
Residing at
Officer's MESS,
Ordnance Factory Estate,
Dehu Road.

...Applicant.

By Advocate Shri S.P. Saxena.

V/s

1. Union of India Represented by
Department of Defence
Production and Supplies
Ministry of Defence
New Delhi.
2. The Director General
of Quality Assurance,
Department of Defence
Production(DGQA/ADM-6A)
Govt. of India, Ministry of Defence,
DHQ PO New Delhi.
3. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
4. The Director of Quality
Assurance (Armaments)
Department of Defence
Production (DGQA/ARM-1)
Govt. of India, Ministry of Defence
DHQ PO New Delhi.
5. The Controller
Controllerate of Quality
Assurance (Military Explosives)
Aundh Road, Kirkee,
Pune.
6. Dr. S.B. Ray
(Ex- Controller, CQA(ME) Kirkee)
Flat No.4, Yogini Appartments,
Aundh, Pune.
7. Dr. J.J. Rebellow, PSCO
QAE (ME)
Khamaria, Jabalpur.

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8. R.K. Mittal, PSCO
QAE (ME) HE Fy
Kirkee, Pune.
9. D. Sridharan, PSCO
CQA (ME)
Aundh Road, Kirkee, Pune.
10. D.V. Singhal, PSCO
SQAE (A) P.O. Badmal
Dist.: Bolangir
Orissa.
11. K. Rajagopalan, PSCO
QAE (ME) Dehu Road.
12. N.K. Biswas, PSCO
CQA (ME) Aundh Road,
Kirkee, Pune.

...Respondents.

By Advocate Shri R.K. Shetty.

O R D E R
{Per Shri S.L. Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking the reliefs as under:

(i) The adverse ACR of 1987 & 1988 be ordered to be expunged as the relevant rules and regulations have not been followed by the respondents No.1 to 6, either in writing the ACRs or in disposal of the representation in accordance with the provisions of O.M. No. 21011/1/77-Estt(A) dt. 30.1.1978 (within 3 months) (Ref: Appendix V, VI, VIII & X) or in convening the DPC in time. Moreover disposal of representation against adverse entries is a quasi-judicial function, requiring application of mind and speaking order. While disposing of the adverse entries of the applicant for ACRs of 1987 & 1988 the respondents have neither applied their mind nor disposed of the application well within time by a speaking order. Hence the respondents No.1 to 6 be directed to expunge all adverse entries in the ACRs of the applicant and communicate the same to the applicant, or in the alternative the Respondents No. 1 to 5 be directed to ignore the ACR for the years 1987 & 1988 and not to act on them while considering the case of promotion of the applicant from SSO I to PSc O, with effect from middle of 1990 when his immediate juniors Dr. J.J. Rebellow etc. are promoted.

(ii) The Memorandum No. A/96208/321/DGI/Adm-6 dated 21.5.1986 (Annexure - A 51) and "Advisory Note" issued vide No. CIME/8036/A/RKP dated 9th Sep. 87 (Annexure - A 52) has to be quashed/set aside.

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(iii) The Respondents No. 1 to 5 be directed to promote the applicant to the post of PScO with effect from the date his juniors Respondent No. 7 is promoted after holding a review DPC and after ignoring the adverse entries in ACR for the years 1987 & 1988.

(iv) To direct Respondents No. 1 to 3 to draw yearwise panel for all available vacancies of PScO with effect from 1989 - 1990 in a particular year for effecting yearwise promotion.

(v) All consequential benefits such as readjustment of seniority, readjustment of promotion date, monetary benefit arising out of such readjustments be paid to the applicant as it will be unjust to deny arrears for the period of notional promotion where employee is kept out of work for no fault of his.

(vi) The cost of the application may be paid by the respondents to the applicant and to inflict exemplary cost and stringent strictures on respondents for unnecessarily harrassing the applicant for 12 years.

2. On the commencement of hearing the Learned counsel for the applicant stated that he is not pressing the reliefs mentioned in para 8(i) & (ii) of the OA., hence it be deleted, nor pressing relief against respondent No.7 though he is junior to him, dropping the relief against respondent No.8.

3. The applicant has challenged the following orders as stated in para 1 of the OA which are as under:

(a) Order No. A/98834/EXP/DGQA/ADM-6B dated 30.11.1993 (page 224) on the subject "Representation against Non-empanellment of Shri J.S. Sundaresan, In the Panel/Promotion Order from SSO-I to PScO received vide No. QAE(ME)/II/14/1/CON dated 31.12.1993 (page 223) (Annexure II) with reference to the applicant's application No. JSS/ROG/PROM dated 25.10.1993 (Appendix I) Page 222 .

(b) Order No. A/98834/EXP/DGQA/ADM-6B dated 17.6.94 (page 227) received vide letter No1. QAE(ME)/II 04/I/CON dated 6.7.1994 (Appendix IV) (page 226) with reference the applicant's application No JSS/ROG/PROM dated 6.5.1994 (Page 225) (Appendix III).

4. In para 3 of the OA the applicant claims that the application is within limitation period.

5. The DPC for the vacancy for the year 1991 - 92 was held on 9.6.1992, Panel was published on 22.9.1992, promotion orders were issued in compliance of the same on 9.11.1992.

6. The applicant represented against the same on 15.12.1992 (Annexure A - 67 OA page 202) which was replied on 23.12.1992 (Annexure A - 68 OA page 204), rejecting the same. Again the applicant represented on 25.10.1993 which was rejected on 30.11.1993 (Appendix II OA page 224) and communicated to the applicant on 31.12.1993. (Appendix II OA page 223) OA has been filed on 29th November 1994. As the first representation was rejected on 23.12.1992, the cause of action accrues on 23.12.1992. The further/subsequent representation does not give a fresh cause of action in favour of the applicant. The period for limitation is to be counted from 23.12.1992. The result is that OA which is filed on 29.11.1994 is barred by time in view of Section 21 of the Administrative Tribunals Act 1985 in this respect. Hence, we decline to examine the matter on merits in this respect.

7. The subsequent DPC for one vacancy for the year 1992 held on 25.2.1994. The panel was published on 30.3.1994 (Annexure A - 69 OA page 205). The applicant represented against the said panel on 15.4.1994 (Annexure A - 30 OA page 206), further represented on 6.5.1994 (Appendix IV OA 226) which was rejected on 17.6.1994 and communicated to the applicant on 6.7.1994. The OA in this respect, which is filed on 29.11.1994 is within limitation. Hence, we proceed to examine the same on merits.

Sd/-

8. The applicant was S.S.O. I and he was considered for promotion to the post of P.Sc.O in both the above referred D.P.C. but could not be empaneled. There is no dispute between the parties that the post of P.Sc.O is a selection post, the Bench Mark is 'very good' and A.R.Cs for the last five years are to be considered for the selection by the DPC. Thus the DPC which met on 25.2.1994 for the vacancy for the year 1992, considered the ACRs of the applicant for the last five years i.e. 1988 - 89, 1989 - 90, 1990 - 91, 1991 - 92, 1992 - 93.

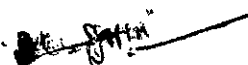
9. The adverse ACRs for the year 1988 - 89 was communicated to the applicant vide letter dated 8.8.1989 which was received by the applicant on 16.8.1989 (A-62 - OA page 192), the applicant submitted the representation against the same (A -63- OA page 194) on 25.8.1989 which was rejected on 6.1.1990 and communicated to the applicant on 27.1.1990 (A - 64 OA page 197). The said order is final one.

10. The grievance against the said order, cannot be examined in an OA filed in November 1994. Thus it can be said with certainty that the ACR for the year 1988 - 89 being adverse, was communicated to the applicant, the applicant represented against the same which was rejected on 6.1.1990 and communicated to the applicant on 27.1.1990 was a subject of consideration by the DPC held on 25.2.1994 for the vacancy of the year 1992. As the applicant could not secure the Bench Mark which is 'very good' for all the five years, hence solely or alongwith other counts his empanelment in the said DPC, if not there, he cannot legally make a grievance against the same.

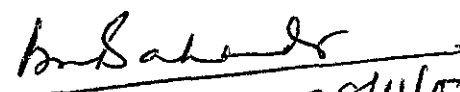
P. J. M.

10. We have carefully perused the minutes of meeting of the DPC., though there are other additional reasons not to empanel the applicant which ought to have been communicated to the applicant in view of the judgement U.P. Jal Nigam and others V/s Prabhat Chandrsa Jain and others {1996 (2) SCC 366}, though not communicated, the applicant's case in no way prejudiced. If we accept the view that they ought to have been communicated and not communicated, hence cannot be taken into consideration in view of the judgement Gurudayal Singh Fizzi V/s State of Punjab and others { 1979 SCC (L & S) 197 } still the applicant is not better placed in the present situation. Hence a futile exercise for a review DPC is not necessary one.

12. In the result, we do not find any merit in the OA., it is liable to be dismissed and is dismissed accordingly with no order as to costs.


(S.L.Jain)
Member(J)

NS


(B.N.Bahadur) 28/11/02
Member(A)