

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1504/95

Date of Decision : 5.7.2000

S.R.Mundargi Applicant.

Shri M.R.Patil Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri R.K.Shetty Advocate for the
Respondents.

CORAM :

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

The Hon'ble Shri Govindan S. Tampi, Member (A)

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

Govindan
(R.G.Vaidyanatha)
VICE CHAIRMAN

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1504/95

Wednesday this the 6th day of July,2000.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri Govindan S.Tampi, Member (A)

S.R.Mundargi,
Deputy Director (Glass & Ceramics),
R/o 47, Apartment House,
Hyderabad Estate, Napean Sea Road,
Bombay.

... Applicant

By Advocate Shri M.R.Patil

V/S.

1. Union of India
through the Secretary,
(Small Scale Industries and
Agro & Rural Industries),
Government of India,
Ministry of Industry,
New Delhi.
2. The Additional Secretary and
Development Commissioner,
(Small Scale Industries),
Ministry of Industry,
Govt. of India, Nirman Bhavan,
7th Floor, New Delhi.
3. S.K.Wadhwani,
Director,
Small Industries Service
Institute, Madras. ... Respondents

By Advocate Shri R.K.Shetty

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O R D E R (ORAL)

{Per: Shri Justice R.G.Vaidyanatha,VC}

This is an application filed by the applicant claiming seniority and retrospective promotion. Respondents No. 1 & 2 have filed reply opposing the application. Respondent No. 3 has remained unrepresented. We have heard Shri M.R.Patil, learned counsel for the applicant and Shri R.K.Shetty, learned counsel for the respondents.

2. The short point for consideration in this application is whether the applicant is senior to Respondent No. 3, S.K.Wadhwani in the cadre of Deputy Director (Glass & Ceramics) and hence entitled to promotion from the date the Respondent No. 3 was promoted as Director?

To answer the above question, only few facts are necessary which are admitted and undisputed.

The applicant was appointed as Promotion Officer and came to be promoted as Deputy Director on 29.11.1979 on adhoc basis and on 9.10.1980 on regular basis. Respondent No. 3 S.K.Wadhwani is a direct recruit and he came to be appointed by direct recruitment on 11.3.1983. It appears that in 1987 provisional seniority list was published and the applicant was shown below Respondent No. 3. Again in 1992, the applicant was shown below Respondent No. 3. The applicant has sent number of representations both against 1987 seniority list and 1992

seniority list. The Respondents No. 1 & 2 partly accepted the case of the applicant and rejected his claim of seniority over Respondent No. 3 Shri Wadhwani by endorsement issued in 1993. Respondent No. 3 was promoted as Director some time in December, 1994. Being aggrieved by the action of Respondents No. 1 & 2, the applicant has come up with the present application.

The applicant's case is that he was always senior to S.K.Wadhwani and he was entitled for the promotion to the post of Director but he was wrongly superseded by Wadhwani in December, 1994 presumably because of his position in seniority list. In view of this, he prays that the applicant be placed above Shri Wadhwani and consequentially Respondents No. 1 & 2 be directed to consider the applicant for promotion and give retrospective effect from the date Respondent No. 3 was promoted with all consequential benefits.

3. Respondents No. 1 & 2 in the reply have asserted that Respondent No. 3 who was a direct recruit was placed above the applicant in view of rota quota policy. They have justified that Respondent No. 3 was senior to the applicant though he has joined the service later.

4. As far as merits are concerned, it is admitted that in the cadre of Deputy Director, as per Recruitment Rules, 75% is to be by promotion and 25% by direct recruitment. Therefore, for 12

posts, 9 posts for promotion and 3 posts for direct recruitment. When there is excess promotion in excess of quota for promotion then excess promotee man cannot get seniority over direct recruitment. The same principle holds good for excess direct recruitment also. Page 35 of the paper book shows that in 1982 there were 11 persons in the cadre. There were 3 direct recruits who were at Sr.Nos. 2,4 & 6. Then applicant is at Sr.No.7. That means in 1982, the quota of direct recruits was full as per Recruitment Rules. Subsequently in 1983 Wadhwani was inducted into the cadre, but he cannot go over and above the applicant who was at S.No.7 in the 1982 list. It is not a case of there being deficiency in the direct recruit quota in 1982. We have already seen that direct recruitment was full when the 1982 seniority list was issued and the Respondent No. 3 is a direct recruit. Therefore, Respondents No. 1 & 2 cannot show Wadhwani as senior to the applicant in March, 1983.

5. The learned counsel for official respondents contended that 1987 seniority list cannot be questioned in 1994, after lapse of 7 years. The argument of the official Respondents No. 1 & 2's counsel though attractive may not have much force in the facts and circumstances of the present case. It is true that challenge to the seniority list can be rejected on the ground of delay and laches. But here admittedly the applicant is aggrieved by the 1987 seniority list. If it was final seniority list, the applicant should approach the Tribunal within one year, but admittedly 1987 seniority list was provisional; then again 1992 seniority list is also provisional; the notification itself says

that if nobody's representation is received, then provisional seniority shall be final. It is on record and not disputed that the applicant has sent representations both against seniority list of 1982 and 1992. If the matter is still in the provisional seniority stage, the applicant need not rush to Court. In addition to this, immediate cause of action is when the applicant was superceded by promoting Respondent No. 3 in December, 1994. Accordingly, the present application was filed in December, 1995 well within one year from the date of supersession. Hence, in the facts and circumstances of the case, we do not find any force in the plea of Respondents No. 1 & 2 about limitation, delay & laches.

6. Even if we accept the applicant's entire claim, the only relief that can be given is to direct the official respondents to hold a Review DPC and consider the case of the applicant for promotion and if he is found suitable he should be promoted from the date his immediate junior Shri Wadhwani was promoted in 1994 with all consequential benefits. But such a relief cannot now be granted in view of the facts now brought out by Respondents No. 1 & 2 at the time of arguments.

7. The Bench Mark for promotion to the post of Director is "Very Good", which is a Group 'A' post. The zone of consideration is 1 : 5. The DPC was presided over by Member, UPSC, which was held in 1994. The learned counsel for the Respondents No. 1 & 2

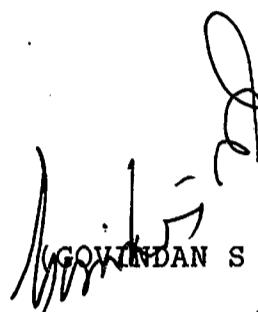
has placed before us the original DPC record. The DPC has considered 5 officers, namely, S.K.Wadhwani, the applicant, J.C.Pandey, Shamdev and Subramaniam. The DPC has given grading to all the officers. Mr.S.K.Wadhwani has got the grading of "Very Good" whereas the applicant's grading as per the DPC is "Good". Therefore, in view of the grading Wadhwani was promoted. Even if the applicant was senior to Wadhwani, since his grading was "Good" and Bench Mark is "Very Good", he cannot be promoted and hence no direction for review DPC can be given since applicant's grading is less than the Bench Mark of "Very Good". It will be a futile exercise, after 5 years, to hold a review DPC since he has already been considered by the DPC, he could not have been promoted in view of the grading and the bench Mark fixed under the Rules, even if he was senior to Wadhwani in the seniority list.

It is true that official respondents have not pleaded this fact in the reply. The official respondents should have pleaded that even if the applicant is senior, he could not be promoted in view of the Bench Mark but such a plea was not taken in the reply. But, however, after perusing the record, even if he was senior, we hold he could not have been promoted. Though we are satisfied that he was senior to Wadhwani at all stages.

8. Applicant has filed M.P.No.346/99 for condonation of delay . M.P.No.178/2000 filed by the respondents is allowed and Sur-rejoinder is taken on record.

9. In view of the above discussion, we find that no relief can be granted to the applicant in the present OA.

10. In the result, the OA. and M.P.No.346/99 and M.P.No.178/2000 are disposed of subject to the above observations. No order as to costs.


GOVINDAN S TAMPI
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO. : 40/2000
IN
ORIGINAL APPLICATION NO.1504/95.

Wednesday this the 28th day of Feb., 2001.

Coram: Hon'ble Shri B.N.Bahadur, Member (A),
Hon'ble Shri S.L.Jain, Member (J).

S.R.Mundargi ... Applicant.

(By Advocate Shri M.R.Patil)

Vs.

Union of India & ors. ... Respondents.

(By Advocate Shri R.K.Shetty)

: O R D E R :

{Per Shri S.L.Jain, Member (J)}

This is an application under Rule 17 of the Administrative Tribunals (Procedure) Rules, 1987 for reviewing of an order passed by this Tribunal in OA 1504/95 passed on 6.7.2000.

2. The learned counsel for the original applicant/Review Petitioner argues that he has no grievance in respect of the order passed by this Tribunal and finding recorded by the Bench till para 6 of the said order "But such a relief cannot now be granted in view of the facts now brought out by Respondents No.1 and 2 at the time of arguments." He has the grievance in respect of para 7 of the order. His contention is that the finding recorded by the Tribunal that "Very Good" Bench mark is required, is not correct.

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3. The learned counsel for original applicant/Review Petitioner relied on Exhibit RP1 and argued that as the applicant's case was for the post of Director which bears the pay scale of Rs. 3700 - 125 - 4700 - 150 - 5000, Hence the Bench mark is "Good" and not "Very Good". He relied on page 86 of Seniority and Promotion (i), (ii), (iii) & (iv) which are reproduced below for ready reference.

(i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts, a benchmark grade would be determined for each category of posts.

For all Group 'C', Group 'B' and Group 'A' posts (up to and excluding the level of Rs. 3700 - 5000) the benchmark would be 'Good' and will be filled by the method of Selection-cum-Seniority as indicated in sub-para (iii)

(ii) In respect of posts which are in the level of Rs. 3700 - 5000 (pre 1.1.1996) and above, the benchmark grade should be 'Very Good' and will be filled by the method of Selection by Merit as indicated in sub/para (iv).

(iii) Each Departmental Promotion Committee while considering the suitability of officers for promotion to posts for which the benchmark has

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been determined as 'Good' would grade the officers as 'Good', 'Average' and 'Unfit' only. Only those officers who obtain the grading of 'Good' will be included in the panel in the order of their seniority in the lower grade, subject to availability of vacancies.

(iv) Notwithstanding the provisions mentioned above, in the case of promotion made for induction to Group 'A' posts/services from lower groups, while the benchmark would continue to be 'Good' the DPC shall grade the officers as 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit', as the case may be, and the officers will be arranged according to the grading obtained, placing the 'Outstanding' officers on top followed by those graded as 'Very Good' and so on in the select panel up to the number of vacancies, with the officers having the same grading maintaining their interse seniority in the feeder grade.

On perusal of the same we are of the considered opinion that the above stated provisions deserves to be considered together, the benchmark prescribed is to be considered with reference to the pay scales to which promotions are to be made and (iv) is to be considered an exception to para (i) and (ii). On perusal of para (i) and (ii) we are of the considered opinion that as the

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post of Director is in the scale of Rs.3,700-5,000, the post of Deputy Director is a Group 'A' post, the promotion to the post of Director is also to Group 'A', the Bench mark grading should be "Very Good". Further perusal of (iv) makes it clear that the grading should be as stated above that DPC shall grade as 'Outstanding', 'Very Good' 'Good' and 'Average' as the case may be and the officers will be arranged according to the grading placing 'Outstanding' officers on top followed by 'Very Good' in the select panel up to the number of vacancies with the officers having the same grading maintaining their interse seniority in the feeder cadre.

4. As the applicant was graded 'Good' and grading which is required was 'Very Good', the applicant could not get the benchmark.

5. In the circumstances stated above, we do not find any error in the order passed by thi Triunval in para 7.

6. The learned counsel for the original applicant/Review Petitioners argues that the proceedings of the DPC be called for and the findings recorded in respect of the applicant be reexamined, as the applicant is graded 'Very Good' but the word 'Very' is being erased which came to his notice by the reply of the review petition filed by the respondents. We do not think it necessary to call again the proceedings of the D.P.C. which were examined by the Tribunal earlier and which is not a ground for

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Entitled
Review Petition. ~~result, we do not find any merit in the Review~~
7. In the result, we do not find any merit in the Review Petition. It is liable to be dismissed and is dismissed accordingly, with no order as to costs.

S.L.Jain
(S.L.JAIN)

MEMBER (J)

B.N.Bahadur
(B.N.BAHADUR)

MEMBER (A)

B.

M 28/10/
order/Judgement despatched
to Appellant/Respondent(s)
on 8/3/10

NO