

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 749/1998

Date of Decision: 30th Day of January, 2001.

Shri R.V.Patel . . . . . Applicant

(Applicant by Shri S.P.Saxena, Advocate)

Versus

Union of India & 3 Ors. . . . . Respondents  
(Respondents by Shri M.I.Sethna, Adv. with Shri  
V.D.Vadhavkar, Adv. for R.1 & 2)

CORAM

Hon'ble Shri S.K.I.Naqvi, Member (J)  
Hon'ble Smt. Shanta Shastry, Member (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library.✓

*Smt. Shanta Shastry*  
(Smt. Shanta Shastry)  
Member (A)

*sj\**

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No. 749/98

DATE OF DECISION: 30.01.2001

CORAM: HON'BLE SHRI S.K.I.NAQVI, MEMBER (J)  
HON'BLE SMT. SHANTA SHAstry, MEMBER (A)

Shri R.V. Patel,  
Deputy Centrller of Patents Designs,  
Todi Estate, Sun Mill Compound,  
Lower Parel, Mumbai-400 013.  
r/a: H-31, Hyderabad Estate,  
Nepean Sea Road,  
Mumbai 400 036. .... Applicant

(Applicant by Shri S.P.Saxena, Advocate)

and Shri H.D.Garcholia Advocate. *Plg. 1/1 (J)*  
vs. *E9*

1. The Union of India through  
The Secretary,  
Ministry of Industry,  
Department of Industrial Development,  
Udyog Bhavan,  
New Delhi - 110 001. *M(A)*
2. The Controller General of Patents,  
Designs and Trade Marks,  
Old C.G.O. Building,  
101, Maharshi Karve Road,  
Mumbai - 400 020.
3. Shri B.P. Mishra  
Jt. Controller of Patents & Designs  
The Patent Office Branch,  
Municipal Market Building,  
Karol Bagh,  
New Delhi - 110 005.
4. The Secretary Union Public Service Commission,  
Dholpur House,  
New Delhi - 110 001. .... Respondents

(Respondents 1 & 2 by Shri M.I. Sethna, Adv. with Shri V.D. Vadhavkar, Advocate. For Resp. 3 & 4 None present)

ORDER (ORAL)

[Per: Smt. Shanta Shastry, M (A)]

The main grievance of the Applicant in this case is that he has been over looked for promotion to the post of Jt. Controller of Patents and Designs, when the DPC was held in 1996. He has prayed for production of the entire records and materials

pertaining to the promotion to the post of Jt. Controller of Patents and Designs by the Respondents and to declare the impugned order dated 6.6.1998 as illegal and bad in law to that extent to quash and set aside the same and to consider the Applicant for the promotional post with all consequential benefits and to conduct the Review DPC.

2. The Applicant joined the service initially in 1972 and was promoted as Assistant Controller of Patents and Designs in 1983. He was granted adhoc promotion as Dy. Controller and was regularised w.e.f. September, 1991, in that post. In the Seniority List of Dy. Controllers of Patents and Designs as on 1.10.19986, the applicant stood at Sr. No.2 and the Respondents No.2 stood at Sr.No.3.

3. A DPC was held on 19.9.1997, for filling up the 3 newly created posts of Jt. Controller of Patents and Designs by promotion. The Applicant's name along with that of Respondent No.3 and another Officer senior to the Applicant was forwarded to the UPSC for consideration. The DPC however, recommended the panel of only two names. The Applicant's name did not figure in the same. Thereafter again another DPC was held and the applicant's junior Respodnent No.3 was recommended by the DPC. Again Applicant's name did not figure in the panel.

4. It is the contention of the Applicant that no adverse remarks were ever communicated to him the period from 1991 to 1997. There were no Disciplinary Proceedings initiated or pending against him. In spite of that he has not been promoted. Further, the Bench mark for the post being "Very Good" even if the Applicant did not meet the Bench Mark, he should have been communicated the Adverse Remarks as even a remark like GOOD would

be considered as adverse in such a case. This was not done. Further if he was superseded, then the reason should have been recorded in the proceedings as to why he could not be found suitable for promotion. None of these actions has been taken by the Respondents. The Learned Counsel for the Applicant has drawn our attention to the fact that the Applicant belongs to the Scheduled Caste community. According to the consolidated instructions of the Govt. of India on Departmental Promotion Committee, dated 10.4.1989 in para 6.3.2 there is a specific provision which reads as follows: "In promotions by selections to posts and services within Group "A" which carry an ultimate salary of Rs.5,700/- per month in the revised scale, the SC/ST Officers who are Senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the Select List has to be drawn up, would notwithstanding the prescription of 'Bench Mark' be included in that list provided they are not considered unfit for promotion. The learned Counsel argues that the post of Jt. Controller of Patents and Designs carried the ultimate salary of Rs.5,700/- being in the Pay Scale of Rs.4,500/- to 5,700/-. The Applicant is from the SC and he is senior enough in the zone of consideration for promotion. There were enough vacancies. No adverse entries were ever communicated to the applicant. Therefore, even if the applicant did not come up to the 'Bench Mark' of 'Very Good', the Applicant should have been recommended for promotion provide he was not found unfit. The Learned Counsel has relied on the following judgements in support that in any supersession of an Officer, reasons to that effect must be recorded.

*M.C. Kapoor vs. Union of India -- AIR 1974 (SC)*

*S.S. Darbari vs. Union of India -- 1996 Vol.II SLJ CAT 701*

*B.W. Pradhan vs. State of Maha. -- 1991 Vol.I SLJ 257*

Similarly, he has relied on a few other judgements viz.

(i) *G.S. Mishra vs. Union of India 1996 Vol.34 ATC 54 (34) ATC*,  
(ii) *G. Chenkamalam vs. UOI 1998 ATC Vol. 37, 354 and*  
(iii) *U.P. Jal Nigam vs. P.C. Jain -- JT 1996 Vol.1 SC 641*,  
which hold than non communicated Adverse Remarks should not to be  
considered for purposes of promotion. The learned Counsel has  
further submitted that even though he was not selected in the  
past DPCs even now there are two vacancies against which he could  
be considered. He, urges that he is entitled for promotion  
against one of the vacancies.

5. Learned Counsel, for the Respondents Shri M.I. Sethna  
along with Shri V.D. Vadhavkar, submit that the applicant was  
duly considered for promotion in every DPC that was held since  
1997. However, he was not found suitable by the DPC. The DPC  
has followed the correct procedure and there is nothing illegal  
in that the applicant's name was not recommended for promotion to  
the posts. The learned Counsel has relied on the judgement in  
the case of *Smt. Nutan Arvind [1996 (c) SC SLJ 238]*. It has been  
held therein that the DPC has considered the cases on merit such  
decisions of the DPC should not be interfered with. Similarly,  
in 1995, (29), ATC 351, in the matter of *Sharadkumar Das vs. Vishwajit* it has been held that where the merit and suitability  
of a person are considered superior seniority had no role to  
play. The learned Counsel has also cited the case 1996 SCC (L&S)

417 in the matter of *State of Rajasthan vs. Sri Ram Varma* . In regard to the para 6.3.2 of the Consolidated Instructions of DPC referred to by the learned Counsel for the Applicant, the learned Counsel for the Respondents, reiterated that the Applicant was not found suitable by the DPC and that has to be construed as equivalent to "Unfit" and therefore, the Applicant's case has been rightly rejected. Respondent No.3 has been promoted in his own right as he has been considered suitable by the DPC. It is not that he has been considered in place of the Applicant by superceding him as is evident in that even in the first DPC held in 1997, though there was a vacancy he was not recommended at that time.

6. We have heard the learned Counsel for the Applicant as well as the Respondents. None was present on behalf of Respondent No.3 and 4 in spite of notice being served. We have given careful consideration to the pleadings. In our view, the whole issue narrows down to the position as to whether the Applicant was found unfit by the DPC in terms of the provisions contained in para 6.3.2 of the Consolidated Instructions on DPC dated 10.4.1989. The Learned Counsel for the Respondents has fairly contended that the Applicant was not found suitable at all. The Respondents have produced the proceedings of the DPC and the full record relating to the Applicant's case. We have perused the same. We do find that the Applicant did not meet the Bench Mark of "Very Good" and he has through out only an average record. The post being a Selection post if the Applicant did not come up to the Bench Mark, certainly, he cannot be recommended,

and the DPC has rightly not recommended him on this post. However, in view of the provision of the Consolidated Instructions referred to above, the Applicant's case should have been considered not only on the basis of 'Bench Mark' but on the basis of whether he was "Fit" or "Unfit" which is normally done in cases of non selection posts. It is likely that perhaps the attention of the DPC was not drawn to this provision. According to us being "unsuitable" and "unfit" are two different things in the context of selection posts. Being unsuitable means that a person has not achieved the Bench Mark prescribed for the posts or being lower in merit comparatively. Thus, the Applicant was certainly unsuitable whereas "unfit" would mean having an Adverse Entry or not being able to stand on his own merit even. That does not appear to be the case here as the Applicant has no Adverse Entry. He has only an "Average" entry. "Average" cannot be considered as "Unfit", since the DOPT instructions have clearly provided for relaxation of provision as far as the SC/STs are concerned, according to us the Applicant deserves to be considered for selection as he is certainly not "Unfit" even though he may not be clearing the Bench Mark. In the facts and circumstances of the case, we direct the Respondents to convene a Review DPC for the year 1997 when the vacancy first existed and the Applicant was high in the zone of consideration. In the light of the provision of para 6.3.1 of the Consolidated Instructions of the DOP&T dated 10.4.1989 (10.8.1989) <sup>10.1.1989</sup> <sub>in (J)</sub>, and to reconsider the Applicant's case for promotion. If found fit, the Applicant shall be promoted from the date of the first DPC with all consequential benefits. This exercise be carried out within a period of 4 months from the date of receipt of a copy of this order.

7. The O.A. is allowed. We do not order any costs. *Sec andy*

*Shanta* *J*  
(Smt. Shanta Shastray)

Member (A)

*Sec andy*  
(S.K.I. Naqvi)

Member (J)

sj\*

② 21. 9. 2001

present: Applicant in person.  
Shri V.G. Rege for respondents.

Post this matter after two  
weeks. Call on 09.10.2001.

K - S  
(Shantosh Shastri)  
Member(CA)

OR  
(V. Rajagopal Reddy)  
VC(I)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

REVIEW APPLICATION NO. 43/2001  
IN  
ORIGINAL APPLICATION NO. 749/1998

THIS THE 14TH DAY OF SEPTEMBER 2001

CORAM: SHRI S.K. NAQVI. ... MEMBER (J)  
SMT. SHANTA SHAstry. ... MEMBER (A)

Union of India & Ors .. Review Applicants  
.. Respondents

Vs.

Shri R.V. Patel. .. Respondent  
Applicant in OA

O R D E R (CIRCULATION)

Smt. Shanta Shastry. ... Member (A)

This review application is filed by the respondents in the Original Application No. 749/98 decided on 30.1.2001. The Tribunal directed the respondents to convene a review DPC for the year 1997 when the vacancy first existed and the applicant was high in the zone of consideration, in the light of the provision of para 6.3.1 of the Consolidated Instructions of the DOP&T dated 10.4.1981 and to consider the applicant's case for promotion. The review applicants have sought the review on the ground that the relief granted to the applicant in the OA was exclusively on the basis of the applicant's submission that

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consideration of the bench mark was not necessary in the case of candidates belonging to the SC/ST. The review applicants have drawn attention of the Tribunal to the provisions of OM dated 22.7.97 bearing No.360E/23/96-Estt.(RES) wherein it has been stated that "it has been decided to withdraw the instructions contained in OM dated 10.4.89 to the extent it provides for consideration of SC/ST candidates without reference to merit and the prescribed 'bench mark' are hereby rescinded". Further, when the DPC met on 19.9.97 the OM dated 22.7.97 was in force and therefore, the applicant would not have been entitled to the relief which he got. It was only during the examination for implementing the Tribunal's order that the aforesaid provisions came to the notice of the appropriate staff. The review applicants/ respondents have also referred to the proceedings in OA No.749/98 wherein this particular OM dated 22.7.97 had been taken into consideration.

2. We have perused the ground taken by the review applicants/ respondents. The judgment was delivered on 30.1.2001 and the review applicants/ respondents have now approached this Tribunal on 26th June, 2001 for review. It is, therefore, barred by limitation as the review application needs to be made within a period of

one month of the receipt of the order. Further, the judgment was dictated in the open court and was based on whatever material available before the Tribunal at the relevant time. Further, even the OM dated 22.7.97 has been amended later on restoring the earlier provisions of para 6.3.1. of OM dated 10.4.89

3. In our considered view, therefore, no review is called for. The review application is, therefore, rejected both on ground of limitation as well as on merits.

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(SMT. SHANTA SHAstry)

MEMBER (A)

S. K. S. Naqvi

(S. K. S. NAQVI)

MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

C.P.57/2001 in  
OA 749/1998

9/10/2001

Heard the applicant in person and Shri M.I.Sethna, Counsel for Respondents.

Prima facie it appears to us that our order passed in OA No.749/98, R.V.Patel V/s. Union of India and Ors decided on 30/1/2001 was not complied within the stipulated period. We issued notice to Shri Hem Dulal Thakur, Controller General of Patents, Designs and Trade Marks, Old CGO Building, 101, M.K.Road, Mumbai - 400 020.

In reply to the notice Shri Hem Dulal Thakur annexed a letter dated 27/6/2001 of Shri Jatinder Kumar, Deputy Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi - 110 001 at Exhibit-6. On perusal of para-4 of said letter, we find that Jatinder Kumar, instead of complying ~~the~~ order mentioned above, has stated in his letter that "the recommendations of the DPC, which met on 19/7/97 in the said case, was in order and is not required to be reopened or reviewed as per the Government instructions." This, prima facie it appears to us to be wilful disobedience of the order of this Tribunal, We issue suo moto notice to Jatinder Kumar as to why he should not be punished for wilful disobedience of above mentioned order under Section 11/12 of Contempt of Courts Act. He is directed to appear in person on 7/11/2001 and submit his reply.

In case he submits his reply and is represented by a lawyer on the date fixed, then he need not appear in person. The office is directed to send a copy of the application as well as

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reply and rejoinder filed by the parties to Shri Jatinder Kumar. The applicant is directed to file a copy of application and rejoinder within three days while the respondents Shri Hem Dulal Thakur will file copy of the written statement/reply he has submitted together with annexures to the Registry within three days.

Hand of

(SMT. SHANTA SHAstry)  
MEMBER(A)

*B. Dikshit*  
(B. DIKSHIT)  
VICE CHAIRMAN

abp