

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.1172/92

Dt. of order: 15.12.1994

Harsh Bahadur

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr. Pankaj Shandari

: Counsel for applicant

Mr. U.D. Sharma

: Counsel for respondents

CORAM:

Hon'ble Mr. Gopal Krishna, Member (Judl.)

Hon'ble Mr. O.P. Sharma, Member (Adm.)

PER HON'BLE MR. O.P. SHARMA, MEMBER (ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Harsh Bahadur, has prayed that the order dated 27.1.89 in so far as it relates to respondents Nos. 3 to 9 which has resulted in supersession of the applicant may be quashed with directions to the respondents to promote the applicant as Superintendent Gr.B w.e.f. 27.1.'89 in the pay scale of Rs.2000-3500.

2. The case of the applicant is that he was appointed as Inspector in the Central Excise & Customs Department on 26.3.77, was confirmed as such w.e.f. 31.8.'82 and was granted Selection Grade on 31.5.1985. His name appears at Sl.No.33 in the seniority list issued by the Central Excise & Customs Collectorate, Jaipur (Annx.A5). A DPC met in 1989 and on its recommendations 29 Inspectors were promoted as Superintendent Gr.B in the scale Rs.2000-3500 vide order dated 27.1.1989 (Annx.A1). No adverse entry has ever been communicated to the applicant through-out his career and no penalty has been imposed on him. The DPC which met in 1989 did not call the applicant for interview, which means that nothing except the service record of the applicant was before the DPC and as per this record, the applicant had a legitimate right to be promoted w.e.f. 27.1.'89. The applicant was promoted vide order dated 18.6.'90. It is surprising that the applicant was found suitable for promotion by the DPC which met in 1990 but was found unsuitable by the DPC which met early in 1989. The applicant moved an O.A. (No.136/89) before the Tribunal,

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who vide order dated 28.11.89 had directed the applicant to file a representation with regard to his grievance. In pursuance of this direction, the applicant filed a representation to the Chairman, Central Board of Excise & Customs, New Delhi, but the representation was rejected on 10.7.1990 by a non-speaking order. According to the applicant, if there had any fall in the standard of his performance it should have been communicated to him in view of the instructions dated 20.5.1972 reproduced by the applicant at page 9 of the application. He has mentioned the names of two persons who were promoted vide order dated 27.1.'89 but had bad record. Thus, according to the applicant, the DPC which met in January 1989 and on whose recommendations the promotion order dated 27.1.89 was passed <sup>acted</sup> ~~is~~ in an arbitrary manner.

3. The respondents in their reply have stated that when the DPC met in June 1990 for considering cases for promotion to the post of Superintendent Gr.B, the new procedure contained in the Department of Personnel & Training O.M. dated 10.4.89 had come into force, according to which the names of the persons whose overall grading is equal to or better than the bench mark 'good' were required to be included in the panel for promotion to the extent of the number of vacancies. That is how the name of the applicant came to be included in the panel for promotion on the basis of the recommendations of the DPC which met in June 1990. As regards, the DPC which met on 2/3.1.'89, the case of the applicant alongwith other eligible candidates was duly considered by the DPC on the basis of the service record in accordance with the procedure contained in the Deptt. of Personnel & Training O.M. dated 19.8.'88, according to which the DPC was required to make its own assessment of the record of the service of the officers irrespective of any grading which might have been shown in the ACRs. Further, as per the procedure contained in the Deptt. of Personnel & Administrative Reforms OM dated 30.12.'76, a panel was to be drawn upto the extent necessary by placing the names of the 'outstanding' officers first followed by the officers categorised as 'very good' and then followed by the officers

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categorised as 'good'. The applicant's name was below the category upto which the panel was drawn. Hence, the applicant could not be granted promotion on the basis of the recommendations of the said DPC. Regarding two persons mentioned by the applicant as having been wrongly granted promotion on the ground that their record was bad, it was after the expiry of the currency period of the penalty in one case <sup>that</sup> the promotion was granted. As regards the second case, the DPC had met on a date before the one on which a memorandum calling for the explanation of the officer for irregularities alleged on his part was issued to him.

4. During the arguments, the learned counsel for the applicant cited before us, the judgment of the Hon'ble Supreme Court in Amar Kant Choudhary Vs. State of Bihar & Ors. (1984) 1 SCC 694 in which directions had been issued by the Hon'ble Supreme Court to reconsider the case of the appellant because the name of the appellant had not been included in the select panel relying upon adverse entries which were expunged after the selection committee had taken its decision and in this case favourable entries in confidential reports had also not been placed before the Selection Committee and further, the representation against the non-inclusion in the select list had not been considered by the Committee in its next meeting. According to the <sup>learned</sup> counsel for the applicant, if the applicant had been granted promotion on the basis of the DPC which <sup>was</sup> held in June 90 there was no reason why he should not have been granted promotion by the DPC meeting held in Jan. 89, because nothing extraordinary had happened during the intervening period.


5. We have heard the learned counsel for the parties and have gone through the records as well as the judgment cited before us by the learned counsel for the applicant. The respondents had earlier been directed to produce the records of the DPC meeting held on 2/3.1.89. These records were produced before us and have been perused by us. These have also <sup>been</sup> shown to the learned counsel for the applicant. We find that the applicant had been categorised by the DPC as 'not yet fit' for promotion. The basis for empanelment at the relevant time was 'selection' under which

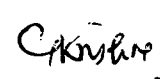
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persons were graded on the basis of their <sup>comparative</sup> merit as reflected in their service record and the panel was arranged in the order of candidates who were outstanding, very good, and good. Those who were not found fit were not included in the panel. Subsequently when the DPC met in June 90, the criteria by that time had changed and all persons who were 'good' or above this bench mark were included in the panel for promotion on the basis of their seniority. Thus, in the circumstances, we do not find any irregularity either in the procedure adopted by the DPC or in its assessment on the applicant for the purpose of promotion to the post of Superintendent Group-B. Assuming that 2 persons whose record has been stated by the applicant ~~were~~ to be bad ~~and~~ were unjustifiably promoted, yet this would not help the applicant in any way because, the applicant had not yet been found fit for promotion and even <sup>if</sup> these two persons had been excluded from the panel, the applicant's name could not have been included in the panel. Regarding the alleged failure of the respondents to communicate any fall in standard of performance of the applicant, there is no specific averment by the applicant that at one stage he had been graded as 'outstanding' or 'very good' and that another stage he had been graded as merely 'good'. Since, the selection by the DPC meeting held on 2/3.1.89 was on the basis of comparative merit, the applicant was categorised as not yet fit for promotion. Regarding the judgment cited by the learned counsel for the applicant, we find that the basic facts of the case are totally different from those of the present case. In the case decided by the Hon'ble Supreme Court, adverse entries had been recorded in the ACR of the applicant and thus the judgment relied upon by the Applicant has no applicability.

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6. In the circumstances of the case, we find no merit in this application, which is dismissed with no order as to costs.

  
(O.P. Sharma)  
Member (A).

  
(Gopal Krishna)  
Member (J).