

(69)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

AT HYDERABAD

O.A.NO. 1022/92.

DATE OF DECISION: 27-3-95.

Between:

Nand Kumar.

.. Applicant.

and

1. Union of India, rep. by its
Secretary, Defence, New Delhi.
2. Chief of Naval Staff,
Naval Head Quarters,
New Delhi.
3. Flag Officer Commanding-in-Chief,
Eastern Naval Command,
Visakhapatnam.
4. Sri Surinder Kumar,
Senior Translation Officer,
Russian Translation Cell,
Naval Head Quarters, New Delhi.
5. Sri P.K.Khullar, Senior Translation Officer,
Russian Translation Cell,
Naval Head Quarters, New Delhi.
6. Durjay Gupta,
Senior Translation Officer,
Russian Translation Cell,
Eastern Naval Command,
Visakhapatnam.

.. Respondents.

Counsel for the Applicant: Mr. P.B.Vijayakumar,

Counsel for the Respondents: Mr.N.R.Devraj, Sr.CGSC.

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN.

THE HON'BLE MR.R.RANGARAJAN : MEMBER(ADMN)

J U D G E M E N T

(as per Shri Justice V. Neeladri Rao, Vice-Chairman)

Russian Translation Cell (RTC) in the Indian Navy was set up in 1967 with a sanctioned complement of three civilian Translation Officers (Russian/English) (Group-B posts) (for short TOs). In 1970 the complement of RTC was 10 Senior Translation Officers (Russian/English) (Group-A post) (for short STOs) and 10 TOs. In 1978 the complement was revised to 5 STOs and 15 TOs. The complement of RTC was again revised in 1981 and it is as under:

Name of the Post	No. of posts
a) Editor (Russian/English)	4
b) S.T.O.	6
c) T.O.	32

Till the recruitment rules for STOs were amended in 1984, the posts of STO were filled up by direct recruitment. Dr. B. K. Srivastava, Shri Malkhan Singh and Shri Kasturi Lal joined as STOs in 1977, 1979 and 1983 respectively on being selected by UPSC by way of direct recruitment. The recruitment rule as amended in 1984 lays down that the posts of STOs have to be filled up by promotion of TOs.

2. As already observed, there were only six sanctioned posts of STOs in 1981. Three of those posts were held by Dr. B. K. Srivastava, Shri Malkhan Singh and Shri Kasturi Lal. The remaining three remained unfilled by 1984 the date on which the recruitment rules for STOs were amended.

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3. Steps were initiated for promotion of STOs who completed three years of service, to the post of Editor/Translator. By proceedings dated 26-5-1985, Dr.B.K. Srivastava and Shri Malkhan Singh were promoted as Editors. After Dr.B.K.Srivastava and Shri Malkhan Singh were promoted as Editors, two consequential vacancies in the cadre of STO had arisen. As six posts of STO were the complement as per proceedings issued in 1981 and by then Dr.B.K.Srivastava and Shri Malkhan Singh were working as STOs and as Shri Kasturi Lal joined in 1983 as STO, the remaining three vacancies of STO were treated as vacancies of 1981 and as steps were taken for promotion of STOs as Editors even in 1984, the two consequential chain vacancies of STOs were treated as vacancies of 1984 and the DPC which met in February 1985 had considered the three vacancies and two vacancies separately and selected Shri A.K.Anand, Shri S.R.Das and Shri B.S.Arya (SC) for the 1981 vacancies and Shri S.C.Dhamija and Shri M.N.Mathur for the two consequential chain vacancies, urged the learned counsel for the Respondents 1 to 3. It is further stated for the respondents that as Shri S.C.Dhamija had not joined on being selected for Steel Plant, Shri O.P.Aggarwal, the next candidate in the panel was promoted to the post of STO.

4. As there were only six posts of STOs and as Shri Kasturi Lal was working as STO by the time the DPC met for the five vacancies, the contention for the applicant that there was one more vacancy of STO in ¹⁹⁸⁴ ~~1983~~ cannot be accepted.

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5. Shri Kasturi Lal went on deputation as STO to R&D Organisation under Project Advanced Technological Vessel (ATV Project) in 1987. Then Shri P.K.Khullar the senior most TO was promoted, on adhoc basis, as STO. (The payscale of STO in ATV Project is equivalent to the payscale of Editor in the Indian Navy viz. Rs.2000-3500). When the post of STO in ATV Project was encadred, Shri Kasturi Lal had come back to Indian Navy in March 1991 and then Shri P.K.Khullar was reverted as TO.

6. It is stated for the respondents that one post of Editor available for filling up by promotion from STOs was lying vacant from 1985 and the same could not be filled up as the senior most STO completed the eligibility period of three years of service in 1986 only and his probation was declared only in 1990. It is further stated for the respondents that three posts in the grade of Editor were created in ATV organisation and encadred in the Indian Navy and hence four vacancies in the category of Editor were available in 1990 and the same were filled up by Shri Kasturi Lal, Shri A.K. Anand, Shri S.R.Das and Shri B.S.Arya who were selected by the D.P.C. in 1991. Accordingly four consequential vacancies had arisen in the posts of STO and 12 ^{TOs} ~~were~~ were considered. ~~considered~~ including the applicant who was at Sl.No.2. Then Respondents 4 to 6, the O/C candidates, and Shri Ram Prasad, S/C candidate were selected for those four vacancies. Though the case of the applicant was considered for 1981, 1984 and 1991 vacancies as he was within the zone of consideration, his name did not find place in the select lists.

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7. Being aggrieved, the applicant filed this O.A. praying for a direction to the respondents to promote him as STO with effect from the date on which his juniors were promoted with all attendant consequential benefits including seniority.

8. The applicant's first and foremost contention is that there was 6th vacancy even in 1985 and if steps were taken to fill up that sixth vacancy, he could have been promoted. As already observed there were only six posts of STO and Shri Kasturi Lal joined as STO in 1983 on being selected by way of direct recruitment by UPSC and the remaining five posts were filled up from amongst the candidates selected by DPC which met in February 1985. Proceedings CP(G)/2607 dt.25-5-85 of Naval Headquarters, New Delhi filed alongwith the written arguments of the applicant, merely shows that Dr.B.K.Srivastava and Shri Malkhan Singh were promoted as Editors/Translators and Shri A.K.Anand, Shri S.R.Das, Shri B.S.Arya, Shri S.C.Dhamija and Shri M.N.Mathur were promoted as STOs. It was also explained for the respondents that out of six sanctioned posts of STO, three were vacant and two more vacancies had arisen due to the promotion of Dr.B.K.Srivastava and Shri Malkhan Singh. As Shri Kasturi Lal continued to be STO till he was promoted as Editor in 1991, it cannot be stated that 6th vacancy in the cadre of STO had arisen before 1991. It cannot be stated that there was a regular vacancy in the post of STO in 1987 when Shri Kasturi Lal was sent on deputation to ATV Project. So the contention for the respondents that during the period

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when Shri Kasturi Lal was on deputation, the post of STO ST0 was filled up only on adhoc basis by appointment of Shri Khullar cannot be held as untenable.

9. It is true that Shri Kasturi Lal completed three years of eligible service by 1986 for consideration for promotion to the post of Editor. But as there was delay in declaration of his probation steps were not taken earlier and after his probation was declared, he was considered for promotion, urged the learned counsel for the respondents. There is nothing to indicate that the promotion of Shri Kasturi Lal was purposely delayed. Even para 6.4.1(d) of the Guidelines for D.P.C. vide OM No.22011/3/76-Estt(D) dated 24-12-80 states that while promotions will be made in the order of the ~~xx~~ consolidated select list in case where DPC considers at a time for filling up of the vacancies each year separately, such promotions will have prospective effect ^{even} in cases where vacancies relate to earlier years. Thus even though Shri Kasturi Lal was eligible for consideration for promotion as Editor in 1986 itself, if his probation was declared by then, still when DPC had considered his case in a later year, his promotion would come into effect only from the date on which he was actually promoted, as such promotion is held as prospective by para 6.4.1(d) of the Guidelines for DPC dt. 24-12-80 referred to above and as Shri Kasturi Lal was actually considered by DPC in 1991 only it has to be held that the vacancy in the category of STO on account of promotion of Shri Kasturi Lal as Editor had arisen only in 1991. So we cannot accede to the contention for the applicant that the vacancy in the category of STO due to the promotion of Shri Kasturi Lal should be deemed to have arisen in 1986 itself.

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10. It may be further noted that Shri Khullar is senior to the applicant as the former was at Sl.No.1 while the applicant was at Sl.No.2 in the select list for the posts of TO prepared in 1973 though the applicant joined earlier to the date on which Shri Khullar joined, pleaded Respondent No.6. Anyhow the applicant had not challenged the seniority list of TOs where all along Shri Khullar was shown above the applicant. The grading that was given to the applicant by the DPC was never higher to the grading given to Shri Khullar. Thus even assuming that the DPC had actually met in 1986 for consideration for promotion of Shri Kasturi Lal to the post of Editor and on his promotion the consequential vacancy in the category of STO had arisen in 1986, still Shri Khullar (R-5) would have been promoted to that post as he is senior to the applicant and as the grading of the applicant was not higher to the grading of R-5.

11. But if the consequential vacancy due to the promotion of Shri Kasturi Lal is treated as a vacancy of the year earlier to 1991, only five would have been considered for that vacancy and if one amongst them was selected, the remaining four and another four would have been considered for promotion to the post of STO for the remaining two vacancies of 1991 and in such a case R-6 would not have been in the zone of consideration. Even then the applicant would not have a chance for there were some more who were having higher grading than the applicant and even then the applicant would not have been empanelled. Hence we feel that it not necessary to further advert to the same for disposal of this O.A.

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12. As the consequential vacancy due to the promotion of Shri Kasturi Lal had arisen at the same time/due to the creation of three posts of Editor in ATV Project, the contention for the applicant that the consequential vacancy due to promotion of Shri Kasturi Lal and the three vacancies had to be separately considered in view of the Guidelines for DPC of 1980 cannot be accepted. We have already held that even if the consequential vacancy due to the promotion of Shri Kasturi Lal had to be considered separately, still the applicant would not have been empanelled as others, even excluding R-6, had gradings higher than the grading given to the applicant.

13. It is further contended for the applicant that even in 1982 he and Shri S.R.Das were detailed for authentication and hence they authenticated even the translations made by ~~Sh~~ R-4 to R-6 and hence it has to be stated that for extraneous reasons the applicant was given grading lower than the grading given to R4 to R6. It is urged for the respondents that no weightage has to be given on the basis of work of authentication. It is stated that even R-5 who was promoted as STO on adhoc basis in 1987 authenticated the translations made by R-6 and ~~other TOS~~ ~~and STOs~~ and even then R-5 was not given any weightage for that and the grading that was given to R-6 was higher to the grading given to R-5. It may be noted that no motive was attributed to any of the members of the Selection Committee which was headed by a member of UPSC. As it is for the selection committee to assess on the basis of ACRs of all the eligible candidates who come within the zone of consideration, it is not open to this Tribunal to

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peruse the ACRs of the applicant and other candidates for assessing the relative merit. Hence we have to merely refer to the submissions for the applicant that even though he was also recommended for being deputed as interpreter to Russia he was not given a higher grading. Of course it is stated that the said recommendation did not ultimately materialise. It is necessary to refer ~~at~~ at this stage about the plea of R-6 who sent the counter by post, that even though he was the junior most TO, his services alone were ~~not~~ utilised as interpreter and that fact was also taken into consideration in assessing his work by the selection committee. Be that as it may, it has to be stated that it is not for the court/tribunal to usurp the work of the selection committee in assessing the relative merit for the purpose of selection as per rules.

14. Whenever promotion is by way of selection (the promotion from the post of TO to STO is by way of selection) the possibility of junior superseding the senior will arise. The grievance of the applicant is that even though he was working in the post of TO for the last 24 years (he initially joined as TO on adhoc basis in 1971 and he was selected as TO by UPSC in 1973) he had not got even one promotion. As the promotion is by way of selection and as juniors to the applicant within the zone of consideration, got higher gradings, the applicant was not empanelled. Of course

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if there is a rule similar to Rule 219(j) of Indian Railway Establishment Manual (Volume-I) which is as there is a some under, then ~~the~~ possibility of ~~seniors~~ being empanelled irrespective of gradings even in case of selection.

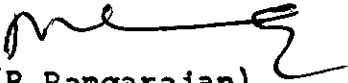
~~may be possible.~~

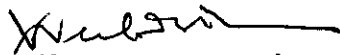
"Rule 219 (of IREM): PROCEDURE TO BE ADOPTED
BY SELECTION BOARD:

(j) The names of selected candidates should be arranged in order of seniority but those securing a total of more than 80% marks will be classed as outstanding and placed in the panel approximately in order of their seniority allowing them to supersede not more than 50% of total field of eligibility."

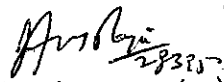
But it is for the policy makers to take a decision in regard to the same and the court/tribunal cannot give a direction in such matters.

15. Thus the O.A. does not merit consideration and accordingly it is dismissed. No costs./


(R. Rangarajan)
Member/Admn.


(V. Neeladri Rao)
Vice-Chairman

Dated: the 27th day of March 1995.


Deputy Registrar (J) CC

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To

1. The Secretary, Union of India, Defence, New Delhi.
2. The Chief of Naval Staff, Naval Head Quarters, New Delhi.
3. The Flag Officer, Commanding-in-Chief,
Eastern Naval Command, Visakhapatnam.
4. Sri Surinder Kumar, Senior Translation Officer,
Russian Translation Cell, Naval Head Quarters, New Delhi.
5. Sri P.K. Khullar, Senior Translation Officer,
Russian Translation Cell,
Naval Head Quarters, New Delhi.
6. One copy to Mr. P.B. Vijayakumar, Advocate, CAT. Hyd.
7. One copy to Mr. N.R. Devraj, Sr. CGSC. CAT. Hyd.
8. One copy to Library, CAT. Hyd.
9. One spare copy.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE- CHAIRMAN

AND

THE HON'BLE MR. R. RANGARAJAN: M (ADMN)

DATED - 27 - 3 1995.

ORDER/JUDGMENT:

M. A. / R. A. / C. A. No.

O. A. No. 1022 ⁱⁿ 192.

T. A. No. (W. P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No. order as to costs.

no spare copy

