

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH : JAIPUR

Date of order : 10.8.2001

O.A. No. 418/95

Inderjeet Singh Sharma son of Shri Mohan Lal Sharma aged about 43 years resident of 62/397, Rajpath, Mansarovar, Jaipur.

... Applicant.

v e r s u s

1. Union of India through the Secretary to the Government of India, Ministry of Human Resources and Culture, Shastri Bhawan, New Delhi.
2. The Director General, Archaeological Survey of India, Janpath, New Delhi.
3. The Superintending Archaeologist, Archaeological Survey of India, Jaipur Circle, D-49, Subhash Marg, 'C' Scheme, Jaipur.
4. Shri R.K. Sinha, Asstt. Superintending Archaeologists, C/o. Superintending Archaeologists, Archaeological Survey of India, Excavation Branch, Patna.
5. Shri A. Jha, Asstt. Superintending Archaeologists, Archaeological Survey of India, Archaeological Museum, Badami, Distt. Brijapur, Karnataka.
6. Shri A.K. Pandey, Asstt. Superintending Archaeologists, Archaeological Survey of India, Galior Museum, Gwalior, Madhya Pradesh.

... Respondents.

Shri Kunal Rawat, Counsel for the applicant.

Shri S.S. Hasan, Adv. Brief holder for Mr. S.M. Khan, Counsel for the respondents.



CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

At the relevant point of time, the applicant was working as Assistant Archaeologist, and the persons by name S/Shri R.K. Sinha, A. Jha and A.K. Pandey (Private respondents 4 to 6), were juniors to him on the post of Assistant Archaeologist. The applicant produced a seniority list vide Annexure A/3 dated 24.02.93 prepared as on 31.12.92, in which his name is at sl. No. 71 whereas the private respondents 4 to 6 are at sl. Nos. 72, 73 and 74 respectively. The private respondents Nos. 3 to 6 were promoted vide Annexure A/4 dated 23.09.94 as Assistant Superintending Archaeologist (Group 'B' Gazetted), but the applicant was not promoted. In these circumstances, the applicant filed an OA No. 662/94 for a direction to the respondents to promote the applicant with effect from the date his juniors (private respondents Nos. 4 to 6) were promoted. This Tribunal vide its judgement and order dated 23.12.94, disposed of the said O.A., directing the respondents Nos. 1 to 3 to decide the representation made by the applicant on 29.09.94 (Annexure A/5 in that OA) by passing a detailed speaking order within a period of two months from the date of receipt of a copy of that order. The official respondents in obedience to the said order of the Tribunal dated 23.12.94, issued an endorsement dated 1/2.3.95 vide Annexure A/8 (= Annexure R/2), stating as under:-




OFFICE MEMORANDUM

Shri Inderjeet Singh Sharma, Assistant Archaeologist should refer to his application dated 29.09.1994 for his promotion to the post of Assistant Superintending Archaeologist on adhoc basis. His promotion case to the post of Assistant Superintending Archaeologist was duly considered by the Departmental Promotion Committee held on 15.09.94. Since the Assistant Superintending Archaeologist is a selection post, the Departmental Promotion Committee did not recommend him for promotion on the basis of his performance."

Assailing this order, the applicant has filed the present O.A. before this Tribunal praying that he should be promoted with effect from the date his juniors have been promoted as Assistant Superintending Archaeologist (Group 'B' Gazetted).


2. The learned counsel appearing for the applicant strenuously contended that the applicant was admittedly senior to the private respondents Nos. 4 to 6 in the feeder cadre of Assistant Archaeologist. Therefore, promoting the private respondents Nos. 4 to 6 and not promoting the applicant is discriminatory. He relied upon the seniority list of the Assistant Archaeologist prepared as on 31.12.92 vide Annexure A/3 dated 24.02.93 and contended that as on 31.12.92, the applicant was admittedly senior to the private respondents Nos. 4 to 6, and there was no adverse entry in his entire service records. Therefore, the applicant should have been promoted alongwith the private respondents Nos. 4 to 6, and not promoting the applicant would be discriminatory. Therefore, there should be a direction in this behalf at the hands of this Tribunal.

3. The respondents by filing the reply statement, denied the case of the applicant, contending that as directed by the order of this Tribunal dt. 23.12.94 in OA No. 662/94 (Annex. A/7), they have considered the case of the applicant, and the applicant has been informed vide Annexure A/8



Normally, a person is selected on the basis of the grading given to the competing candidates, on the basis of various parameters as per guidelines issued. It is not the case of the applicant that there was any malafides on the part of the DPC for considering promotion. As held by Hon'ble the Supreme Court in AIR 1996 SC 3352 (Smt. Nutan Arvind vs. Union of India and Anr.), this Tribunal cannot sit over the considerations of the DPC. However, the case of the applicant is that there was no adverse entry in his entire service career, therefore, the applicant should have been selected. But as per the guidelines issued vide Annexure R/4, we find that the DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of the candidates, who are to be considered by them. According to that guidelines, the merit has to be recognised and rewarded, and accordingly, the grading of the officers should be classified as (i) Outstanding, (ii) Very good, (iii) Good, (iv) Average and (v) unfit. If ultimately, the DPC does not recommend the case of the applicant for promotion on the basis of such grading, it is very difficult for this Tribunal to sit over the judgement of such DPC. In the judgement referred to above, Hon'ble the Supreme Court observed as under:-

"5. The DPC which is a high level committee, considered the merits of the respective candidates and the appellant, though considered, was not promoted. It is contended by learned counsel for the appellant that one K.S. Rao was the officer at the relevant time to review the performance of the appellant where as in fact one Menon had reviewed it. The latter was not competent to review the performance of the appellant and to write the confidentials. We are afraid we cannot go into that question. It is for the DPC to consider at the time when the assessments of the respective candidates is made. When a high level committee has considered the respective merits of the candidates assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority. The DPC would come to its own conclusion on the basis of review by an officer and whether he is or is not competent to write the confidentials is for them to decide and call for report from proper officer. It has done that exercise and found the appellant not fit for promotion. Thus, we do not find any manifest error of law for interference."




OFFICE MEMORANDUM

Shri Inderjeet Singh Sharma, Assistant Archaeologist should refer to his application dated 29.09.1994 for his promotion to the post of Assistant Superintending Archaeologist on adhoc basis. His promotion case to the post of Assistant Superintending Archaeologist was duly considered by the Departmental Promotion Committee held on 15.09.94. Since the Assistant Superintending Archaeologist is a selection post, the Departmental Promotion Committee did not recommend him for promotion on the basis of his performance."

Assailing this order, the applicant has filed the present O.A. before this Tribunal praying that he should be promoted with effect from the date his juniors have been promoted as Assistant Superintending Archaeologist (Group 'B' Gazetted).

2. The learned counsel appearing for the applicant strenuously contended that the applicant was admittedly senior to the private respondents Nos. 4 to 6 in the feeder cadre of Assistant Archaeologist. Therefore, promoting the private respondents Nos. 4 to 6 and not promoting the applicant is discriminatory. He relied upon the seniority list of the Assistant Archaeologist prepared as on 31.12.92 vide Annexure A/3 dated 24.02.93 and contended that as on 31.12.92, the applicant was admittedly senior to the private respondents Nos. 4 to 6, and there was no adverse entry in his entire service records. Therefore, the applicant should have been promoted alongwith the private respondents Nos. 4 to 6, and not promoting the applicant would be discriminatory. Therefore, there should be a direction in this behalf at the hands of this Tribunal.


3. The respondents by filing the reply statement, denied the case of the applicant, contending that as directed by the order of this Tribunal dt. 23.12.94 in OA No. 662/94 (Annex. A/7), they have considered the case of the applicant, and the applicant has been informed vide Annexure A/8



dated 1/2.3.95 that the DPC, which was held on 15.09.94, did not recommend the case of the applicant. It is stated by the respondents that the post of Assistant Superintending Archaeologist (Group 'B' Gazetted) is a selection post on the basis of seniority-cum-merit. ~~There~~ The respondents further stated that the DPC has not recommended the case of the applicant for promotion to the next cadre of Assistant Superintending Archaeologist (Group 'B' Gazetted). The learned counsel appearing for the official respondents submitted that when it is a selection post, no person is entitled to be promoted only on the basis of seniority. In fact, the DPC has considered the entire case of the applicant alongwith ~~with~~ others, and ultimately, he was found unfit. Therefore, the applicant has no case.


3. Heard and perused the records of the case.

4. It is not in dispute that the respondents Nos. 4 to 6 were juniors to the applicant on the post of Assistant Archaeologist vide Annexure A/3 seniority list dated 24.02.93 prepared as on 31.12.92. In this seniority list, the applicant is at sl. No. 71, whereas the respondents nos. 4 to 6 were at sl. Nos. 72 to 74, i.e. below the applicant. It is also not in dispute that the promotion from the post of Assistant Archaeologist to the post of Assistant Superintending Archaeologist (Group 'B' Gazetted) in the grade of Rs. 2000-3500 is by way of selection on the basis of seniority-cum-merit. Therefore, a DPC was held on 15.09.94, and ultimately, the DPC found the applicant unfit for promotion to the next cadre, and when the DPC found him unfit for promotion, it is difficult for this Tribunal to sit over the assessment of the DPC as an appellate authority. The DPC is the competent authority to decide on the basis of the entire records of the persons who were entitled to promotion to the next cadre.



Normally, a person is selected on the basis of the grading, given to the competing candidates, on the basis of various parameters as per guidelines issued. It is not the case of the applicant that there was any malafides on the part of the DPC for considering promotion. As held by Hon'ble the Supreme Court in AIR 1996 SC 3352 (Smt. Nutan Arvind vs. Union of India and Anr.), this Tribunal cannot sit over the considerations of the DPC. However, the case of the applicant is that there was no adverse entry in his entire service career, therefore, the applicant should have been selected. But as per the guidelines issued vide Annexure R/4, we find that the DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of the candidates, who are to be considered by them. According to that guidelines, the merit has to be recognised and rewarded, and accordingly, the grading of the officers should be classified as (i) Outstanding, (ii) Very good, (iii) Good, (iv) Average and (v) unfit. If ultimately, the DPC does not recommend the case of the applicant for promotion on the basis of such grading, it is very difficult for this Tribunal to sit over the judgement of such DPC. In the judgement referred to above, Hon'ble the Supreme Court observed as under:-

"5. The DPC which is a high level committee, considered the merits of the respective candidates and the appellant, though considered, was not promoted. It is contended by learned counsel for the appellant that one K.S. Rao was the officer at the relevant time to review the performance of the appellant where as in fact one Menon had reviewed it. The latter was not competent to review the performance of the appellant and to write the confidentials. We are afraid we cannot go into that question. It is for the DPC to consider at the time when the assessments of the respective candidates is made. When a high level committee has considered the respective merits of the candidates assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority. The DPC would come to its own conclusion on the basis of review by a officer and whether he is or is not competent to write the confidentials is for them to decide and call for report from proper officer. It has done that exercise and found the appellant not fit for promotion. Thus, we do not find any manifest error of law for interference."

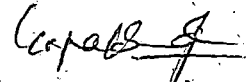


The above principle laid down by Hon'ble the Supreme Court, has been reiterated by Hon'ble the Supreme Court in AIR 1997 SC 2656 (Mrs. Anil Katiyar vs. Union of India and Ors.), by observing as under:-

"4. Having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service or a civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it could not sit in judgement over the selection made by the DPC unless the selection is assailed as being vitiated by mala fides or on the ground of it being arbitrary. It is not the case of the appellant that the selection by the DPC was vitiated by mala fides."

5. As we have already stated above, the applicant has not made any allegations of mala fides against the DPC by making it as one of the respondents. In this view of the matter, we do not find any merit in this application. Accordingly, we pass the order as under:-

"The application is dismissed. But in the circumstances, without costs."


(GOPAL SINGH)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

cvr.