

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 187/1998
T.A. No.

199

DATE OF DECISION 24.05.2002

M.L. Gupta

Petitioner

Shri R.P. Sharma

Advocate for the Petitioner (s)

Versus

UOI & Ors.

Respondent

Shri V.S. Gurjar

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. M.P. Singh, Member(A)

The Hon'ble Mr. J.K. Kaushik, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(M.P. Singh)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

O.A.No.187/1998

Jaipur, this 24th day of May, 2002.

Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri J.K. Kaushik, Member(J)

M.L. Gupta
Or.No.Type III
Central Sheep & Wool Research
Institute Campus
Avikanagar, District Tonk .. Applicant
(Shri R.P.Sharma, Advocate)

Versus

Union of India, through

1. Secretary
Indian Council of Agricultural
Research, Krishi Bhavan, New Delhi
2. Director
ICAR, Krishi Bhavan, New Delhi
3. Director
Central Sheep & Wool Research Instt.
Avikanagar, Tonk
4. Sr. Administrative Officer
Central Sheep & Wool Research Instt.
Avikanagar, Tonk
5. Mukesh Vashistha
Asstt. Director(Hindi Section)
Central Sheep & Wool Research Instt.
Avikanagar, Tonk .. Respondents

(Shri V.S.Gurjar, Advocate)

ORDER

Shri M.P. Singh, Member(A)

The applicant has challenged the order dated 31.3.1998 read with order dated 23.4.1998, by which Shri Mukesh Vashistha (Respondent No.5) has been appointed on promotion to the post of Assistant Director (Official Language) (AD(OL) for short).

2. Brief facts of the case are that the applicant was appointed as Hindi Translator on 25.5.1987.

In the seniority list issued on 28.12.96, applicant's



name figures at Sl.No.2 while that of R-5 is at Sl. No.1, who was also appointed as Hindi Translator on 25.5.87. As per the Recruitment Rules for the post of AD(OL), a Selection post, Senior Translators with 3 years regular service in the grade and ~~Hindi~~ [&] Junior Translators with 8 years regular service in the grade are eligible to be considered for promotion to the said post of AD(OL). According to the applicant, R-5 was communicated adverse remarks from his ACR for the year 1990-91 which were not expunged. Despite this, on the basis of the recommendations of the DPC, R-5 has been promoted to the post of AD(OL) vide order dated 31.3.98. Applicant has made on 13.4.98 a representation/against this but without success. Thereafter, another order was passed on 23.4.98 appointing R-5 to the post of AD(OL) w.e.f. 20.4.98 and posting him in Hindi Cell in Central Sheep & Wool Research Institute, Avikanagar, Tonk. Aggrieved by this, applicant has filed the present OA praying for direction to quash and set aside the orders dated 31.3.98 and 23.4.98 and further direction to the respondents to promote him to the post of AD(OL) w.e.f. 31.3.1998 by reconvening DPC meeting and grant him all consequential benefits.

3. Respondents in their reply have contested the OA and have stated that R-5 was communicated vide Memo dated 27.8.91 advising him to improve his performance. However, adverse entries contained in his ACR for the period 1995-96 and communicated to him vide OM dated 16.12.1996 were expunged vide OM dated 3.3.1997. Promotion of R-5 was made on the

MR

basis of recommendations of DPC and the records available before the Committee. Besides R-5 was senior to the applicant in the post of Hindi Translator. Therefore, there is no violation of any of the provisions of Articles 14 and 16 of the Constitution of India. The DPC consisting of Members having expertise in their field assessed the performance of R-5 on the basis of facts and circumstances of the case and material available on record and thereafter made recommendation for promotion of R-5. Hence the OA merits rejection.

4. Heard the learned counsel for the parties and perused the records.

5. During the course of the arguments, learned counsel for the applicant submitted that R-5 did not possess the requisite qualifications as contemplated in the Recruitment Rules when he was appointed as Hindi Translator and therefore he is neither eligible nor entitled to be considered or promoted to the post of AD(OL). The post of AD(OL) is a selection post and is required to be filled in by promotion on the basis of comparative merit assessment and seniority is not relevant. The service record of past 8 years of the applicant is far better than R-5 and as such an edge ought to have been given to applicant over R-5. Besides R-5 was communicated adverse remarks from his ACR for the year 1990-91 which were not expunged but have attained finality. In view of this, R-5's promotion is liable to be quashed and set aside.

OR

6. On the other hand, the learned counsel for the respondents has denied the aforesaid contentions and maintained that the orders dated 31.3.1998 and 23.4.1998 are perfectly legal, valid and in consonance with the rules and regulations.

7. On our directions, the learned counsel for the respondents have furnished the ACR folders in respect of the applicant as well as R-5 and also the minutes of DPC meeting held on 30.3.1998. As per the guidelines issued by DoPT vide its letters dated 10.3.89 and 27.3.97 the procedure to be observed by DPC is stipulated as under:

III .. For all Group C, Group B and Group A posts (upto and excluding the level of Rs.3700-5000) the bench mark would be 'good' and will be filled by the method of selection-cum-seniority as indicated in sub-para (iii);

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

The post of AD(OL) is a Group B post. However, we find that the minutes of DPC dated 30.3.1998 have been simply worded as follows:

'The DPC considered the case of promotion of Hindi Translator to Assistant Director (Official Language) on the basis of Selection and recommends promotion to the following:-

Sl.No.	Name of the Official	Whether SC/ST or neither	
1.	Sh. Mukesh Vasisth	Neither	I
2.	Sh. M.L. Gupta	Neither	II

Therefore, from the above, it is clear that the DPC has not assessed the performance of the aforesaid officers as reflected in their ACRs for the last 8 years prior to DPC and graded them accordingly as per the guidelines of DoPT extracted above.

8. We have also gone through the ACR folders of the applicant and R-5 and we find that they have been graded as under:

Period	Applicant	Respondent No.5
1989-90	Very good	Average
1990-91	-do-	Average*
1991-92	-do-	Good*
1992-93	-do-	Average
1993-94	-do-	Good
1994-95	-do- (From 1.4.94 to 20.9.94)	Good
	Outstanding (from 21.9.94 to 31.3.95)	
1995-96	-do- (from 1.4.95 to 30.11.95)	Average
	Very good (from 1.12.95 to 31.3.96)	
1996-97	Very good	Very good

*The CRs for the years 1990-91 and 1991-92 contain adverse remarks and R-5 was advised to improve his performance vide Memos dated 27.8.91 and 16.7.1992 but there are no orders available on the ACR folder to show that these remarks have been expunged.

9. We are conscious of the law laid down by the Hon'ble Supreme Court that this Tribunal cannot substitute itself as a Selection Committee and award grading. However, where there is arbitrariness/malafide in making assessment, Tribunal/Court can certainly interfere. In this case we find that the DPC has neither followed the procedure as laid down in the guidelines for DPC nor has properly assessed the ACRs of the officials and graded them accordingly, inasmuch as the applicant has been given much higher grading in his ACRs for the last 8 years as compared to R-5, as has been reflected above.

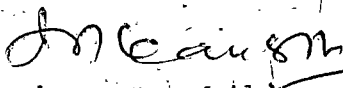
Therefore, we find that the recommendations of the

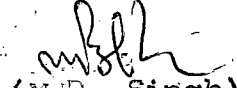
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DPC are arbitrary and not in consonance with Rules/
procedure framed by the Government from time to time.

10.- Therefore, for the reasons recorded above, the
present OA succeeds and is allowed. The impugned
orders dated 31.3.1998 and 23.4.1998 are quashed and
set aside. Respondents are directed to hold a meeting
of the DPC to review the proceedings of the DPC held
on 30.9.98 and consider the matter afresh for promotion
to the post of AD(OL) from the due date keeping in view
the Rules and guidelines on the subject and also the
observations made by us in the preceding paras. If
the applicant is found fit for promotion to the post
of AD(OL), he shall be entitled for all consequential
benefits on his promotion. This exercise shall be
completed within a period of three months from the
date of receipt of a copy of this order.

No costs.


(J.K. Kaushik)
Member(J)


(M.P. Singh)
Member(A)

/gtv/