

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 13 September, 2001

OA No.369/1998

1. N.K.Jain s/o Shri D.P.Jain, Ranpur Dadwara, Kota Junction, at present employed on the post of Inspector in the office of Central Bureau of Narcotics, Kota.
2. D.K.Devsthali s/o Shri D.R.Devsthali c/o Ramlal Rathore, Peerkhera, Chittorgarh at present employed on the post of Inspector in Central Bureau of Narcotics, Chittorgarh.

OA No.371/1998

R.N.Yadav s/o Shri K.P.Yadav c/o Deputy Commissioner Narcotics, Kota at present employed on the post of Inspector in the office of Central Bureau of Narcotics, Kota.

..Applicants

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, New Delhi.
2. Commissioner, Central Bureau of Narcotics, 19, Mall, Morar, Gwalior.
3. Deputy Commissioner, Central Bureau of Narcotics (Adm.), 19, Mall Morar, Gwalior.

.. Respondents

Mr. Shiv Kumar, counsel for the applicants

Mr. Sanjay Pareek, counsel for the respondents

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.S.A.T.Rizvi, Administrative Member

ORDER

Per Hon'ble Mr. S.A.T.Rizvi, Administrative Member

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Similar questions of facts and law arise in both these OAs and, therefore, these are taken together for disposal by this common order.

2. Both the applicants in OA No.369/98 and the lone applicant in OA No.371/98 were promoted to officiate in the grade of Inspector in the pay scale of Rs. 1400-2300 by the respondents' establishment order dated 19th December, 96 (Ann.A2). However, later by the respondents' order dated 24th October, 1998 all the 3 applicants have been reverted to their original post of UDC/Steno on the ground that they were erroneously promoted by the order of 19th December, 1996. Thus, aggrieved by the aforesaid order Ann.A1, applicants have filed these OAs.

3. We have heard the learned counsel on either side and have perused the material placed on record.

4. One of the main grounds taken on behalf of the applicants is that the impugned order dated 24th October, 1998 has been passed by the respondents without putting the applicants to notice. The further grounds taken are that there was nothing adverse against the applicants and, therefore, their reversion is totally unjustified. According to the applicants, there was no error committed at the time they were considered for promotion and at any rate the respondents have not shown any error, which might have been committed by them at the relevant time. The impugned order is, therefore, illegal and deserves to be quashed and set-aside.

5. The learned counsel appearing on behalf of the respondents has submitted that the applicants were promoted as a result of a mistake committed by the respondents at the time of

consideration of their claim in December, 1996. The selection of ministerial officers for Group-C executive posts used to be governed by the Govt. of India, Ministry of Finance, Department of Revenue circular letter dated 9th May, 1991 until the provisions made therein were revised by the same respondents circular letter of 24th March, 1992. However, after sometime, having regard to the objections raised by the staff side in the departmental council meeting held in July, 92, the guidelines contained in the aforesaid circular dated 24th March, 92 were held in abeyance by the respondents letter dated 19th November, 1992. Accordingly, the earlier circular letter dated 9th May, 1991 was supposed to find application at the time the applicants were considered for promotion in 1996-1997. The aforesaid letter dated 19th November, 1992 was not noticed by the DPC and, therefore, the claim of the applicants as also of others for promotion was considered in accordance with the provisions contained in the circular guidelines dated 24th March, 1992. The mistake thus committed has been rectified by the respondents by holding a review DPC in September and October, 1998, the result of which is available at Ann.A1. A perusal of the aforesaid revised order would show that the review DPC held in September/October, 1998, has proceeded to promote UDCs/Stenographers on the basis of yearwise vacancies from 1991-92 to 1996-97. The applicants alongwith two others having been erroneously promoted by the DPC held in 1996 were reverted by the same order (Ann.A1).

6. The learned counsel appearing on behalf of the applicants had raised the issue of non observance of the principles of natural justice on the ground that the applicants were not put to notice before they were reverted by the impugned order. He has also contended that since the applicants were not at fault, they could not be reverted by holding a review DPC. He has, ^{2 further} ~~however~~, submitted that

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it is not possible at the time of holding the review DPC to alter the zone of consideration and the gradings of the applicants to their disadvantage.

7. Insofar as, the non-observance of the principles of natural justice is concerned, we find that the plea advanced by the learned counsel for the applicant has no force. The respondents had by their letter of 5th October, 1998 (Ann.A3) announced that a review DPC was to be held in October, 1998 in order to consider cases of promotion to the Inspector grade. The aforesaid notice contained names of the applicants also and they were supposed to appear for interview before the review DPC alongwith several others. In response to this notice the applicants made representations on 12th October, 1998 (Ann.A4). We have perused the same and find that the applicants have therein raised the same issue which has been raised by the learned counsel for the applicants. Relying on the provisions made in Swamy's Establishment and Administration, 1994 Edition, the applicants have submitted in the aforesaid representations that a review DPC could reconsider cases only on the ground of technical or factual mistake and that the review DPC was not entitled to alter the gradings of the officers without any valid reasons nor could it change the zone of consideration. The specific request made in the aforesaid representations was that the respondents should duly consider the issues raised therein before holding the review DPC. Since the aforesaid representations were made before the review DPC was convened, we take it that the issues raised therein had been duly considered by the respondents and accordingly decisions were taken which led to the issuance of the impugned order dated 24th October, 1998. In the circumstances, we are satisfied that the applicants were, as a matter of fact, put to notice and were allowed to make a representation as well before respondents proceeded to pass an adverse

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order. The corresponding plea advanced by the learned counsel for the applicants, therefore, fails and is rejected.

8. Insofar as the holding of the review DPC is concerned, the learned counsel for the respondents has placed before us a copy of page No. 708 and 709 of the Swamy's- Establishment and Administration which deal with the issues relating to review DPCs. We find it convenient to reproduce ~~the~~ ^{view} the following instructions provided therein, insofar as, the same are relevant for our purpose:-

"When Review DPCs may be held

18.1 The proceedings of any DPC may be reviewed only if the DPC has not taken all material facts into consideration or if material facts have not been brought to the notice of the DPC or if there have been grave errors in the procedure followed by the DPC. Thus, it may be necessary to convene Review DPCs to rectify certain unintentional mistakes, e.g.-

- (a) where eligible persons were omitted to be considered; or
- (b) where ineligible persons were considered by mistake; or
- (c)
- (d)
- (e)

These instances are not exhaustive but only illustrative.

18.2.....

18.3 A Review DPC is required to consider the case again only with reference to the technical or factual mistakes that took place earlier and it should neither change the grading of an officer without any valid

reason (which should be recorded) nor change the zone of consideration nor take into account any increase in the number of vacancies which might have occurred subsequently."

A careful consideration of the aforesaid provisions reveals that where an unintentional mistake has been committed, the same can be rectified even by including those eligible persons who had earlier been ignored. Similarly, if by an unintentional mistake persons otherwise ineligible have been considered in the past, they can be excluded at the time of review DPC. Further more, changes can be made in the gradings as well as zone of consideration for valid reasons, which would need to be recorded. In the present case, the respondents have, on their own, admitted that the DPC held in 1996 by mistake followed the guidelines provided in the respondents' circular dated 24th March, 1992. The aforesaid mistake was an unintentional mistake and, therefore, the respondents correctly decided to hold a review DPC in accordance with circular guidelines dated 9th May, 1991, which ought to have been applied by the said DPC. According to the learned counsel appearing on behalf of the respondents, the review DPC, following the guidelines extracted above, has correctly and properly adopted the method and procedure laid down in the circular guidelines of 9th May, 1991. There can be nothing wrong, therefore, if in the process the applicants have been differently assessed from the assessment in respect of them carried out by the DPC held in 1996. Similarly, no fault can be found with the respondents if the application of the method and procedure laid down in the circular guidelines of 9th May, 1991 has led to the consideration of some more names by way of enlargement of zone of consideration at the time of review DPC. For the same reason, no mistake can be attributed to the respondents if someone found eligible at the time of 1996 DPC has

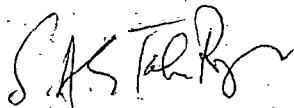
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been found to be ineligible at the time of review DPC held in October, 1998 in accordance with the details laid down in the aforesaid circular guidelines of 9th May, 1991. The bonafide of the respondents are not, in any case, in doubt in this case.

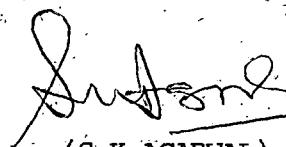
9. At the time of consideration by the review DPC in October, 1998, one of the applicants namely Shri N.K.Jain, being junior, could not be included in the consideration zone, whereas the other two applicants figured in the consideration zone and their names were duly considered by the review DPC. Having regard to the rule position which required promotion to the Inspector grade by following the selection process, the applicants other than Shri N.K.Jain could not be placed on the select panel for promotion to the post of Inspector. Shri N.K.Jain being junior was simply not considered. Thus, none of them has figured in the select panel prepared by the review DPC in October, 1998.

10. In the ultimate analysis and keeping in view the facts and circumstances mentioned in the preceding paragraphs, we are unable to persuade ourselves to find any force in the present OAs. The same are in our view devoid of any merit and deserve to be dismissed.

11. The present OAs are accordingly dismissed. No order as to costs.


(S.A.T.RIZVI)

Adm. Member


(S.K.AGARWAL)

Judl. Member