

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 329/2000
T.A. No.

199

DATE OF DECISION _____

C.M.Markose Petitioner

Mr.P.P.Mathur Advocate for the Petitioner (s)

Versus

Union of India & Anr. Respondent

Mr.P.C.Sharma, Adv.brief holder for Advocate for the Respondent (s)
Mr.Sanjay Pareek

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. A.P.Nagrath, Adm.Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
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 ?

(A.P.Nagrath)
Member (A)

(G.L.Gupta)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 30/12/2002

OA 329/2000

C.M.Markose, Assistant Engineer (E&M) O/o Head Quarter C.E., Jaipur Zone,
Jaipur.

... Applicant.

Versus

1. Union of India through Secretary, Ministry of Defence, Sena Bhawan,
New Delhi.
2. Engineer in Chief, Army Head Quarter, DHQ PO, Kashmir House, New
Delhi.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicant

... Mr.P.P.Mathur

For the Respondents

... Mr.P.C.Sharma, Adv.brief holder
for Mr.Sanjay Pareek

O R D E R

PER MR.A.P.NAGRATH

In this application, the relief prayed for by the applicant is stated in the following terms :

- "(I) The respondents may be directed to modify the panel published on 27.8.99 by including the name of applicant at S.No.18.
- (II) That the applicant on empanelment, may kindly be directed to be promoted to the grade of Executive Engineer w.e.f. 27.8.99 with all consequential benefits.
- (III) Any other relief to which the humble applicant may found entitle may please be granted in the interest of justice."

2. The applicant is an Assistant Engineer aspiring to be promoted to the post of Executive Engineer. As per Recruitment Rules, 1/3rd quota of the Executive Engineers' cadre is filled up from amongst the Assistant Engineers. The remaining 2/3rd quota is to be filled up from Assistant Executive Engineers. The case of the applicant is that for the vacancies of the year 1997-98 there were about 58-63 vacancies of Executive Engineers. Some dispute had been raised in respect of the process of filling up of vacancies before the Allahabad Bench of this Tribunal in OA 465/99. While disposing of MA 2339/99 in that OA, the Tribunal permitted the respondents to fill not more than 19 vacancies to the grade of

Executive Engineers from the quota of Assistant Engineers till final disposal of the OA. Subsequently, the respondents prepared a panel of 18 Assistant Engineers for promotion to the grade of Executive Engineers. A copy of this panel dated 27.8.99 has been placed on record as Ann.A/1.

2. Plea of the applicant in this OA is that his name should also be included in this panel. The reason advanced by him is that this panel includes the name of one Shri M.M.Kurian who had voluntarily retired from service on 27.2.99. The DPC meeting was held in June, 1999 and the contention of the applicant is that this DPC should not have considered Shri Kurian as one of the eligible candidates for this panel. Instead, he has stressed that by deleting Shri Kurian's name applicant's name should be inserted. The applicant concedes that there are others senior to him but some departmental proceedings are in progress against them and they could not have been included in the panel. Thrust of his argument is that when Allahabad Bench of this Tribunal had permitted the respondents to promote 19 Assistant Engineers, the respondents could not have stopped at promoting only 18. For all practical purposes, the applicant claims that he is the next available senior as other seniors to him could not have been placed in the panel because of disciplinary proceedings against them. Not bringing him on the panel has been termed as vindictive action on the part of the respondents against the applicant.

3. In reply to the OA, the respondents have stated that in fact the number of vacancies to be filled up came to only 53 for the year 1997-98 and not 58-63. Thus, 1/3rd quota worked out to 18 and not 19. So, the respondents contend that they could have formed a panel of only 18 and that has been done. In respect of Shri M.M.Kurian it has been explained that the DPC considered the vacancies for the year 1997-98, during which period Shri Kurian was in service, and as per relevant rules and orders of the Government, the retired officers who were within the zone of consideration on the relevant vacancy year but are not actually in service when the DPC is being held, are also required to be considered in the DPC. Because of this reason, considering Shri Kurian's name was the requirement of the rules. The respondents have further come out with the information that name of one Shri T.K.Biswas, senior to the applicant, had been kept in sealed cover as some departmental proceedings were going on against him. Subsequently, the said Shri Biswas had been exonerated, which resulted into inclusion of his name in the said panel. Since Shri Kurian had already retired, it was possible to include the name of Shri Biswas in that panel. Because of these facts, the respondents have totally refuted the claim of the applicant.

4. The applicant has filed rejoinder to the reply while reiterating his stand in respect of Shri M.M.Kurian that he should not have been considered by the DPC for being placed on the panel as he had already retired before the DPC met. He further stressed that before August, 1999 23 Assistant Engineers had been retired but they were never considered for promotion to the post of Executive Engineer.

5. The learned counsel for the applicant vehemently stressed that action of the respondents was in violation of the rules and total departure from the procedure required to be followed by the DPC in regard to retired employees. In support of his contention, he drew our attention to the Government of India OM dated 12.10.98. Further, his plea was that the applicant had a right to be included in the extended panel as per instructions of DOPT issued vide OM dated 9.4.96. He also laid stress on the fact that the panel should have been of 19 persons and not 18 when the Allahabad Bench of this Tribunal had specifically permitted the respondents to promote upto 19 Assistant Engineers. He assailed the action of the respondents in not empanelling the applicant as a deliberate action of denying him promotion when it was due. The learned counsel for the respondents while agreeing that the Allahabad Bench of this Tribunal had permitted for promoting upto 19 officers contended that that did not mean that the panel necessarily had to be of 19. While referring to the Recruitment Rules, he stated that only 1/3rd of the vacancies of Executive Engineers can go to the cadre of Assistant Engineers and since there were 53 vacancies to be filled up and not 58 or 63, as being made out by the applicant, the panel could not have been made of more than 18. He also referred to the same rules, as quoted by the learned counsel for the applicant, to contend that considering a retired person was obligatory under the rules so that the zone of consideration for the relevant year of vacancies is worked out correctly.

6. We have considered the rival contentions carefully.

7. Prima-facie itself, we do not find any reason for the applicant to feel aggrieved. It is not his case that any of his junior has stolen a march over him. We are left wondering as to how could a person make grievance against promotion of his seniors. Shri T.K.Biswas and Shri M.M.Kurian are admittedly senior to the applicant. We could have appreciated that the need for our scrutiny was there if any junior to the applicant had been brought on the panel. In this case, that has not been the situation. In regard to referring to the seniority list, which has been brought on record by the applicant himself as Ann.A/2, we find

that after the last person in the panel, Shri B.M.Kapoor, there is one more person (Shri K.B.Nair) above the applicant. Even if the panel had to be of 19 persons, even then the applicant would not be in the zone of consideration. We do not find any merit in the plea raised by the learned counsel on his behalf that since departmental proceedings were in progress against Shri Biswas and Nair, they could not have been considered for this panel. Considering those in the zone of eligibility undergoing departmental proceedings in fact is one of the requirements of the procedure. If the departmental proceedings are still current when the DPC met, the name of such people are required to be kept in sealed cover. No junior can stake a claim to such promotion so long as the final fate of those kept in the sealed cover is not decided. In the instant case, Shri Biswas had been fully exonerated after a few months and as the respondents have mentioned he has already been brought on panel in place of Shri Kurian since Shri Kurian had retired voluntarily. We do not see any infirmity in this action.

8. Now coming to the main ground pressed by the applicant that name of Shri M.M.Kurian should not have been considered as he had retired before the DPC met. We have perused the contents of OM dated 12.10.98 carefully, to which the reference was made by the learned on either side. This OM prescribes the procedure to be followed by the DPC in regard to the retired employees. In para-2 of the said OM it has been stated that doubts have been expressed as to whether those who have since retired and would have been considered for promotion, if the DPC for the relevant year had been held in time, are required to be considered. On this aspect, the clarification has been given in para-3 of this OM;

"According to legal opinion also it would not be in order, if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held, are not considered while preparing year-wise zone of consideration/panel and, consequently, their juniors are considered (in their places) who would not have been in the zone of consideration, if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant year(s). Names of the retired officials may also be included in the panel(s)." (emphasis supplied).

It is obvious from the above that there is no escape but that the DPC has necessarily to consider all those who were in service during the relevant year for which the vacancies are being considered. Significance of this has also been mentioned by stating that this would help in identifying the correct zone of consideration for the relevant year. Thus, there is no force in the argument of the applicant that Shri

M.M.Kurian, who had retired before the DPC met but was in service during 1997-98, should not have been considered.

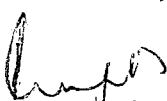
9. Regarding extended panel, the OM dated 9.4.96 provides for three contingencies which are as follows :

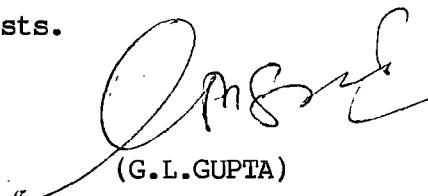
- "(i) when persons included in the panel are already on deputation or whose orders of deputation have been issued and will be proceeding on deputation shortly for more than a year, OR
- (ii) when persons included in the panel have refused promotion on earlier occasions and are under debarment for promotions, OR
- (iii) when officers included in the panel are retiring within the same year provided there is no change in the zone of consideration by the expected date of their retirement."

(i) and (ii) above are not relevant. The provision under (iii) above, on which the learned counsel for the applicant placed lot of emphasis, is relevant. The necessary condition for this is that DPC can prepare extended panel only if it take into account the retirements within the same year and provided there is no change in the zone of consideration. Obvious meaning of this rule is that the extended panel can be formed only to the extent of the number of retirements during that year. Shri Kurian was not likely to retired in the year 1997-98. He only sought voluntary retirement in the year 1999. In such a situation, if his case had to be considered then zone of consideration itself would need to be extended. The rule does not permit that. Obviously, there is no force in the argument of learned counsel that the applicant could have been given the benefit of extended panel. This is more so when there were others senior to him in the cadre.

10. Having said that, we would again like to reiterate what we have observed initially that the applicant is attempting to make a grievance in respect of promotion of his seniors. In service jurisprudence we cannot see any justification for any junior to raise a dispute against promotion of his seniors.

11. In the light of discussions aforesaid, we dismiss this OA as having no merit. Parties are left to bear their own costs.


(A.P.NAGRATH)
MEMBER (A)


(G.L.GUPTA)
VICE CHAIRMAN