

(21)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDERS OF THE BENCH

Date of Order: 28.03.2012

OA No. 256/2010

Ms. Kavita Bhati, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondent nos. 1 to 4.
Ms. Anupama Chaturvedi, counsel for respondent no. 5.
None present for respondent nos. 6 to 10.

Learned counsel appearing for the respondent no. 5 filed reply to the OA with an advance copy of the same to the learned counsel appearing for the applicant. The same is taken on record.

Heard learned counsels appearing for the parties. Original Application stands disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K. S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

*Pooor filed on
27/3/12 @*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 28th day of March, 2012

ORIGINAL APPLICATION No. 256/2007

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

S.D. Naik son of Shri D.G. Naik, aged about 58 years, resident of 5, Kailash Nagar, Jhotwara, Jaipur -12. Presently working as Director (ARCH), O/o Chief Engineer, South Western Command, Jaipur.

... Applicant
(By Advocate: Ms. Kavita Bhati)

Versus

1. Union of India through its Secretary to the Government of India, Ministry of Defence, South Block, New Delhi.
2. The Secretary, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, North Block, New Delhi.
3. The Engineer-In-Chief, E-In-C's Branch, Integrated Headquarters of MOD (Army), Kashmir House, Rajaji Marg, New Delhi.
4. The Director General (Pers) MES, Integrated Headquarters of MOD (Army), Kashmir House, Rajaji Marg, New Delhi.
5. The Secretary, UPSC, Shahjahan Road, DHQ P.O., New Delhi.
6. Smt. Mala Mohan, Chief Architect, E-In-C's Branch, Integrated Headquarters of MOD (Army), Kashmir House, Rajaji Marg, New Delhi.
7. Shri G. Lachi Reddy, Chief Architect (JT DG, ARCH), CE Western Command, Chandigarh.
8. Mrs. Anasua Guha Thakurta, Chief Architect (JT DG, ARCH), CE Central Command, Lucknow.
9. Shri N.U. Anturkar, Chief Architect (JT DG, ARCH), CE Southern Command, Pune.
10. Smt. Upinder Kaur, Chief Architect (JT DG, ARCH), CE Eastern Command, Kolkata.

... Respondents
(By Advocates: Mr. Mukesh Agarwal – Respondent nos. 1 to 4
Ms. Anupama Chaturvedi – Respondent no. 5
None present for Respondent nos. 6 to 10.

ORDER (ORAL)

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The applicant has filed this OA praying for the following reliefs:-

- "(i) By an appropriate order or direction the impugned orders dated 09.06.2009 and 08.02.2010 may kindly be quashed and set aside to the extent it promotes the juniors of the applicant.
- (ii) By an appropriate order or direction the respondents may be directed to hold the review DPC considering the case of the applicant for promotion.
- (iii) Cost of the application may also kindly be awarded to the applicant; and

Any other order or direction which this Hon'ble Tribunal deems fit and proper may also kindly be passed in favour of the applicant in the larger interest of the equity, justice and law."

2. The applicant was initially appointed on the post of Deputy Architect with the respondent department. He was promoted to the post of Senior Architect in the year 1994. That the applicant was due for promotion to the post of Chief Architect in the year 2002 but he was not promoted by the respondents and juniors to the applicant were promoted. Again vide letter dated 09.06.2009 (Annexure A/1), the applicant has been superseded for the post of Chief Architect for the vacancies for the year 2006-2007 and 2007-2008. Even in this DPC, the applicant was not selected and Senior Architect, juniors to the applicant, were promoted. The applicant has further stated that vide order dated 08.02.2010 (Annexure A/2), he was again superseded while his juniors were promoted for the vacancies for the year 2008-2009 and 2009-2010. Aggrieved by his supersession, the applicant has filed the present OA.

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3. Official respondent nos. 1 to 4 and official respondent No. 5 (UPSC) had filed their reply. The UPSC in their reply has stated that the DPC was held on 22.08.2008 for promotion to the grade of Chief Architect. The DPC considered five eligible officers for one vacancy of 2006-2007 wherein the applicant was also considered at sr. no. 1 of the eligibility list. He was again considered at sr. no. 1 of the eligibility list for two vacancies for the year 2007-2008. The DPC assessed him unfit as he could not attain the prescribed bench mark of 'very good'. They have further stated that bench mark for promotion in the present case is 'very good'.

4. Official respondents nos. 1 to 4 have also stated that the applicant was found below the bench mark by the UPSC for the year 2008-2009 and 2009-2010 and since the DPC constituted by the UPSC have found the applicant unfit on all occasions, therefore, the applicant could not be promoted to the post of Chief Architect. The applicant has a right to be considered for promotion but has no right to be promoted. The applicant was considered by the duly constituted DPC and was not found fit. Therefore, the OA has no merit and it deserves to be dismissed with cost.

5. Learned counsel for the applicant argued that the applicant has never been communicated any adverse remark which might become impediment in the way of promotion of the applicant. There is no material on record to deny the promotion to the applicant. Therefore, the denial of promotion is highly

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unjustified and arbitrary. The applicant is unaware about the entries which are affecting his promotional avenues. That the eligibility of qualification provided in the recruitment rules was fully satisfied by the applicant. He argued that it is not disputed that the applicant is senior to the officers who have been promoted for the vacancies of 2006-2007, 2007-2008, 2008-2009 and 2009-2010. The applicant was never communicated the below-bench mark entries and, therefore, on this count alone, the impugned orders are liable to be quashed and set aside. She further argued that the case of Indrani Sarkar stands on the same footing and the impugned order is also the same in the present application. Smt. Indrani Sarkar was junior to the applicant and she was also not communicated any of the entries in the ACRs which were affecting her promotion and were below the prescribed bench mark of 'Very Good'. The CAT Principal Bench has allowed the OA with the directions to convene Review DPC within three months from the date of the order dated 12.04.2010. Therefore, the case of the applicant also deserves to be allowed in the light of decision rendered by the Hon'ble Principal bench, New Delhi. The applicant should have been communicated such entries which were below bench mark so that he would have got an opportunity to make the representation against it thereby praying for its upgradation. This legal preposition has been upheld by the Hon'ble Supreme Court in the case of **Dev Dutt vs. Union of India & Others**, 2008 (8) SCC 725. Therefore, the action of the respondents in not communicating the bench mark ACRs is in contravention of

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the law laid down by the Apex Court. Therefore, she argued that the OA be allowed and the impugned order be quashed.

6. On the other hand, learned counsel for UPSC argued that the applicant was considered for promotion for the post of Chief Architect for the vacancies of 2006-2007, 2007-2008, 2008-2009 and 2009-2010 but since the ACRs were below the bench mark, he was found unfit for promotion. She argued that bench mark for promotion in the present case is 'Very Good' and the DPC assessed him as 'unfit' as he could not attain the prescribed bench mark 'Very Good'. She argued that the applicant was duly considered by the DPC but was assessed as 'unfit'. Therefore, no legal right of the applicant has been violated. With regard to the legal position, as laid down by the Hon'ble Supreme Court in the case of Dev Dutt vs. Union of India & Others (Supra), she argued that the Department of Personnel & Training vide their OM No. 21011/1/2010-Estt.A dated 27th April, 2010 have brought to the notice that when the petitions in SLP (Civil) No. 15770/2009, now converted to Appeal Civil No.2872 of 2010 (Union of India vs. A.K. Goel & Others) were called for hearing, the Supreme Court has taken note of the apparent conflict between the decisions of the Hon'ble Court in Dev Dutt case on one hand and the judgments of Supreme Court in Satya Narain Shukla vs. UOI 2006 (9) SCC 69 and K.M. Mishra vs. Central Bank of India & Others, 2008 (9) SCC 120 on the other hand and by their Order dated 29.03.2010, the Hon'ble Supreme Court has referred these appeals to a Larger Bench. Thus the judgment of Dev Dutt is

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not final and the matter is sub-judice before the Larger Bench of the Hon'ble Supreme Court. She further argued that the applicant has not been able to make out any case for any relief. Therefore, the present OA may be dismissed with costs.

7. Learned counsel for respondent nos. 1 to 4 argued that the ratio laid down by the Principal Bench in the case of Indrani Sarkar is not applicable on the facts & circumstances of the present case. Moreover, he argued that it is only applicable in respect of Indrani Sarkar and not for all being judgment in rem. He also supported the arguments which were advanced by the learned counsel for respondent no. 5, UPSC.

8. Having heard the rival submissions of the parties and after careful perusal of the documents on record and also examining the cases referred to by the parties, we are of the view that the applicant has failed to make out any case for interference by this Tribunal. It is not disputed between the parties that the applicant is senior to the officers, promoted vide letter dated 09.06.2009 (Annexure A/1) and letter dated 08.02.2010 (Annexure A/2). It is also not disputed between the parties that the applicant being senior was considered for promotion to the post of Chief Architect for the vacancies of 2006-2007, 2007-2008, 2008-2009 and 2009-2010 but on each occasion he was assessed by the duly constituted DPC by the UPSC as 'unfit' as he could not attained the prescribed bench mark of 'Very Good'. Since the applicant was senior, therefore, he had a right to be considered and that the respondents have

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duly considered his case but the applicant has no right to be promoted to a particular post. The applicant has been found 'unfit' by the DPC constituted by the UPSC. Hon'ble Supreme Court in the case of **Nutun Arvind vs. Union of India & Another**, 1996 (2) SCC 488 has held that "When a high level Committee had 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 Hon'ble Supreme Court in another case of **Dalpat Abasahed Solanke vs. B.S. Mahajan**, AIR 1990 SC 484 has held that- "It is needless to emphasize that it is not the function of the court to hear appeals over the decisions of the Selection Committee and to scrutinize the relative merit of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee, which has the expertise on the subject."

9. Thus on the basis of the ratio laid down by the Hon'ble Supreme Court in the above cases, we find that there is no ground for our interference in the present case.

10. In so far as the ratio laid down by the Hon'ble Supreme Court in the case of Dev Dutt (Supra) is concerned, the respondents have stated that the Hon'ble Supreme Court in Civil Appeal No. 2872/2010, Union of India vs. A.K. Goel, after noticing the apparent conflict between the judgment in Dev Dutt vs. Union of India & others, 2008 (8) SCC 725, on the one

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hand and Satya Narain Shukla vs. Union of India, 2006 (9) SCC 69 and K.M. Mishra vs. Central Bank of India & Others, 2008 (9) SCC 120, has referred the matter to Larger Bench. Thus, the judgment of Dev Dutt has not attained finality and matter is sub-judice before the larger bench of Hon'ble Supreme Court.

11. Thus looking from any angle, the present OA has no merit. Consequently, the OA is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)

Member (A)

K.S. Rathore
(Justice K.S. Rathore)
Member (J)

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