

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 021/00507/2016 &MA 1030/2016

Date of CAV: 20.11.2018

Date of Pronouncement: 22.11.2018

Between:

S. Goverdhan Rao, S/o. late S. Sanjeeva Rao,
Age 54 years, R/o. H. No. 3-5-247, Plot No. 45,
Occ: Dy. Chief Executive (A), NFC, Hyderabad,
Road 3B, Krishna Nagar Colony,
Moula Ali, Hyderabad – 500 040.

... Applicant

And

1. The Union of India, Rep. by its Secretary,
Department of Atomic Energy,
CSM Marg, Mumbai – 400 001.
2. The Secretary,
Department of personnel & Training,
North Block, New Delhi – 110 001.
3. The Additional Secretary,
(Cadre Controlling Authority),
Department of Atomic Energy,
CSM Marg, Mumbai – 400 001.

... Respondents

Counsel for the Applicant ... Mr. G. Jaya Prakash Babu,
Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC
Mr. Siva

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

Hon'ble Mr. Swarup Kumar Mishra, Member (Judl.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

The OA is filed aggrieved over the action of the Respondents in not appointing the applicant on promotion as Controller of the Bhabha Atomic Research Centre as per rules.

2. Brief facts of the case are that the Applicant belongs to the Dept. of Atomic Energy (DAE) Centralised Administrative cadre and is holding the position of Director (Personnel & Administration) in the Pay Band-4. He has served in different capacities in the Organisation. As per Recruitment rules the post of Controller can be filled up by promotion failing which by deputation. A duly constituted DPC selects the candidate. The applicant having fulfilled the eligibility criteria for the post and considering the fact that the post has been kept vacant for 4 years for want of eligible candidate, was expecting that the selection committee would recommend his name to the said post. However, it is claimed by the applicant that the DPC has decided not to recommend his name and are clandestinely moving a proposal to fill up the post on deputation basis and are also moving the Appointments Committee of the Cabinet (ACC). Aggrieved over the same, this OA has been filed. This Tribunal granted an interim stay directing the Respondents not to fill up the post of Controller till the next date of hearing vide orders dt 27.6.2016.

3. The contention of the applicant is that he is fully eligible to be promoted to the post of Controller, Bhabha Atomic Research Centre. As per the DAE promotional hierarchy the applicant is in the feeder cadre and as per rules he has to be selected. Further, the applicant has extensive experience and qualifications. As the applicant grew up the cadre in the Respondents Organisation, he has the ability and exposure to handle the post. Rules prescribe that the post has to be filled up by promotion failing which by deputation. Emphasis being on the first option and the applicant having fulfilled the eligibility criteria it is arbitrary, illegal and against rules in not promoting him.

4. The Respondents contest the claim of the applicant by stating that initially as none of the Departmental Officers were eligible for consideration, they have

approached the Dept. of Personnel and Training to fill up the post, but could not fill up due to non suitability of officers recommended against DAE circular dt 12.2.2013. Followed it up, by issuing circulars once again on 18.2.2014 /22.4.2014 but as there being no response, the post is operated through Incharge arrangement. The applicant became eligible on 1.4.2016 but was found to be unfit by the DPC, on grounds that BARC being a leading Scientific Organisation in the world, the Controller, apart from discharging Administrative functions should coordinate scientific activities and serve in a number of committees which involve scientific linkages as well as extend administrative support to Scientific Management. Further, the controller post is a selection post and not a promotional post and that the DPC has made an independent evaluation of having a Scientific Officer or a Deputationist with technical background. Just being eligible would not entitle a candidate to be selected. The minutes of the DPC were approved by the Secretary, DAE on 2.6.2016 and that the Respondents have not sought any approval of ACC.

5 Heard the learned counsel and perused documents on record. The learned counsel has patiently and properly taken us through the various aspects of the case in a lucid manner. The main thrust of the submissions of the learned counsel for applicant is that the applicant being the only eligible candidate as per recruitment rules, the DPC overlooking his candidature is illegal. The ld. Counsel for the Respondents argued that the DPC in its wisdom has taken the appropriate decision within the ambit of the Recruitment rules and hence cannot be questioned. The duel was interesting and enlightening.

6. The Respondents called for the meeting of the DPC to select a candidate for the post of Controller and the applicant was the only senior most eligible candidate within the Organisation satisfying the eligibility criteria with

experience and qualifications required. The Recruitment rule does specify that the post has to be filled by promotion failing which by deputation by a duly constituted DPC. The learned counsel for the applicant has asserted that one of the Members of the DPC is Additional Secretary, DAE holding the post on Incharge basis and hence is not appropriate to have him/her as DPC member. Therefore the constitution of the DPC is irregular. However, when questioned, the learned counsel has not produced any document to this effect and neither this ground was taken in the OA. Therefore it loses its sting. The learned Counsel for the Respondents claim that Controller post is a selection post, by referring to para 11 of Gazette of Annexure I is devoid of reasons in view of the open admission of the Respondents at para 5 of the same Gazette remarking as 'inapplicable'. That apart, the rejoinder submitted by the applicant at para 9 lists out the previous incumbents to the posts of Controller who hail from ICS, DAE, IA&AS, Scientist, IPS & IPOS. The appointments on deputation basis to the said post having ranged from police to post, there can be no reason as to why the applicant should be discriminated from being selected is the poser of the learned counsel for the applicant. The applicant believes that the only reason for being discriminated is that the DPC is dominated by the Scientific community with 3 of them having scientific background. However, there has been no documentary evidence submitted to substantiate the same. The DPC has an independent mind. It needs to operate within the ambit of guidelines provided and take a independent decision. The recruitment rules do specify that selection to the post of controller is by promotion failing which it has to be by deputation. The DPC gave reasons as to why it would like to go in for a Scientist or a deputationist with technical background. This Tribunal cannot sit on appeal over the decision of the DPC unless it is malafide or against rules. The rules have given the option

of promotion or deputation. The DPC did not exercise the option of promotion for reasons stated. The argument made by the applicant that the recruitment rules need to be changed if the option chosen by the DPC has to be exercised, is unreasonable since among the twin options available the DPC has a right to make the apt choice as it deems fit. It is not disputed that the applicant is the lone eligible candidate but that does not mean that he has to be selected. Presuming the argument is accepted then there is no need to have a DPC which is against the recruitment rule. The essential role of the DPC is to select the candidate based on recruitment rules and the requirements of the Organisation. It is a multi member body constituted to eliminate any bias or prejudice in selection.

7. In the words of Honourable Supreme Court as held in Union of India & Anr. Vs. S.K. Goel & ors, (Appeal (Civil) 689/2007-SLP @-2410/2007) “*DPC enjoyed full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it. Hence, interference by High Court is not called for.*” While delivering the above judgment, the Division Bench has observed that:

“*It is now more or less settled that the evaluation made by an Expert Committee should not be easily interfered with by the Court which do not have the necessary expertise to undertake the exercise that is necessary for such purpose.*”

In another case of A.K. Narula (AIR 2007 SC 2296), the Hon’ble Supreme Court has observed as detailed below:

“*Where the DPC has proceeded in a fair, impartial and reasonable manner, by applying the same yardstick and norms to all the candidates and there is no arbitrariness in the process of assessment by the DPC, the Court will not interfere*”

In one another case of Union of India Vs. K.V.Janakiraman (AIR 1991 SC 2010), Hon’ble Supreme court has held that “*An employee has no right to promotion.*

He has only right to be considered for promotion. The promotion to a post and more so, to a Selection post depends upon several circumstances.. ”

Ministry of Personnel, Public Grievances and Pension, DOPT vide their OM No. 22011/4/2007-Estt.(D) dt. 28.04.2014 clarified that “*After consultation with the Department of Legal Affairs, Government of India that it is a settled position that the DPC within its power to make its own assessment, has to assess every proposal for promotion on case to case basis.*” The said OM further clarified that “*DPC enjoys full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them.*”

The applicant right to be considered has not been infringed but he has no right to demand a selection unless otherwise it is proved that the rules were violated or malaise is attributed to the DPC. Neither of them has happened in the case as per records and hence the decision of the DPC stands valid. On this count we agree with the submission made by the learned counsel for the Respondents. The Honourable Supreme Court observations stated above have upheld the independence of the DPC and the limited scope of the courts to sit on judgment of the decision of the DPC.

8. Therefore, in view of the aforesaid, we find no valid reason to intervene on behalf of the applicant as prayed. The interim stay granted stands vacated and the MA is accordingly disposed. The OA is dismissed with no order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 22th day of November, 2018

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