

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2587/2003

New Delhi, this the 3rd day of August, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

K.C.Yadav
s/o Late Shri S.P.Yadav
working as Dy. Director
National Power Training Institute (NR)
Badarpur, New Delhi - 110 044. ... Applicant

(By Advocate: Ms. Harvinder Oberoi proxy of Shri
Harpreet Singh)

Versus

Union of India through

1. Secretary (Power)
Ministry of Power
Shram Shakti Bhawan
Rafi Marg, New Delhi - 110 001.
2. Director General
National Power Training Institute
Sector - 33, Faridabad - 121 003.
3. Director (Finance & Admn.)
National Power Training Institute (NR)
Sector - 33, Faridabad - 121 003.
4. Principal Director
National Power Training Institute (NR)
Badarpur, New Delhi - 110 044.
5. Shri J.S.S.Rao
Director
National Power Training Institute
Sector - 33, Faridabad - 121 003.
6. Secretary
Department of Personnel & Training
North Block, Central Secretariat
New Delhi - 110 001. .. Respondents

(By Advocate: Ms. Shail Goel)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Shri K.C.Yadav) has been working as Assistant Director in the National Power Training Institute (formerly Power Engineers Training Society) since 1982. He was promoted as Deputy Director in 1989. The next higher post is that of Director. It

18 Ag

is a Group 'A' post. The appointment to the post of Director as per the recruitment rules can be made by promotion, failing which by deputation/transfer, failing both, by direct recruitment (including short term contract).

2. Applicant, as per the seniority list of Deputy Director on 31.3.2001, is shown at Sl. No.3 and private Respondent No.5 (Sh. J.S.S.Rao) is at Sl. No.7. For the vacancy of the year 2001-2002, a Departmental Promotion Committee was conducted for the post of Director on 28.3.2002. The claim of the applicant is stated to have been ignored and private Respondent No.5 had been promoted. By virtue of the present application, he seeks setting aside of the same and also the subsequent orders of 22.5.2003 and 18.7.2002.

3. Some of the other facts would precipitate the question in controversy.

4. The applicant contends that respondents follow the financial year from April to March every year. The Departmental Promotion Committee should have been held for the clear vacancy of 2001-2002 in April/May, 2001. There was only one clear vacancy arising on superannuation of D.K.Choudhry. The same is stated to have been delayed to favour Respondent No.5. It was held on 28.3.2002 which was the last working day with respect to two vacancies, while in fact it should have been held in advance to avoid delay in filling up of the post. If the DPC was held as per schedule in April or May 2001, there would have

Ms Ag

been one clear vacancy and the private Respondent No.5 would not even have come in the zone of consideration. The DPC failed even to prepare the year-wise panels as per the guidelines and there should have been held a second DPC for the subsequent year.

5. Furthermore, it is asserted that since it was a DPC for Group 'A' and 'B' posts, the officers attending the DPC should be at least one step above the posts for which the promotion is being made. Shri Burman was only a Deputy Secretary. He was one of the members of only Departmental Promotion Committee. There was no outside expert from NPTI and in this regard, even the rules were violated. In any case, it has been asserted that the applicant's Annual Confidential Reports were 'Very Good' and he should not be ignored.

6. Needless to state that in the reply, the application has been contested. It is denied that there has been a delay in holding of the DPC meeting for the vacancies of the year 2001-2002. The DPC for the promotion to the grade of Director was convened on 28.3.2002, i.e., after Shri Ata-Ur-Rehman, Director retired on 16.1.2002. It was held during the same year after clubbing of the vacancies occurred on 31.10.2001 and 16.1.2002. There was thus, no delay and blame could not be placed on the respondents. It is denied that DPC was held for selecting the private Respondent No.5 only.

18 Aug

7. Respondents further claimed that the constitution of DPC was in order. As per the recruitment rules of NPTI orders/instructions issued by the Government of India, from time to time regulating inter alia 'promotion' are applicable subject to the Rules and Regulations of NPTI. Shri S.N.Burman admittedly attended the meeting as Deputy Secretary, who was associated as Member of DPC under the category, "an expert not in the employment of NPTI" in order to ensure expertise on Rules and Regulations. It is denied that there is any stipulation in the Recruitment Rules of NPTI that all the Members of DPC should be of the rank of Joint Secretary to the Government of India.

8. We have heard the parties' counsel. Since the basic question raised was about the constitution of the Departmental Promotion Committee, and in our opinion, the application is liable to succeed on that ground. In this regard, thus, it becomes unnecessary to refer to the other controversies.

9. The Supreme Court in the case of UNION OF INDIA AND ANOTHER v. U.D. DWIVEDI. (1997) 3 SCC 182 had concluded that when the appointment of the DPC, i.e., Chairman was invalid, the recommendations would also ^{be} invalid. By analogy ratio of the decision would even apply in cases where the constitution of the Member is abundantly invalid.

10. As per the Recruitment Rules for the post of Director, which is a Group 'A' post, the DPC has to comprise of the following:

18 Aug

"(3) For other Group A posts

(a) Chairman - Director General

(b) Members - i) Chief Superintendent (Training)/Head, Training Resources Unit of the Society/ Joint Secretary, Ministry of Energy (Department of Power)

ii) Chief Engineer, Central Electricity Authority or, equivalent (to be nominated by Chairman, Central Electricity Authority).

iii) An expert, not being an employee of the Society (to be nominated by Director General)."

11. The Recruitment Rules further prescribed that Rules, Regulations and Instructions issued by the Government from time to time pertaining to certain matters shall be applicable to it. It includes promotions, therefore, it is established beyond any pale of controversy when instructions of the Government of India are applicable in cases of promotion and necessarily, therefore, in cases of constitution of the Departmental Promotion Committees also it would apply.

12. The Government of India had issued the guidelines on 10.4.1989 vide Government of India, Department of Personnel & Training's OM No.22011/5/86-Estt.(D) dated 10.4.1989. The same had been amended on 27.3.1997. In case of Group 'A' and 'B' posts, the Members have to be as under:

"Composition of DPCs

LG Ag

2.1 In the case of Groups 'A' and 'B'.- Members included in DPCs for Groups 'A' and 'B' posts should be officers who are at least one step above the posts in which promotions/confirmation is to be made as indicated below-

(IV Pay Commission) Pay scale of the post in which confirmation or to which promotion is to be considered by the DPC Minimum status of officers who should be members of the DPC

1. Rs.2,200-4,000 or equivalent Officers of the rank of Rs.3,000-4,500 or equivalent Deputy Secretary to the Government of India or above.
2. Rs.3,000-5,000 or equivalent Officers of the rank of Director or above.
3. Rs.3,700-5,000 or equivalent Officers of the rank of Rs.4,100-5,000 or equivalent Joint Secretary to the Government of India or above.

In such case the Secretary/Additional Secretary of the Department/Ministry should invariably be one of the members of the DPCs.

4. Rs.5,100-5,700 or equivalent Secretary/Additional Rs.5,900-6,700 or equivalent Secretary to the Government of India."

13. It is clear that all members in the DPC should be officers who are at least one step above the post in which the promotion/confirmation is to be made. The post of the Director is in the scale of Rs.12,000-16,000 which is corresponding to the earlier scale of Rs.3700-5000. Therefore, necessarily, the person concerned should have been a step higher. Unfortunately, one of the members who was also to be taken as expert was only in the scale of Rs.12000-16000 which is not a step higher and, therefore, inadvertent mistake has crept in. In face of the aforesaid, we have no hesitation, therefore, in concluding that the constitution of the DPC was not valid. Thus, following

18 Aug

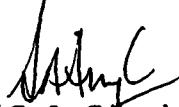
the ratio of the Supreme Court in the case of U.D.DWIVEDI (*supra*), it must follow that the impugned orders cannot be sustained and are liable to be quashed.

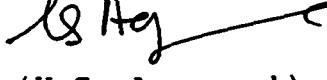
14. For these reasons, we direct:

(a) The impugned orders are quashed.

(b) A review DPC should be held at the earliest.

(c) Nothing said herein, should be taken as any expression of the opinion on the other matters regarding which we have not expressed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/