
(2018) 12 CAT CK 0189

In the Central Administrative Tribunal

Case No : Original Application No. 2293 Of 2013

Dr. Anup Chandra

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 05-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0189

Hon'ble Judges : L. Narasimha Reddy, J;Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : V.S.R. Krishna, Sanjay Katyal

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. The applicant belongs to SC community and had joined Indian Council of Forestry Research & Education (ICFRE), Dehradun as Scientist-B on 18.12.1997. The channel of promotion is to Scientist-C after three years of working as Scientist-B and Scientist-D after four years of working as Scientist-C and so on. A selection process is defined for such promotions.

2. The rules governing such promotions were notified vide letter dated 27.07.2001. The relevant provisions are reproduced below:

"5.2.1 Review for promotion by the Departmental Review Committee shall be done twice a year, that is, before 1st January and 1st July every year. Those who have completed or will complete the residency period in a post during the period of three months before or three months after the date of 1st January or 1st July, as the case may be, as prescribed in the table given below, will be considered as on that date for review for promotion to the next higher:

Designation

Minimum Residency period linked to performance

Scientist 'B'

3 years

Scientist 'C'

4 years

Scientist 'D'

4 years

Scientist 'E'

5 years

Scientist 'F'

5 years

Scientist 'G'

xxx xxx xxx

6. Review process

6.1 All scientists will be first screened by the Screening Committee, as provided in these rules, on the basis of gradings in the Annual Confidential Reports (ACRs) for consideration for promotion; the ACRs will be assessed on a

10 point scale giving 10 marks for "outstanding", 8 marks for "very good", 6 marks for "good", 4 marks for "average" and Zero for "poor" and only those scientists who satisfy the minimum residency period linked to their performance as indicated in the table below, will be screened in:

Number of years in the grade

3

4

5

6

7

8

Minimum percentage for eligibility

Scientist 'B' to

Scientist 'C'

85%

80%

70%

65%

60%

-

Scientist 'C' to

Scientist 'D'

-

85%

80%

75%

70%

60%

Scientist 'D' to

Scientist 'E'

-

85%

80%

75%

70%

60%

Scientist 'E'

Scientist 'F'

-

-

85%

80%

75%

70%

Scientist 'F' to

Scientist 'G'

-

-

85%

80%

75%

70%

6.2 The composition of the Screening Committee shall be as follows:

(1) Director General, ICFRE Chairman

(2) Director, IGNFA/FSI Member to be nominated by the Director General

(3) One DDG/Director of the Member ICFRE Institute to be nominated By the Director General

(4) Secretary, ICFRE Member Secretary

6.3 All scientists who are screened-in will be called for an interview to be conducted by the Departmental Review Committee mentioned under Clause 5.1. The performance in the interview will also be graded similarly on a 10 point scale and the eligibility for promotion will be based on the same norms as given in the table under Clause 6.1."

3. The applicant was considered for promotion as Scientist-C in the year 2002, 2003 and 2004. In the year 2002 and 2003, he did not have required grading in the ACR as per para 6.1 of the relevant instructions referred above, hence was not called for the interview. Thereafter, he secured the required grading in the evaluation done in the year 2004 and was promoted as Scientist-C on 01.01.2004.

As regards the promotion from Scientist-C to Scientist-D, he was considered in 2008, 2009, 2010 and 2011. He did not have requisite ACR gradings in the years 2008 to 2010. Thereafter he was considered for Scientist-D in the year 2011 as of 01.01.2011 and on being found fit he was promoted as Scientist-D w.e.f. 14.10.2011.

The applicant pleaded that once the ACR grading to the requisite standard was attained, further success depended only upon securing minimum qualifying marks in the interview. For interview also, the standards of minimum qualifying marks were very high and thus, the final selection depended on interview alone. This was against the decisions of the Apex Court wherein weightage for interview was pegged at 15%. The applicant also pleaded that the said Interview Board did not include one SC/ST Member, as is required under the extant rules.

4. In respect of his promotion from Scientist-C to Scientist-D, the applicant had also represented to National Commission for Scheduled Caste, who had heard the matter on 16.09.2011 and recommended "that the petitioner's promotion may be considered from retrospective effect, i.e., 2008". Thereafter the candidate's case was considered by the respondents and the same was rejected vide orders dated 23.01.2012.

Thereafter, the applicant preferred a representation to the respondents vide his letter dated 27.11.2012 and when there was no response, the present OA has been filed.

5. Heard Sh. V.S.R.Krishna, learned counsel for applicant and Sh. Sanjay Katyal, learned counsel for respondents.

6. Applicant had relied upon judgment by Apex Court in Director General, ICAR and others vs. D. Sundara Raju, (2011) 6 SCC 605 passed on 30.03.2011 wherein following directions were passed:

"49. The appellants were totally unjustified in allocating 50% marks for the interview particularly when the appellants did not even disclose to the respondent that the interview would also be held to evaluate suitability of the candidate for the said post.

50. The procedure evolved by the Selection Committee for evaluating the respondent was totally arbitrary and contrary to the settled legal position."

In this case the relevant instructions for selection did not contain any instruction as regards the allocation of marks to ACR and interview etc. and the Selection Committee formulated its own criteria and followed the same. The applicant therein was not selected. Feeling aggrieved, he approached the Tribunal where the non-selection was set aside and respondents were ordered to consider the case and promote the applicant if found fit and grant notional promotion w.e.f. 27.07.2008. The matter was agitated in Karnataka High Court where the Tribunal's order was upheld.

The matter was agitated before Hon'ble Apex Court also where the Tribunal's order was upheld (para 6 above).

It is thus clear that since the selection scheme did not contain any allocation of marks to various processes and candidates were not disclosed the allocation method decided by the Selection Committee, it was held that allocation of 50% marks for interview is excessive. This is not the case in the instant application, where the full scheme and allocation of marks to various stages of selection is contained in the notification dated 27.07.2001. The process, so specified, has been followed in its entirety.

7. This Tribunal had relied upon the decision of Apex Court in Lila Dhar vs. State of Rajasthan, AIR 1981 SC 1777 decided on 19.08.1981. The Apex Court had made the following observations:

".... It is for the interviewing body to choose the appropriate method of marking at the selection to each service. There cannot be any magic formulae in these matters and courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless as we said, it is proved or obvious that the method of marking was chosen with oblique motive."

It is, therefore, held that once the selection process is well defined and notified for general information of all concerned, Courts need not interfere unless the process is vitiated by malafide.

8. The applicant has also relied upon the judgment in respect of Dr. (Mrs.) Manjurani Routray vs. Union of India and ors., 2008 (II) OLR 951, which was adjudicated by Hon'ble High Court of Orissa. She was working as Scientist-D and as per the Flexible Complementing Scheme (FCS), she was eligible for promotion after 4 years to the post of Scientist-E. Her case was considered for promotion by the Selection Committee in the years 2000 and 2001 but she was declared unfit. She secured adequate grading in ACR but could not clear the subsequent interview. In that selection a similar policy, as in the instant case, was followed. The High Court of Orissa in WP (C) No.7080/2005 dated 26.09.2008 quashed the very rules. However, subsequently the matter was agitated in Apex Court vide SLP No.7100/2009 where matter is reported to be still pending. Therefore, no ratio can be drawn in the instant case.

9. Another case relied upon by the applicant is in respect of Kumari Thara Bai Thankachi vs. Union of India and others, OA No.620/2008 of Ernakulam Bench of this Tribunal. The applicant was working as Scientist-C and was considered for Scientist-D for the years 2002 to 2008. For the period 2002 to 2005 the ACR grading was not upto the mark and as such, she was not called for interview. For the years 2006 to 2008, the ACR grading was upto the mark and she was called for interview but could not succeed in the interview.

She agitated the matter in Ernakulam Bench of this Tribunal vide OA No.620/2008 which was decided on 07.04.2010 with directions to decide the case as per SLP which was reported to be pending in Hon'ble Apex Court. Therefore, no ratio can be drawn.

10. This Tribunal has relied upon one another case titled K.A.Nagamani vs. Indian Airlines and others, (2009) 5 SCC 515. It is noted that in his case the Hon'ble Supreme Court has held that, having taken part in the process of selection and thereafter not being found successful, if the unsuccessful candidates turn around and question the very process of selection itself, the plea of such applicants cannot be accepted under these circumstances. The ratio of this judgment is attracted in instant case as selection procedure was known in advance and applicant participated in it all these years from 2002 to 2010 and has questioned it only now.

11. One more case relied upon by Tribunal was decided by the Hon'ble Apex Court is in respect of Pradeep Kumar Rai and others vs. Dinesh Kumar Pandey

and others, (2015) 11 SCC 493. The relevant paras of this decision are as under:

"19. Now, so far as the question of awarding consolidated marks by all the panelists in the interview is concerned, we are in agreement with the finding of the learned Single Judge. The purpose of constituting multi member interview panel is to remove the arbitrariness and ensure objectivity. It is required by each member of the interview panel to apply his/her own mind in giving marks to the candidates. The best evidence of independent application of mind by each panelist is that they awarded separate marks. However, if only consolidated marks are awarded at the interview, it becomes questionable, though not conclusive, whether each panelist applied his/her own mind independently. Having said that, we note that this Court cautioned in *Lila Dhar Vs. State of Rajasthan and Ors.*, (1981) 4 SCC 159, that it is not for the Courts to re-determine the appropriate method of selection unless obvious oblique motives are proved in a particular case.

20. Even in *Lila Dhar's* case (*supra*), the issue was regarding the marks awarded by the Selection Committee as one consolidated marks; the Court refused to interfere with the appointment process on this ground. Only because the panelists on the interview committee did not award separate marks, cannot be a ground to quash the entire process. Also, with respect to the legal argument that the Government Order dated 03.02.1999 provided that the marks must be separately awarded by interview panelists, we hold that the Government Order dated 3.02.1999 was in continuation of the Government Order dated 23.01.1999, which was superseded expressly by Government Order dated 27.02.1999. The Government Order dated 27.02.1999 did not provide any condition that the marks were to be separately awarded by each interview panelist. Thus, it cannot be argued that the Government did not follow the rules framed by itself.

21. Further, it is a settled law that in cases like the present one, where an Executive action of the State is challenged, Court must tread with caution and not overstep its limits. The interference by Court is warranted only when there are oblique motives or there is miscarriage of justice. In the present case, there is no oblique motive or any miscarriage of justice warranting interference by this Court. Hence, the appeals and the writ petition are dismissed."

The Apex Court had held that even if all the interviewing members awarded only one consolidated mark as a whole, this by itself cannot be agitated as a sufficient ground to challenge the interview unless malafide is proved. In the instant case, records have been produced to indicate that the individual members of the interview board had made separate assessment and had given separate marks individually to the candidate. Overall assessment was made thereafter.

12. In view of the same, the plea of the applicant that interview was not held in a fair manner cannot be accepted. The very process of ACR grading and interview thereafter was in force from 2001 and the applicant himself had

undergone this process while being promoted from Scientist-B to Scientist-C in the year 2002 to 2004 and thereafter from Scientist-C to Scientist-D during the years 2008 to 2011 and as such questioning the same belatedly cannot be accepted. No malafide has been brought out in the selection process.

13. In the result, the OA does not succeed and the same is dismissed being devoid of merit. No costs.