
(2002) 01 DEL CK 0088
In the Delhi High Court
Case No : Civil Writ Petition No. 3181/98

K.C. Chakraborty

APPELLANT

Vs

Indian Trade Promotion Organisation

RESPONDENT

Date of Decision : 18-01-2002

Acts Referred:

Citation : (2002) 2 AD 409 : (2002) 96 DLT 744

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Party in perso, for the Appellant; V.K. Rao and Ashok Bhasin, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The petitioner, who is employed with Indian Trade Promotion Organisation, is aggrieved by his non-regularisation to the post of Deputy General Manager to which post the petitioner was initially appointed on an ad-hoc basis.

2. On 14.10.1996 the petitioner was promoted to the post of Deputy General Manager on an ad-hoc basis. It is stated in the petition that a clear vacancy arose for the post on superannuation of one of the officers on 3.11.97 but the petitioner was not regularised. Thereafter another vacancy arose and in view of two clear vacancies a Departmental Promotion Committee (DPC) was held on 12.5.98. Instead of the petitioner being regularised the DPC did not confirm the petitioner to the post of Deputy General Manager confirm the petitioner to the post of the Deputy General Manager and persons junior to the petitioner were promoted.

3. The petitioner who has appeared in person contended that the bye-laws of the Trade Development Authority provide that the appointment to the post in a grade by promotion, whether substantive or officiating, is liable to be made from amongst the employees serving in the organisation eligible for promotion in

terms of Clause 3.4 of the said bye-laws. The petitioner further referred to Clause 3.4(2) to submit that the appointment to a selection post was liable to be made on the basis of merit, efficiency, past experience and general suitability with due regard to the seniority and on the basis of the recommendations of the appropriate selection committee. For this purpose Confidential Reports of the officers for a period of 5 years preceding were to be taken as guiding factors.

4. The petitioner also referred to the office memorandum dated 30.3.98 of the Government of India, Ministry of Personnel, Public Grievances and Pensions (Annexure P-11) where the issue of ad-hoc appointments has been dealt with. The office memorandum records that instructions have been issued from time to time that posts should be filled up in accordance with prescribed procedure and recruitment rules on a regular basis. Consequently it was required to ensure that all appointments made on an ad-hoc basis are limited to posts which cannot be kept vacant until regular candidate has become available. The office memorandum noted that despite this position the appointment continued to be made on an ad-hoc basis which had led to instances where judicial authorities have directed the Government to fix seniority after taking into consideration the period of service rendered on an ad-hoc basis. Thus the petitioner contended that in view of this office memorandum the benefit of the ad-hoc services was liable to be granted to the petitioner. The petitioner also referred to one of the notice of respondent no.2 dated 24.3.98 annexed to the synopsis of arguments of the petitioner dated 22.2.2001 which referred to the meeting of a DPC scheduled for 27.3.98 to "consider/recommend regularisation/promotion for the grade of Assistant Manager". The petitioner thus contended that in view of his earlier ad-hoc promotion by a DPC the subsequent DPC only had to regularise the services of the petitioner.

5. The petitioner has also challenged the constitution of the DPC in view of what the petitioner contends is the inclusion of the DGM in the DPC. Petitioner contended that a specific ground (m) has been taken in the petition that a DGM is not eligible to select another DGM as a Member of DPC. The petitioner further contended that there was an element of bias against him.

6. Mr. Rao, learned counsel for the respondent no.2, on the other hand, is opposed to grant of any relief to the petitioner. Mr. Rao urged that the petitioner had not even impugned the office order dated 18.5.98 in pursuance whereof the petitioner was reverted to a substantive post of Senior Manager from the ad-hoc post of DGM.

7. Mr. Rao, learned counsel for respondent no.2, submitted that the plea of the petitioner about improper constitution of DPC was misplaced since the General Manager(Administration) or Deputy General Manager (Administration) is not a Member of the DPC but only a Secretary of the Committee.

8. Mr. Rao referred to the Minutes of meeting held on 26.9.96 which considered the case of the petitioner for appointment to the post of DGM on ad-hoc basis.

The said minutes recorded that seniormost person Mr. J.K. Badam was not considered fit for promotion in view of ACRs. The petitioner was next in the seniority and since he was in the eligibility zone was found suitable for ad-hoc promotion and accordingly it was recommended that he should be so appointed. The committee minutes record that the promotion does not confer any right for seniority. The subsequent DPC held on 12.5.98 considered the question of appointment of the DGMs. The relevant portion of the said minute is as under:

"III. Deputy General Manager (Trade Development Cadre) in the pay scale of Rs. 7500-300-9900

The DPC was informed that there was a clear vacancy of Dy. General Manager (Trade Development Cadre) caused by the retirement of Shri S.P. Choudhary. In addition, two more vacancies by way of channel promotion as recommended above, would be available (one Rao). Further, there was one temporary vacancy due to long-term deputation of Shri P K Bhandari against which Shri K C Chakraborty being the seniormost in the Grade is working on adhoc basis. The DPC considered the following eligible candidates in terms of Recruitment Rules:

1. Shri K C Chakraborty
2. Shri N K Sehgal
3. Shri H C Thekedar
4. Shri Ranbir Singh
5. Shri R K Gupta
6. Shri P R Mohan

The DPC after assessing the ACR gradings with reference to the laid down bench mark of "Very Good" and taking into account all other relevant factors found the following officers fit for promotion to the post of Dy. General Manager, in the pay scale of Rs. 7500-300-9900, in order of merit:

2. Shri N K Sehgal
3. Shri H C Thekedar
4. Shri Ranbir Singh
5. Shri R K Gupta
6. Shri P R Mohan

The Committee did not consider Shri K C Chakraborty fit for promotion.

9. Mr. Rao, thus contended that the petitioner was appointed on an ad-hoc basis in view of the temporary vacancy due to the long term deputation of Mr. P K Bhandari. The DPC after considering the relevant ACRs did not find the petitioner fit for promotion. Mr. Rao referred to the office order dated 16/17.3.97 directing

that the DPCs in respect of the recruitment/promotion in respondent no.2 were to be constituted as per the relevant guidelines in the preamble to the recruitment rules governing recruitment/promotion of Ex-TFAI employee. Consequently, Mr. Rao referred to Chapter 20 dealing with the ad-hoc appointments/promotions Clause 4(iii) which is the office memorandum dated 30.3.98 no. 28036/8/87-Est(D) of GI, Department of Personnel and Training. Relevant portion of the said rule is as under:

"(iii) Where ad hoc appointment is by promotion of the officer in the feeder grade, it may be done on the basis of seniority-cum-fitness basis even where promotion is by selection method as under-

(a) Ad hoc promotions may be made only after proper screening by the appointing authority of the records of the officer."

10. Mr. Rao thus contended that even for ad-hoc promotions DPC was held as required but that would not give any right to the petitioner to be confirmed. The subsequent DPC was held for considering the appointment on a permanent basis. The petitioner's case was examined and the petitioner was not found fit. Mr. Rao while referring to the relevant recruitment rules submitted that the post in question is a selection post and the promotion to selection post is considered on the basis of merit, efficiency, past experience and general suitability with due regard to seniority. The criteria was set out in the agenda of DPC itself as under:-

"Promotion to a selection post is considered on the basis of merit, efficiency, past performance and general suitability with due regard to seniority. CRs of the eligible persons for a period of not less than five preceding years are to be taken as the guiding factor except in a case where the eligibility period of promotion is less than five years, CRs only for that period are to be taken into account. Further as per GOI's instructions, the DPC may not be guided merely by the overall grading recorded in the CRs of the eligible officers but it would make its own assessment on the basis of the entries in the Crs to decide a benchmark grading among (i) Outstanding (ii) Very good (iii) Good (iv) Average (v) Unfit. For promotion to the posts in question, the bench-mark would be "Very Good". However, officers who are graded as "Very Good" and placed in the selection panel; officers with same grading maintaining their inter-se seniority in the feeder post."

11. I have considered the submissions advanced by the petitioner as also by the learned counsel for the respondents. A reference to the DPC initially held on 26.9.96 leaves no manner of doubt that DPC was held only for appointment on purely adhoc basis. Subsequent DPC held on 12.5.98 considered relevant merits of the candidates and did not find the petitioner eligible to be appointed. Thus the only question to be considered in this behalf is whether the mere appointment of petitioner on adhoc basis would give a right to him to be appointed on a regular basis. In my considered view the petitioner is not entitled to such a benefit and if this should be position then there is no purpose in

holding a subsequent DPC for permanent appointment. It is not disputed that the post in question is a selection post and Therefore, there is no right to be appointed on the basis of mere seniority. The merits of the candidates have to be considered on the basis of their ACRs. I also do not find any force in the submission of the petitioner that the Office Memorandum dated 30.3.98 would have any bearing on this case. The circular arose as a result of adhoc appointments being made while directions were for appointment against vacancies. The directions were issued by the judicial authorities for coacting the adhoc service of the person being so regularly appointed. In the present case the petitioner has admittedly not been appointed on a regular basis. Thus the question of considering the adhoc service of the petitioner for regular appointment would not arise. The basis for selection has been set out in the agenda of DPC itself which has been reproduced above. It has not been shown how the same has been violated by the DPC in considering the case of the petitioner.

12. The challenge by the petitioner to the constitution of the DPC itself is also without any merit. It has not been shown that the DGM was part of the selection process in the DPC and being present as a Member Secretary and signing in that capacity would not imply that the said person was part of the selection process and would thus not vitiate the process of selection by the DPC.

13. In so far as the allegations of bias are concerned no details have been given. In fact only a general allegation has been made against the respondents without detailing out as to which officer was biased against the petitioner and in what manner it affected the selection process of the petitioner.

14. The Supreme Court had the occasion to consider the obligation of a selection committee while considering a candidate for appointment in *Major General I P S Dewan v. Union of India and Ors.* 1995 (29) ATC 579 and was of the view that in the absence of provision to the contrary the selection committee was not obliged to record reasons for its decision or not to select a particular person and the requirement of natural justice requiring speaking orders would not be applicable to the selection process.

15. The position in law is also well established that the High Court in exercise of its powers under Article 226 of the Constitution of India cannot assume the role of selection committee and evaluate fitness of a candidate for a particular post. This position has also been set out by the Supreme Court in *Indian Airlines Corporation v. Capt. K C Shukla and Ors.* (1993) 23 ATC 407

16. In the present case we are concerned with the selection to the post on merit basis although seniority may be more relevant in case of equality of merit as held by the Supreme Court in *R.K.S. Chauhan (Dr) and Anr. v. State of U.P.* (1995) 31 ATC 768 The petitioner has further not been found fit to be appointed by the DPC which considered the case of the petitioner and other candidates for appointment to the post of DGM on 2.5.98. The comparative merit of the candidates is chart

from has been produced before this Court in a sealed cover which has been examined. The chart is counter signed by the counsel based on the confidential reports. The DPC proceeded on this basis and in accordance with the criteria laid down. There is thus no infirmity in the process.

17. It may, however, be noted that in additional affidavit filed by the petitioner dated 10.12.2001 it has been stated that the respondents have rectified their mistake and restored the position of DGM to the petitioner after three years in terms of the order 3.12.2001 but the petitioner should be granted legal dues of seniority. A reference to the said order annexed to the affidavit shows that it is only an adhoc promotion which has been granted to the petitioner without any claim for regular promotion. Thus the presumption of the petitioner that the position has been remedied and the petitioner has been appointed on a regular basis is misconceived.

18. In view of the above I am of the considered view that no infirmity can be found in the process of selection by the DPC. This court will not substitute its mind for the DPC. No relief can be granted to the petitioner.

19. The writ petition is dismissed leaving the parties to bear their own costs.