



CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 3192/2002

New Delhi this the 2nd March 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman**  
**Hon'ble Mr. S.A. Singh, Member (A)**

K.N.Sharma,  
Regional Director (Retd.),  
Sports Authority of India,  
B-2/91 Paschim Vihar,  
New Delhi.

..Applicant

(Applicant present in person alongwith Sh. B B Raval Advocate)

VERSUS

1. Sports Authority of India,  
through the Secretary,  
Sports Authority of India,  
Jawaharlal Nehru Stadium,  
New Delhi.
2. Union of India through the  
Secretary, Ministry of Youth  
Affairs and Sports, Shastri Bhawan,  
New Delhi.
3. Shri C.R.Gopinath,  
Executive Director, Sports Authority of  
India, Jawaharlal Nehru Stadium, Lodi Road,  
New Delhi.

.. Respondents

(By Advocate Shri Arun Bhardwaj counsel for  
respondents 1-2 and Ms. Shubhangi Tuli for Respondent No.3)



## ORDER

(Hon'ble Mr. S. A. Singh, Member (A)

The applicant has retired as Regional Director, Sports Authority of India and prays for the following reliefs:-

- (i) Direct the respondents to hold Review DPC for the post of Director as at 5.8.1991, as directed by this Hon'ble Tribunal on 15.9.1997 in TA 7/96, by including names of all those officers who fulfilled the eligibility criteria including those promoted by office order No. 240/91 also dated 5.8.1991, and Respondent No.3 herein, who had not been absorbed in SAI on 5.8.1991 and did not fulfill requisite qualifications;
- (ii) Grant financial relief and arrears from 1.8.1996 in the rank of Deputy Director, and from 5.8.1991 in the rank of Director.
- (iii) Declare that absorption of Respondent No.3 in Sports Authority of India was against the Bye-laws of SAI and other statutory Rules;
- (iv) Direct the respondents to grant promotion to the petitioner as Regional Director from 1995 and as Executive Director from 2001.

2. The applicant had earlier filed OA 949/2002 before the Principal Bench of the Tribunal seeking certain reliefs which was disposed of at the admission stage without issuing notice to the respondents, with a direction to consider the various representations together with OA 949/2002 and decide the matter. In compliance of these directions, the respondents passed order dated 7.10.2002 wherein they had indicated that the applicant filed 2187/1992 before the Delhi High Court of Delhi, which was subsequently transferred to the Hon'ble Central Administrative Tribunal (PB) as TA 7/1996. This was decided by the Tribunal (PB) on 15.9.1997. Against this order, the respondents had filed CWP 5298/1997 before the High Court of Delhi which was disposed of vide their order dated 1.5.2000. Thereafter, the order of the High Court of Delhi read with the order dated 15.9.1997 of the Tribunal were implemented by the respondents against which the applicant had filed CCP 130/2001. The same was disposed of by the High Court, agreeing with the respondents that the directions of the Division Bench have been complied with and there was no point in proceeding further in the matter. The counsel for



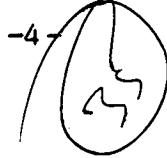


the petitioner stated in CP that the applicant, though promoted as Regional Director, but was not promoted from the year 1995 when his junior i.e. respondent No.3 was given promotion. The Tribunal observed that if it is so, the petitioner may, if he so desires, file a substantive petition for getting his grievance redressed in accordance with law. In view of these directions the applicant had filed the present OA.

3. The applicant was appointed as a Hockey Coach Grade-III in the National Institute of Sports Patiala (NIS) in the scale of Rs.500-900. He was promoted as Hockey Coach Grade II in the scale of Rs.700-1100 w.e.f. 1.4.80. The post of Hockey Coach Grade II was re-designated as Supervisor by NSI on 5.6.82 and the applicant joined the Sports Authority of India as Supervisor. In Sports Authority of India post of Supervisor and Assistant Director were in the scale of Rs.700-1100/- and 700-1300/- respectively. In compliance to the 4<sup>th</sup> CPC recommendations both posts were made equivalent w.e.f. 1.1.1986. The applicant was appointed on regular basis as Assistant Director w.e.f. 1.1.1986 and then on regular basis as Director. It is the case of the applicant that one Shri C.R.Gopinath (respondent No.3) was wrongly absorbed as Director <sup>on</sup> 1.1.86 by Sports Authority of India. This wrong absorption gave respondent No.3 seniority over and <sup>above</sup> ~~and~~ the applicant. Based on this seniority Respondent 3 has been promoted as Regional Director w.e.f. 12.1.1995 whereas the applicant has been promoted to the same rank w.e.f. 2.11.2001. Subsequently respondent No.3 has been promoted as Executive Director w.e.f. 27.1.2001.

4. The applicant pleaded that he had filed several representations and then OA 949/2002 seeking directions for holding of a Review DPC as per the position prevailing on 5.8.1991 for considering the claim of the applicant ( w.e.f. 12.1.95 i.e. date of promotion of Respondent 3) as well as similarly placed eligible officers for promotion to the rank of Regional Director. The applicant had also filed TA 7/1996 seeking promotion

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to the post of Director w.e.f. 5.8.91 i.e. the date from which his juniors were promoted to the post of Director.

5. TA 7/1996 was disposed of by the Tribunal vide order dated 15.9.1997 with the directions that after preparation of a combined eligibility list of all the candidates eligible to be posted/promoted as Director as on 5.8.1991 and who fulfill the eligibility condition of 5 years of service as Deputy Director or 10 years of combined service as Deputy Director and Assistant Director a review DPC should be held for giving notional promotion. It was also directed that no distinction will be made whether the service is in scale of Rs. 700-1100 or Rs. 700-1300 for eligibility just because the same has now been combined by the Fourth Pay Commission even though implementation of the same had been given effect to w.e.f. 1.1.1986 only. It was also clarified that the combined seniority, list so prepared, for the purpose of consideration of review DPC shall not include any right to seniority on the basis of past service. In compliance with these directions, review DPC was held and the applicant was promoted. The applicant filed the Contempt Petition pleading that he had been promoted but not from the date from which he is now seeking promotion in the present OA.

6. Applicant claims that in the combined seniority list, which has been prepared on the orders of the Court, he has been wrongly assigned the seniority w.e.f. 1.1.1986 as Assistant Director because he was Assistant Director as on 1.10.1984 and was promoted to the post of Deputy Director w.e.f. 1.8.1986. As per the combined list of eligible persons in which at serial No.10 Shri L.S.Ranawat has been shown as regular Assistant Director w.e.f. 16.10.1984 whereas the applicant was shown as Assistant Director w.e.f. 1.10.1984. Thus, the applicant was senior to Shri L.S.Ranawat in the rank of Assistant Director. However, he has been shown junior to Shri L.S. Ranawat as per columns 4 and 5 of the combined seniority list. At serial No.16, the applicant has been shown as Deputy Director w.e.f. 1.8.1986 on ad hoc basis and w.e.f. 5.8.1991 on regular basis when the



respondents have themselves promoted him to the post of Director w.e.f. 5.8.1991. This shows that the position is erroneous as the applicant cannot be Deputy Director on 5.8.1991 and also Director on the same date. The respondents vide order dated 27.11.2001 promoted respondent No.3 from the post of Regional Director to Executive Director. The case of the applicant is that had he been considered by the review DPC held on 5.8.1991 in which 5 other Deputy Directors have been promoted as Director, he would have become Regional Director and subsequently Executive Director, if respondent No.3, had not been granted promotion in spite of CBI case initiated against him. The applicant, therefore, has to work under an officer who was junior to him, besides loosing timely promotion.

7. Respondent No.3 had been given no objection by his parent Department on 28.10.1988 for absorption i.e. after the date of his joining SAI. He tendered his technical resignation from the Trade Development Authority (TDA), which was accepted by parent Department on 4.3.1992 w.e.f. 1.6.1991 and respondents vide order dated 8.1.1992 absorbed respondent No.3 w.e.f. 1.6.1991. The absorption of respondent No.3 was made before the consent of parent Department was taken, it is, therefore, according to the applicant illegal. Moreover, as per Recruitment Rules, respondent No.3 was over aged. The applicant had been absorbed earlier than respondent No.3, therefore, he was senior to respondent No.3 and should have been promoted earlier.

8. Needless to say that the respondents have strongly contested the averment of the applicant. They have made a preliminary objection that the OA is barred by the principles of res judicata as the issues raised in the present application were raised in CWP 2187/1992, CWP 5298/1997, TA 7/1996 and OA 949/2002. Once the issues have been raised, which have duly been taken into consideration by the Hon'ble High Court and Hon'ble CAT and thereafter the matters have been disposed of giving specific directions and the said directions have been duly complied with ~~that~~ cannot be taken up again. The





applicant had also filed CP which was disposed off. In fact the applicant is a Hockey Coach and had been wrongly placed in the administrative cadre, when amalgamation of the NIS was made with SAI. There is no comparison with regard to respondent No.3 because respondent No. 3 was absorbed as Director while the applicant was an Assistant Director, thus he cannot consider himself senior to respondent No.3. Respondent No.3 was taken on deputation as per Bye-laws 1987 because at that time there were no recruitment rules. CBI enquiry against the respondent No.3 was not relevant for absorption and moreover, the CBI enquiry was closed.

9. The applicant in his rejoinder has pointed out that he was on deputation with SAI and absorbed w.e.f. 1.10.1984 vide order dated 5.6.1986. The applicant was appointed as Supervisor in the pay scale of Rs. 700-1100 under the Stadia Management Scheme and order shows that he was already Assistant Director on 1.10.1984 against the vacant post. Also order dated 8.1.1991 shows that he was Deputy Director.

10. We have heard the learned counsel for the parties and have gone through the documents on record. The High Court while disposing of CCP 130/2001 has passed the order as under which reads:

“ Counsel for the respondent has stated that the petitioner has now been promoted in the post of Regional Director by order dated 27.10.2001 and has placed the copy thereof on the file. He submitted that now nothing survives in this petition as directions of this court contained in the order of the Division Bench dated 1.5.2001 have been complied with. Counsel for the petitioner on the other hand, has stated that the petitioner should have been promoted in the year 1995 to the post of Regional Director when his junior Mr. C.R.Gopinath was given promotion. If it is so, the petitioner may, if he so likes, file a substantive petition for getting his grievance redressed in accordance with law. But so far as this petition is concerned, the directions of the Division Bench have been complied with”.

11. The applicant has filed the present OA in view of the liberty granted by the High Court in CCP. The main relief is to grant promotion to the applicant as Regional Director from 1995 and as Executive Director from 2001 and to declare the absorption of respondent No.3 as against the Bye-laws of SAI and other statutory Rules. The grounds

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asking for this relief are the same which he had put forth in OA 949/2002. He has relied on the judgement of the Hon'ble Supreme Court in M. Ramchandran JT 1999(7) SC 271).

12. The main grounds taken by the applicant are that :-

- (i) Respondents gravely erred by non-inclusion of the names of 5 Deputy Directors who had been promoted by Office Order No. 240/91 dated 5.8.1991 in the review DPC held on 5.8.1991 along with respondent No.3 amounts to non compliance of Court's orders.
- (ii) That the Hon'ble Tribunal in its order dated 15.9.1997 had specifically directed that review DPC be held by including names of all those officers who filled the eligibility criteria, which included names of 5 Deputy Directors mentioned at (i) above and name of respondent no.3 who had yet not became a cadre officer of SAI. Respondents committed an error by excluding names of those officers who were to be considered and only considering that of applicant in the review DPC.
- (iii) The respondents committed grave illegality in promoting respondent No.3 as Regional Director in 1995 because respondent No.3 became a cadre officer of SAI on 1.6.1991. Respondent No.3 had thus not completed 5 years of service as required Bye laws of SAI and was thus ineligible to be considered for promotion to the post of Regional Director.
- (iv) The respondents erred in treating the applicant junior to respondent No.3 as he had become eligible to be promoted as Director on 5.8.1991 i.e. prior to respondent No.3 who was made a cadre officer of SAI retrospectively. Giving retrospective absorption to respondent No.3 ignoring the claim of the applicant for promotion to the post of Director in review DPC held on 5.8.1991 respondents had shown invidious discrimination quo the applicant.

13. The issue left for adjudication after the Hon'ble High Court's judgment in CCP 130/2001 is the date from which the applicant should have been promoted to the post of Regional Director i.e. when respondent No.3 was given promotion.





14. Now we come to the question as to the date from which the applicant should have been promoted to the post of Regional Director. He was promoted to the post of Regional Director w.e.f. 27.11.2001. However, he prays for promotion as Regional Director from 1995 and thereafter as Executive Director from 2001. He has asked for review DPC for the post of Director for promotion w.e.f. 5.8.1991.

15. The question of seniority had been taken up by the applicant in CWP 2187/1992 before the High Court which was subsequently transferred to the Hon'ble CAT as TA 7/1996 wherein respondent No.3 was impleaded. The respondents were directed to prepare a combined eligibility list and hold a review DPC on 5.8.1991. The date of 5.8.1991 was also be the cut off date for inclusion or exclusion of eligible candidates for preparation of the eligibility list provided all of them have been in the cadre of SAI on the relevant date, either by way of absorption or by way of DR or by any other method. As per the direction the seniority of the applicant was fixed vis-a-vis 5 Deputy Directors, namely, Shri T.C.Sharma, S.N.Mathur, G.S.Anand, P.C.Kashyap and Shri S.K.Saggar and subsequently the applicant was promoted as Regional Director w.e.f. 27.11.2001. CCP 130/2001 filed against the aforesaid order was disposed of vide order dated 29.11.2001 and this order said that "nothing further survives in the matter and there is no point in proceeding further with the matter. Counsel for the respondent (applicant) in that petition had disputed that the applicant was entitled to be promoted to the post of Regional Director from 1995 as he was senior to respondent No.3 and the applicant was given liberty if he so likes, to file a substantive petition for getting his grievance redressed in accordance with law". The present OA is in connection with this liberty and only seniority vis- a -vis respondent No.3 is to be determined.

16. The applicant was on deputation from NIS Patiala to SAI and on amalgamation of NSI with SAI the applicant was absorbed in the Administrative Cadre w.e.f. 1.5.87. He was thereafter provisionally promoted as Asstt. Director w.e.f. 20.4.87 and in January



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1991 was promoted with retrospective effect as Asstt. Director from 01.10.1984. He was, thereafter, promoted again with retrospective effect (i.e. from 1.8.86) as ad hoc Dy. Director with notional pay fixation from this date and with full monetary benefits from the date of assumption of charge. The applicant was promoted on ad hoc basis from 4.2.2000 as Director. A review DPC was held on 16.4.2001 for the post of Director and the applicant was promoted as Director (notionally) from 5.8.1991.

17. It is not contested that the respondent No. 3 who had come on deputation as Director in 1988 was later absorbed in SAI. On this date the applicant was an Asstt. Director. The controversy is with regard to the date of absorption of respondent No. 3 into SAI. According to the respondents this date was 01.06.2001, whereas according to applicant respondent -3 could not have been absorbed on this date because respondent No. 3 continued to draw deputation allowance till July 1992. The applicant prayed that the Tribunal should call for the relevant records to verify the authenticity of the respondents' averments. Moreover it was not possible for the respondent no. 3 to be absorbed retrospectively i.e. from 01.6.1991 and at the same time to draw deputation allowance till July 1992 as it would tantamount to having simultaneous lien on two posts, which was not permissible. Moreover, a resignation cannot be accepted retrospectively. The absorption of the respondent No. 3 was also not approved by the Personal Advisory Committee i.e. Ministry as is required under Recruitment Rules.

18. The respondents pleaded that respondent no. 3 was on deputation under provisions of bye law 6(1) of SAI bye laws 1987. The Recruitment Rules were promulgated on 5.9.1997 and before this promulgation no recruitments could take place. After promulgation steps were taken to regularize the appointments including that of respondent No.3. This regularization was permitted by the bye laws promulgated in 1992.

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19. The willingness of the respondent no. 3 for absorption in SAI was obtained and thereafter the matter was referred to a screening committee for assessing the suitability of respondent 3 and others for absorption in SAI and also to decide the year of placement in the cadre of NSAI. The recommendations of this committee as per bye law were put up to Director General, SAI. The DG approved the recommendations of the screening committee for promotion / absorption of respondent no. 3 as Director in SAI in the pay scale of Rs. 3,700 – 5000/- w.e.f. 1.6.91. Thereafter, a request was made to the parent department of the respondent No. 3 to grant approval for absorption of applicant in SAI by accepting the technical resignation of respondent No. 3 retrospectively i.e. from 1.6.91. On receipt of this approval formal orders of absorption of respondent No. 3 were issued on 10.8.92. The date of absorption of respondent no. 3 from 1.6.91 was recommended by the screening committee based on the vacancy position.

20. With regard to the question of payment of deputation allowance up to July 1992 the respondents clarified that on absorption with SAI the pay of respondent No. 3 was fixed in the pay scale of Rs.3700 –5000/- and his total emoluments in the said pay scale were higher than the emoluments he was drawing while on deputation (including deputation allowance), hence the deputation allowance got adjusted on pay fixation after absorption into SAI.

21. We have gone through the records made available to us by the respondents and we find that respondent no. 3 was absorbed into SAI after the promulgation of the recruitment rules and find no infirmity in the date of absorption or the process adopted by the respondents in absorbing respondent No. 3. We also find no reason to interfere as the bye laws permit absorption of persons if they were in SAI on the date of promulgation of the rules/bye laws.

22. The principle laid down for seniority of person absorbed after being on deputation is given in DOP&T O.M.No. 9/11/55-R.P.S.dated 22.12.1959 which reads as under:

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“.....Accordingly, it has been decided to add the following sub-para. (iv) to para. 7 of principles communicated vide O.M. dated 22.12.1959:-

“(iv) In the case of a person who is initially taken on deputation and absorbed later ( i.e., where the relevant Recruitment rules provide for Transfer on Deputation/Transfer), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already ( on the date of absorption) the same or equivalent grade on regular basis in his parent Department such regular service in the grade shall also be taken into account in fixation of his seniority, subject to the condition that he will be given seniority from

- the date he has been holding the post on Deputation  
or
- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent Department.

whichever is later.

The fixation of seniority of a transferee in accordance with the above principles will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up vacancies in higher grade taking place after such absorption. In cases in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption”.

23. From a plain reading of the principle laid down in the OM reproduced above, the seniority of the applicant and Respondent No.3 would have to be determined from their dates of absorption in the respective grades. Respondent No.3 was absorbed as Director on 1.6.1991. The applicant was absorbed in the administrative cadre of SAI w.e.f. 1.5.1987 on the amalgamation of NIS with SAI. Though the applicant was provisionally promoted as Assistant Director w.e.f. 20.4.1987 his promotion as Assistant Director was made retrospective w.e.f. 1.10.1984. Subsequently, he was promoted as Deputy Director and then through a review DPC held on 16.4.2001 he was promoted on notional basis, along with his seniors as Director w.e.f. 5.8.1991. The position that emerges is that on



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1.6.1991 i.e. the date of absorption of Respondent No.3 as Director the applicant was not a Director. He was promoted on notional basis as Director w.e.f. 5.8.1991 i.e. after the date of absorption of respondent No.3 as Director. In terms of OM reproduced earlier in Para 17, the seniority of a transferee on deputation is counted from the date of absorption. Respondent No.3 was absorbed as Director on 1.6.1991, whereas the applicant was promoted, on notional basis, as Director w.e.f. 5.8.1991. The applicant, therefore, cannot claim seniority in the grade of Director over Respondent No.3. Hence the OA is without merits and fail.

24. In view of the above, the OA is dismissed. No costs.

  
(S.A. Singh)  
Member (A)

  
(V. S. Aggarwal)  
Chairman

Patwal/