



**Central Administrative Tribunal
Principal Bench**

OA No. 3199/2015

New Delhi this the 16th day of January, 2020

**Hon'ble Mrs. Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)**

Shri B.S. Negi (Aged about 62 years)
S/o Shri G.S. Negi
Working as : Retired Director
R/o Pocket – B, DDA MIG Flats,
Flat No. 952, East of Loni Road,
Shahdara (East), DELHI-110093
... Applicant

(By Advocate : Sh. B.S. Chowdhary)

Versus

1. Union of India
Through Secretary,
Department of Personnel & Training
North Block, New Delhi-110001
2. Secretary,
Union Public Service Commission
Dholpur House, Shahjahan Road,
New Delhi.

...Respondents

(By Advocate : Sh. A K Singh-R-1
Sh. Amit Yadav-R-2)

O R D E R (ORAL)

Hon'ble Mr. Pradeep Kumar, Member (A)

1. The applicant herein belongs to ST Community and is a directly recruited Section Officer on the basis



of 1984 examination. He actually joined service in September, 1986. The approved service is counted from 01.07.1985. In due course of time, he was promoted and eventually retired as a Director on 31st October, 2012.

The applicant drew attention to a Notification issued on 17.12.1991 by Department of Industrial Development, where he was working at that point of time wherein promotion orders to the Grade 1 of the Central Secretariat Service (Under Secretary) in scale of pay Rs.3000 -Rs.4500/-, were issued and were given effect from the forenoon of 04.12.1991. Total number of officers were promoted were 30, out of which, the officers at S.No.20 to 30 were promoted on a personal basis. The applicant's name appears at S.No.30 in this list. These promotion orders were subject to the approval of UPSC and outcome of the case in Hon'ble Apex Court in SLP No. 15250/88, Civil Appeal No. 3797/91 - **UOI and Ors. vs. Amrit Lal & Ors.** which was pending adjudication. It was pointed out that there were certain disputes going on between the seniority of directly recruited S.Os and those who were



promoted to the post of S.O., and case relates to those disputes,

2. The DPC for promotion to the grade of Under Secretary is to be convened by involving UPSC. The same was convened after the seniority related dispute was resolved and DPC was held on 30th and 31st of May-02, 3rd 5th, 6th, 7th June, 2002 and 2nd & 19th July, 2002 for several years together. The applicant's name was considered for the select list of the year 1993 and his name appears at S.No. 24. He was assessed as 'Very Good' and was promoted on regular basis.

3. There was a third proviso to Rule 12 (2) of CSS (Rules) 1962 wherein a provision was made that in case some junior S.Os. are being considered for promotion to the post of Under Secretary, the Senior SC/ST community officers shall also be considered, even if they had completed only four years of service as against 8 years required for a general community candidates. This provision was withdrawn by DOP&T vide instructions dated 09th March, 1999.

Some of the affected SC/ST community officers felt aggrieved that they were considered for



regular promotion to the post of Under Secretary after completion of eight years of service only, whereas at the relevant point of time i.e. up to 1993-99 they were required to be considered after 4 years only if their juniors were being considered. Five such officers (other than applicant) filed OA No. 991/2003. This was allowed vide orders dated 30.11.2004. These directions read as under :-

“35. For these reasons, we allow the present application and direct that respondents should prepare the revised Select List in accordance with the third proviso to Rule 12(2) of the CSS Rules, which was in force at the relevant time and consider the claims of the applicants in accordance with law.”

4. The respondents DOP&T challenged these directions by filing a writ before the Hon'ble High Court of Delhi in WP (C) No. 13352/2005 (UOI vs. Vijay Kumar & Ors.) This writ was dismissed by Hon'ble High Court vide order dated 13.11.2013. The relevant observations and the decision by Hon'ble High Court are reproduced below :-

“9. This Court had queried the counsel for the parties as to whether any officer likely to be affected was made a party to the proceedings or was made aware of the pendency of the present case. The Central Government had on 28.10.2011 given effect to the impugned order of CAT by issuing the corrected deemed dates of promotion and corresponding seniority position to the applicants. The said order also refers to the present case as well as another writ petition, i.e. W.P. (C) 13425/2005 filed by one Mr. Prabhakar, i.e., an



unreserved category candidate who claimed to have been aggrieved by the order of CAT dated 30.11.2004 passed in OA 991/2003.

10. In view of this development, the Court is satisfied that all concerned parties likely to be affected were in fact notified about the present proceedings.

11. In view of the above discussion, the Court hereby is of the opinion that no infirmity can be found in the order of the CAT. The petition is accordingly dismissed."

5. In compliance to these directions, review DPC was held by involving UPSC for the select list for the year 1989 to 2001. The DPC was held on 4.6.2015 and the applicant's name was considered by this review DPC for the year 1990 to 1992. The remarks recorded by the review DPC for the applicant (CSL No. 2807) for all these three years indicates "Assessment not possible due to non-availability of ACRs".

In view of this, the applicant could not be granted promotion from an earlier year as per the review DPC.

6. The applicant pleads that he was already granted promotion as per the order issued on 4.12.1991 (para 1 supra). Accordingly, his APARs for the period from September, 1986 to March, 1991, i.e. the entire period after he joined service, would have been satisfactory and are expected to have been available



and taken into account. Despite this, he has been denied the benefit of promotion on completion of four years of service, when his junior UR candidates were considered, despite his name having been considered by the review DPC and review DPC not finalising their recommendations on account of APARs not being available.

It was pleaded that APARs are in custody of Department and if they did not produce it before Review DPC, he cannot be penalised. Feeling aggrieved, the instant OA has been filed.

7. The applicant also pleaded that for the relevant years 1990, 91, 92 and 93, his junior namely Ms. Kimbirang Kipgen, belonging to ST community, and who is also a directly recruited S.O. of the next batch and for whom the approved service counts from 1st July, 1986, was considered by Review DPC and she was assessed as "Very Good" for the year 1990 and was empanelled in the select list of 1990 itself. The applicant is also required to be given the benefit as per rules 12(2) of CSS (CCA) Rules, 1962 on his own right as well as at par with his junior.

8. The respondents opposed the OA. The respondent No.2 (UPSC) pleaded that as per DOP&T



OMs, all the APAR of the relevant years are required to be produced for consideration by the DPC. In case some of the APARs of the relevant period are not available, the DPC can look into the APARs of equal number of earlier years and even if those are also not available, then the APARs of even a lower grade can also be taken into account.

It was pleaded that in the instant case for the Review DPC for the year 1990, the APARs were required to be provided for the period 1984-85 to 1988-89. Since the applicant had joined in September 1986, his APAR even for the truncated period was not made available and accordingly, recommendation in respect of the applicant could not be made and remarks were recorded accordingly (para 6 supra). Same was the status for years 1991 and 1992 also.

The specific averment made by respondent No.2 vide para 8.4 of their counter reply is reproduced below :-

“8.4. That, with regard to statement by the Applicant and that of DOP&T in their reply Affidavit that the ACRs were available with the Respondent No.2 (i.e. the Commission) at the time of preparing panels for Grade-1 of CSS for the years 1991-94, it is submitted that for assessing Shri B.S. Negi for his inclusion in USSL 1993, the relevant matrix constituted the ACRs for the years 1987-88 to 1991-92, whereas for consideration of his case for



inclusion in USSL 1990, the ACRs for the years 1984-85 to 1988-89 were to be required to be provided by the DOP&T, which is the administrative Department concerned in this case as well as the custodian of ACRs. The DOP&T's guidelines issued vide O.M. dated 10.04.1989 and 16.6.2000 provide that for assessing the suitability of an officer for promotion, ACRs for five preceding years are required. In the absence of requisite number of ACRs, it may not be possible to assess the suitability of the Applicant for inclusion in USSL 1990."

9. The respondent No.1 (DOP&T) also made similar averments. In addition a Specific averment made in para 20 of their counter reply is as under :-

"20. Even if ACRs for all the years were available, still for USSL-1990 the earliest USSL for which he was eligible, only 2 ½ years ACRs would be available for consideration i.e. ACRs from 23.09.1986 to 31.03.1987, 1987-88 and 1988-89."

10. Matter has been heard at length. Shri B.S. Chowdhary, learned counsel represented the applicant. Sh. A K Singh, learned counsel and Sh. Amit Yadav, learned counsel represented the respondents.

11. It is admitted that the applicant had joined service as directly recruited S.O. in September, 1986. It is also admitted that applicant was promoted as Under Secretary on personal basis w.e.f. 4.12.91 on personal basis and was promoted on regular basis also for the year 1993 (para 2 supra). It is expected that at that time his APARs would have been available and are also expected to be satisfactory.



This period is from Sept. 86-to Dec.91 (i.e. FY 1986-87 to 1990-91) for orders that took effect from 4.12.91 and the five year period 1987-88 to 1991-92 for Regular DPC for the year 1993.

The relevant years for review DPC for 1990 to 1992 are thus covered in this entire period from 1984-85 to 1990-91, since applicant joined in Sept.-86. Thereafter it is not justified to deny the benefit of promotion in Review DPC on the plea that APARs are not available.

12. Moreover, the review DPC for the year 1990, when applicant was considered, another ST candidate who is junior to the applicant and was also Directly recruited, was also considered and empanelled. The total numbers of APARs, that would have been available for this junior candidate, would have been for still lesser number of years. Accordingly, the plea of DOP&T in para 9 above, cannot be accepted.

Accordingly, it stands to reason that the applicant's case could not be recommended by the DPC only on the plea that his ACR for the relevant period was not available.



13. Maintenance of ACRs is the responsibility of the department. The applicant cannot be denied the benefit of promotion for same thing for which he was not responsible and especially so in view of discussion in para 11 above.

14. This Tribunal is finding acceptability in the pleas of the applicant and accordingly the OA is allowed. The respondents are directed to consider the applicant as fit for promotion for the select year 1990 and grant him consequential benefits as per law within a period of three months from the date of receipt of a certified copy of this order. No costs.

(Pradeep Kumar)
Member (A)

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(Justice Vijay Lakshmi)
Member (J)