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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1603/2001

New Delhi, this the 13th day of May, 2004

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Dr. A.K. Belwal
137, Sukhdev Vihar
New Delhi

.. Applicant

(Applicant in person)

versus

Union of India, through

1. Secretary
Department of Economic Affairs, M/O
Finance, North Block, New Delhi
2. Secretary
Dept. of personnel & Training, North Block,
New Delhi
3. Secretary, UPSC,
Shahjahan Road, New Delhi.
4. Sh. Shravan Nigam, President Indian
Economic Service Association, Economic
Advisor, M/O Industry, Udyog Bhawan,
New Delhi.
5. Shri Yogesh Chandra, Economic Advisor,
Dept. of Economic Affairs, North Block,
IES Cadre Section, New Delhi.
6. Smt. Mala Datt, Dy. Economic Advisor,
IES Cadre Section, North Block, New Delhi.
7. Shri Nirmal Singh, Vice President, IES
Association & Dy. Advisor, Planning Commission,
Yojana Bhawan, New Delhi.
8. Shri R.C. Srinivasan, C/O IES Cadre Section.
9. Sh. Mohan Singh, Dy. Eco. Advisor, Deptt. of
Economic Affairs, North Block, New Delhi.
10. Shri Bal Ram, Director General, Labour
Bureay Shimla.
11. Shri J.K. Chahal
12. Shri Swami Nath

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13. Shri Brij Bhushan Advisor Planning
Commission, Yojana Bhawan, New Delhi.

14. Smt. Gur Pyari, Secretary, Tariff Commission,
Lok Nayak Bhawan, 7th Floor, Khan Market,
New Delhi.

(Shri R.N. Singh, Advocate)
(None for private respondents.)

ORDER

Shri S.K. Naik

The applicant Dr. A.K. Belwal, an Officer of the Indian Economics Service (IES), is before us in a fifth round of litigation. He had earlier filed OA 857/87 challenging the validity of amended Rule 13 of IES Rules, 1961, which was disposed as withdrawn vide Tribunal's order dated 27.4.1993. This was followed by another OA 1288/93 on the same subject. This OA alongwith OA 1206/1993 (filed by Nagesh Singh and another) was disposed of vide order dated 7.1.1999, with the following observations/directions:

"35. In the result these two OAs succeed and are allowed to the extent that following the Hon'ble Supreme Court's judgement in Shri Mohanty's case (supra), the promotions made of those SC/ST candidates under Rule 13 (unamended), IES Rules, 1961 without considering the case of the applicants in the two OAs before us, is held by us to be legally unsustainable. Furthermore, the retrospective operation of the amendment to Rule 13, IES Rules to the extent that the same takes away the vested rights of the applicants and other general category

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candidates is also unreasonable, arbitrary and as such violative of Article 14 and 16 of the Constitution and is, therefore, struck down.

36. In the light of the above, respondents are directed to review the impugned promotions and consider the cases of the applicants for promotions from the date the impugned promotions were made, with all consequential benefits. While doing so the respondents should make all efforts to protect the promotions of reserved category candidates to the extent possible, but if it becomes absolutely necessary to revert them from the higher posts to which they have been promoted under the unamended or amended Rules, that may be done. While doing so, however, any financial benefits given to them while working in the higher posts should not be withdrawn and should be protected as personal to them."

2. In pursuance to the aforesaid observations/ directions, respondents reviewed the promotions made from Grade IV(JTS) to Grade III(STS) of IES vide OM dated 17.12.1999 and from Grade III(STS) to Grade I (JAG) vide OM dated 22.3.2001. Further vide memo dated 6.6.2000, as a corollary to such reviews, promotion to Non-Functional Selection Grade (NFSG) also was revised. Not satisfied with this OM, applicant again filed MA 669/2000 in OA 1428/1999 challenging the OMs. Both these applications were disposed of by the Tribunal vide order dated 1.6.2001 giving liberty to the applicant to challenge the same with such grounds available to him. On the strength of the same, applicant is now before us through the present OA, inter alia challenging the orders dated 22.2.2000, 1.6.2000 and 21.6.2001. Incidentally, it would be relevant to mention here that all these impugned orders have been issued in pursuance of the directions given in OA 1206/93 and OA 1288/93 (supra).

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3. Since the facts of the case in so far as the present applicant is concerned have already been discussed in detail and answered to thereof while deciding OA 1206/93 with OA 1288/93 (supra), we do not deem it necessary to reiterate the same here.

4. The main grievance of the applicant is that by the impugned orders, his seniority has been downgraded by 132 positions in Grade III list and in the list of Grade I he has been placed alongwith officers, much junior to him. According to him, he was eligible for promotion to Grade I in the year 1988 but was actually promoted only in the year 1994, especially when no adverse remarks were ever communicated to him during all these years. He has admitted that he was on study leave from 1.7.1987 to 3.6.1992 to acquire Ph.D which should have been taken into consideration while assessing relative merits for promotion. In this connection he has referred to the decision of this Tribunal in Naresh Chandra Vasistha Vs. State of Harvana (1989) ATC 713. He has further placed reliance on the decision of this Tribunal in P.B.Roy V. UOI 1987(i) ATJ 268 to contend that he being the senior is entitled to promotion from the date his juniors were promoted.

5. Respondents in their reply have justified the issuance of the aforementioned impugned orders by stating that after this Tribunal struck down the retrospective operation of Rule 13 of IES, the matter was reviewed in the year 1999-2000 and the applicant's seniority which was adversely affected in 1986-89 was restored by review DPC while promoting from JTS(Grade IV) to STS (Grade III).

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of IES. According to them, prior to Tribunal's order dated 7.1.99 in OA 1206/93 with OA 1288/93, applicant's case for promotion from STS to JAG was considered by 7 duly constituted DPCs held on 12.3.90, 26.4.90, 26.10.90, 10.5.91, 8.4.92, 30.12.92 and 10.5.94 but he was not recommended for inclusion in the select list for promotion. But on the basis of subsequent service records, his name was recommended by the DPC held on 21.12.95. Thereafter, he was promoted to JAG vide order dated 8.1.96 and this promotion has been subsequently reviewed by order dated 22.2.2000. They have stated that no ACRs were recorded during the period the applicant was on study leave and other kinds of leave. It is further stated by them that the impugned orders have been issued by the competent authority after following due process as per instant rules and instructions on the subject and the same do not suffer from any illegality and/or infirmity. In view of this position, they would contend that the OA is devoid of merit and be dismissed.

6. The main thrust of argument by the applicant is that he was at S1.No.221 while his immediate junior Ms. S.Rohini was at S1.No.222 in Grade III list but in the revised list he has been pushed down to No.360 while Ms. Rohini is at No.128, while both of them have been given promotion to Grade III w.e.f. 17.12.1983. But he has been given promotion to Grade I w.e.f. 10.5.1994 while Ms. Rohini has been given promotion from 12.5.1988. This is highly discriminatory and arbitrary according to the applicant. He insists that he became eligible to be promoted to Grade I from Grade III in 1988 but he has been given actual promotion from 1994. In other words,

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he has been ignored for promotion for six years from 1988 to 1993, while no adverse remarks were communicated to him. In this connection he has relied upon the judgement of the Supreme Court in the case of U.P. Jal Nigam Vs. P.C. Jain 1996 SCC (L&S) 519.

7. On the other hand, counsel for the respondents contends that the anomaly in seniority arising out of reservation being provided to the reserved category officers with retrospective effect has since been corrected and seniority of the applicant has been restored at the STS level. He has been duly considered by the DPC along with others for promotion from STS to JAG, which was based on the criteria of merit-cum-seniority with the overall grading of 'very good' having been prescribed by the DoPT as the Bench Mark grade for such selection on the basis of service record. As he could not obtain the Bench Mark in the DPCs held earlier, ultimately he was promoted to JAG vide order dated 8.1.1996. That apart applicant remained on study leave and other leaves for a pretty long period to pursue his academic interest and no ACR was recorded for this period as per DoPT guidelines. He has contended that the applicant's seniority has been rightly reflected in terms of the directions given in the two OAs referred to above and therefore applicant should have no grievance against this. He has also drawn our attention to the order dated 21.6.2001 wherein it has been mentioned that the said order would be subject to the final outcome of various CWP and OA pending before the Delhi High Court/Tribunal respectively. In view of this position, he argues that the applicant has no case.

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8. We have heard with great patience the arguments advanced by the applicant himself as also the reply offered by the learned counsel for the respondents. Further we have gone through the records of the case including the ACR dossier and the review DPC proceedings.

9. Applicant in this OA has prayed for the following reliefs:

- (a) That the Tribunal should ask the respondents to produce the ACRs of the applicant from 1979 onwards till date and peruse as to whether the ACRs or any performance appraisal for the period from 1.7.1987 to 30.6.1992 have been written for the applicant and considered and further certificates placed at page 109 to 119 of the paper book are available on his file and if these reports and documents have not been taken into consideration by the DPC as per his apprehension, Tribunal may direct them to take the same into account and review the matter;
- (b) Respondents be directed to include his professional achievements in the field of economic research during his study leave and Ph.D work and performance appraisal during the study leave of 5 years in case it has not been done earlier.

10. In view of the limited prayer stated above, we deem it unnecessary to dwell on the background history of the case which had necessitated the review DPC as an outcome of the orders passed by this Tribunal in various OAs, in particular OA 1206/1993 and OA 1288/1993.

11. Coming to the reliefs sought by the applicant, it may be stated that we have perused the ACR dossier as well as the review DPC proceedings. After Rule 13 of IES Rules was struck down by the Tribunal vide judgement dated 7.1.99, respondent-department had held review DPC for promotion from STS to JAG on various dates between 1.2.89 and 13.12.1992. However DPCs have not recommended the case of the applicant for inclusion in the select list for promotion from STS to JAG. The DPC which was

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held on 10.5.1994 however found the applicant fit for promotion and recommended his case for promotion to JAG. We do not find any irregularity or illegality in the proceedings of the review DPC. It is also noted that there has been no flagrant fluctuation in the gradings awarded to the applicant during the period under consideration which could be a ground for the applicant to demand communication in keeping with the principles of natural justice. He has been graded more or less uniformly as 'Good' barring the year 1992 and 1993 when he was graded as 'Average'. In so far as his contention that the respondents be directed to take into account the period of his absence on study leave and further give him credit for the letters of appreciation etc., which are enclosed from page 109 too 119 of the paper book, we agree with the reply of the respondents counsel that study leave by its very nature is leave and during this period no ACRs can be recorded and neither any credit or discredit can be given to the applicant for this period in keeping with the DoPT guidelines.

12. In the result, we find that the reliefs sought by the applicant on both counts are not sustainable and therefore the OA must fail. Accordingly the OA is dismissed, with no order as to costs.

SKN
(S. K. Naik)
Member(A)

VSA
(V. S. Aggarwal)
Chairman

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