

CENTRAL ADMINISTRATIVE TRIBUNAL.
PRINCIPAL BENCH

O.A.NO.2085/2001

New Delhi, this the 6th day of February, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

1. Shri P.Krishna Kumar
s/o Shri Parameswaran Namboodiyar
Civilian Staff Officer (Stores)
Director General of Ordnance
Army Headquarters
New Delhi.
 2. Shri D.K.Bhasin
s/o Late Shri K.P.Bhasin
Civilian Staff Officer (Stores)
Directorate General of Ordnance Services
Army Headquarters
New Delhi.
 3. Shri R.C.L.Virwani
Civilian Staff Officer (Stores)
Central Ordnance Depot,
Jabalpur.
 4. Bhagwan Singh Gill
Civilian Staff Office
Ammunition Deptt.,
Bharatpur.
- ... Applicants

(By Advocate: Ms. Meenu Mainee)

Versus

Union of India through

1. The Secretary
Ministry of Defence
Government of India
South Block
New Delhi.
2. The Director General of
Ordnance Factory
Army Headquarters
New Delhi.
3. The Secretary
Union Public Service Commission
Dholepur House
New Delhi.
4. Shri R.K.Ghoshal
C.S.O.
COD, Agra
5. Shri L.Ravi Iyer
C.S.O.
CAFVD
Kirkee (Pune).

6. Shri V.M.Gadgil
C.S.O.
COD
Jabalpur.

7. Shri S.C.Kochar
CSO
Directorate General of Ordnance Service
Master General of Ordnance Branch
Room No.-186, B-Block
Army Headquarters
DHQ, PO, New Delhi - 110 011.

8. Shri Radha Krishan
C.S.O.
Directorate General of Ordnance Service
Master General of Ordnance Branch
32, B-Block
Army Headquarters
DHQ, PO, New Delhi - 110 011. ... Respondents

(By Advocate: Sh. R.N.Singh for Respondents No.1 and 2; Shri Jayant Nath with Sh. Subhash Mishra for R-3 and None for R-4 to R-8).

O R D E R

Justice V.S. Aggarwal:-

The applicants had been appointed as Ordnance Officers (Civilian) Group 'B' in the year 1979. Subsequently, they were promoted as Civilian Staff Officer (Stores) which is a Group 'A' post. Initially they were appointed on ad hoc basis in the year 1984/1985 but they were subsequently regularised w.e.f. 8.1.1987.

2. The applicants contend that as there was no channel of promotion for Civilian Staff Officer (Stores) and they were stagnating for long time without any prospects of promotion, the respondents appointed a Committee comprising the Director General (OS) as Chairman and Commandant, CAFVD, Kirkee, DDOS, HQ 10 Corps, Director GS(WE) Army Headquarters and Officiating Director (OS PP&C), Army Headquarters as Members. The Committee was formed for the purpose of cadre review and removal of stagnation in the cadre of

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Civilian Staff Officers. It had been required to examine functional necessity for creation/upgradation of posts for Civilian Officers to provide promotional avenues. The Committee gave its report on 3.7.1992. It recommended that seven posts of Civilian Staff Officers should be upgraded to the post of Senior Civilian Staff Officers and to provide promotional opportunities to the Civilian Staff Officers. The said recommendations of the Committee had been referred to the Fifth Central Pay Commission.

3. The Fifth Central Pay Commission had considered the recommendations and in Paragraph 63.10 further recommended that ten posts of Civilian Staff Officer should be upgraded. Out of them seven posts were recommended as Senior Civilian Staff Officer and three were to be placed in still higher grade of Principal Civilian Staff Officers. The recommendations of the Fifth Central Pay Commission were accepted by the respondents.

4. According to the applicants, since seven posts were upgraded which were to be filled up, Respondent No.2 had written a letter to various Commandants directing them to complete the Annual Confidential Reports of the Civilian Officers. Since according to the applicants it was upgradation of posts the method could not be by 'Selection'. Applicants grievance is that in case of upgradation of posts, which are so done to avoid stagnation, the posts had to be filled on basis of 'seniority-cum-fitness' and not by way of 'Selection'. The

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respondents are alleged to have adopted the method of 'Selection' and in this process the rightful claim of the applicants have been ignored.

5. By virtue of the present application, the applicants seek quashing of the orders and for a direction that a review Departmental Promotion Committee should be held for the upgraded posts as per the seniority subject to fitness.

6. The application has been contested. Respondents No.1 and 2 in their reply pleaded that recruitment rules are still not being notified for the newly created posts of Senior Civilian Staff Officers. However, Union Public Service Commission had given one time relaxation to fill these posts by holding a Departmental Promotion Committee. The Departmental Promotion Committee was held in the Union Public Service Commission. The application of the officers have been examined. It is denied that the posts should only be filled up by 'non-selection' method. According to the respondents, the same should be filled up as per the Department of Personnel & Training's instructions vide OM No.22011/10/84-Estt(D) dated 4.2.1992 which provides:

"(i) Where the upgradation involves only a higher replacement scale without any additional responsibility/Higher qualification/higher eligibility service, the suitability of the incumbents need not be assessed.

(ii) Where the upgradation involves a higher replacement scale without higher responsibilities or higher qualifications but with a higher eligibility service, the incumbent need not be assessed for their suitability but it should be ensured that they have

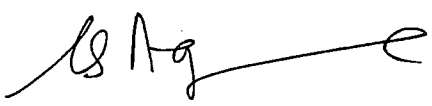


completed the requisite qualifying service for appointment to the upgraded post.

(iii) If the upgradation involves higher responsibilities as in the instant case, the suitability of the incumbents has to be assessed and if found suitable, they will be appointed to the upgraded post prospectively i.e. not earlier than the date of UPSC's advice letter. A copy of the DOP&T OM dtd.4.2.92 is enclosed as Annexure R1."

7. In the present case, the respondents plead that all the 32 appointments have not been upgraded. Only seven appointments were upgraded. All the higher appointments carry higher responsibilities and are to be filled by regular promotion based on the guide-lines issued by the Department of Personnel & Training from time to time. The Department of Personnel & Training had issued an order dated 27.3.1997, wherein it has been laid down that in respect of posts which are in the level of Rs.3700-5000 and above, the benchmark as per the instructions has to be 'Very Good' and they have to be filled up by method of 'Selection'.

8. Respondent No.3 filed a separate counter reply. They almost took up the same pleas. It was reiterated that the Departmental Promotion Committee meeting for considering promotion to the post was held. The Committee considered eighteen officers against seven vacancies. In the present case, there were no recruitment rules. In the absence of recruitment rules, Respondent No.3 advised the selection to the post on the criteria of Selection-cum-fitness on basis of the Office Memorandum of the Department of Personnel and Training dated 27.3.1997.



9. We have heard the parties counsel.

10. The learned counsel for the applicants urged that only seven posts were upgraded and once it is a case of upgradation of the posts, they could not be filled up by method of 'Selection'. The respondents, therefore, had wrongly adopted the method of 'Selection'. In support of her claim, the learned counsel relied upon the decision of the Apex Court in the case of All India Non-SC/ST Employees Association (Railways) v. V.K. Agarwal & Others, in Contempt Petition (Civil) No.304/99 in Civil Appeal No.1481 of 1996, decided on 1.2.2001. The Supreme Court held that if as a result of the reclassification or readjustment there is no additional posts which are created and it is a case of upgradation, then principles of reservation will not be applicable. From the perusal of the facts, it is patent that there was a dispute pertaining to the reservation of SCs/STs. The findings of the Supreme Court are, therefore, basically confined to the controversy of reservation and therefore it ~~has~~ a little relevance to the controversy before us.

11. To appreciate the controversy, though we have stated from the pleadings, we take an opportunity of referring to certain other facts on the record. For the Civilian Staff Officers (Stores) there were a little channel of promotion. The Committee had been formulated to examine the controversy. It recommended that seven posts of Civilian Staff Officers should be upgraded to the post of Senior Civilian Staff Officers



to remove stagnation and to provide promotional opportunities to the officers working as Civilian Staff Officers. The said recommendations had been forwarded to the Fifth Central Pay Commission. The Fifth Central Pay Commission in this regard recommended:

"We have considered all relevant factors and taking into account the structure recommended for storekeeping staff as a common category and the recommendations by the Cadre Review Committee appointed in 1988, we recommend the following grade structure for Stores Cadre:

Existing Grades	No.	Proposed Grades	No.	Remarks
---	--	Principal Civilian Staff Officer (Stores) (Rs.4500-5700) 100% Promotion	3	New Grade to be introduced to improve promotion prospects
---	---	Senior Civilian Staff Officer (Stores) (Rs.3700-5000) 100% Promotion	7	-do-
Civilian 32 Staff Officer (Rs.3000-4500) 100% Promotion		CSO (Stores) (Rs.3000-4500) 100% Promotion	20	10 posts upgraded 2 posts surrendered
---	---	Senior Ordnance Officer Civil (Stores) (Rs.2500-4000) 100% Promotion	60	New grade to be introduced "

12. It appears that in pursuance of the said recommendations of the Fifth Central Pay Commission, twenty posts were placed in the corresponding replacement scale of Rs.10000-15200 and redesignated as Civilian Staff Officers (Stores). Seven posts were to be placed in the upgraded pay scale of Rs.12000-16500 which is the corresponding scale of

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Rs.3700-5000 and three posts were placed in the scale of Rs.14300-18300, while two posts were surrendered. It was further pointed in the communication addressed to the Chief of the Army Staff, dated 15.7.1999 (Annexure A-3) that the posts were to be filled up by selection process. The same reads:

"The upgradation of the above posts will be applicable only prospectively. Further, actual placement of personnel in the higher grades of Senior Civilian Staff Officer (Stores) and Principal Civilian Staff Officer (Stores) will be subject to their fulfilling the eligibility/residency criteria prescribed by the Department of Personnel & Training in May, 1998 orders and adherence to the prescribed selection procedures. It will also be necessary for the Army HQrs to clearly delineate the functional responsibilities of the incumbents of the new posts now created as a result of restructuring."

13. The learned counsel for the applicants still contended that the posts were simply upgraded. It appears to us that the expression 'upgradation of posts' was wrongly used in the facts of the present case. It is true that there was stagnation and to avoid the same, seven posts were created to Civilian Staff Officer with higher scale. In the communication of 22.3.2001, addressed to the Chief of the Army Staff from the Government of India, the same had been clearly mentioned but in that communication also it was prescribed:

"4. While filling up the above posts, the procedure prescribed for making such appointments vide DOP&T O.M.No.22011/5/91-Estt(D) dated 27 Mar., 1997, will be followed."

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14. In this process, it was clearly mentioned that posts have to be filled up in accordance with the OM of 27.3.1997. A copy of the said OM of 27.3.1997 has been **produced** and it helps us in coming to know as to what method that has to be adopted. It reads:

SELECTION-CUM-SENIORITY AND SELECTION BY MERIT:

(I) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts a bench mark grade would be determined for each category of posts.

For all Group-C, Group-B and Group-A posts (upto and excluding the level of Rs.3700-5000) the bench mark would be 'Good' and will be filled by the method of Selection-cum-Seniority as indicated in sub-para (iii).

(ii) In respect of posts which are in the level of Rs.3700-5000 and above, the bench mark grade should be 'Very Good' and will be filled by the method of Selection by Merit as indicated in sub-para(iv)

(iii) Each Departmental Promotion Committee while considering the suitability of officers for promotion to posts for which the bench mark has been determined as 'Good' would grade the officers as 'Good', 'Average' and 'Unfit' only. Only those officers who obtain the grading of 'Good' will be included in the panel in the order of their seniority in the lower grade subject to availability of vacancies.

(iv) Notwithstanding the provisions mentioned above, in the case of promotions made for induction to Group A posts/services from lower groups, while the bench mark would continue to be 'Good', the DPC shall grade the officers as 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit' as the case may be and the officers will be arranged according to the grading obtained, placing the 'Outstanding' officers on top followed by those grade as 'Very Good' and so on in the select panel upto the number of vacancies with the officers having the same grading maintaining their inter-se-seniority in the feeder grade."

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15. These facts clearly show that though the expression "upgradation of posts" had been used but in fact seven posts with higher scale had been created. They were in the scale of Rs.3700-5000 (PRS). The method of filling up the same was recommended to be by 'Selection' in the communication of 15.7.1999. The same has not been challenged by the applicants. Furthermore, the OM of 27.3.1997 which we have reproduced above also indicates that the posts in the above said scale has to have a benchmark of 'Very Good' and they would be filled up by a method of 'Selection'. The said OM becomes important because when these posts were created, it was specified that they would be filled up by method of 'Selection' as indicated above.

16. In this view of the matter, after a method of 'Selection' was adopted, in that process the applicants were ignored. We find nothing illegal in this regard.

17. We refer with advantage to the decision of the Supreme Court in the case of D.P.Upadhyay v. General Manager, Northern Railway, Baroda House, New Delhi, (2002) 10 SCC 258. A similar argument was advanced, and the Supreme Court held that the prescribed procedure of the Railway Administration indicates that an employee is entitled to get the upgraded post not as of right and without selection. Therein, there were Railway Administration procedure. Herein, though the Department of Personnel & Training is involved, the Judgement holds the field to which we have referred to above. Therefore, the decision of

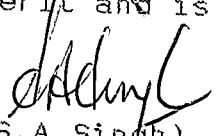
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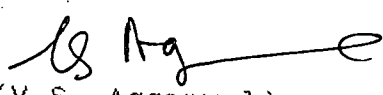
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the Supreme Court in the case of D.P. Upadhyay (supra) clearly indicates that if the method adopted is by selection, ^{in the fact} it cannot be set aside. There is nothing illegal about it. The plea of the applicants in this regard must fail.

18. For these reasons, the OA being without merit and is dismissed. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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