

(39)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2137/2001

New Delhi, this the 4th day of February, 2004

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

1. Sh. Manjit Singh
s/o S. Teja Singh
r/o B-706, Ram Vihar
Sector-30, Noida-201 303.
2. Sh. Dushyant Pal
s/o Sh. Teg Singh
r/o E-307, Pragati Vihar Hostel
New Delhi - 110 003.
3. Sh. Rajesh Saxena
s/o Sh. R.C. Saxena
r/o 1735, Laxmi Nagar
New Delhi - 110 023.
4. Sh. Nar Singh Sahu
s/o Radha Kanta Sahu
r/o 401, Laxmibai Nagar
New Delhi - 110 023.
5. Sh. S.C. Bansal
s/o Late Sh. Shiv Charan Das
r/o A-29, Brij Vihar
Pritampura
New Delhi - 110 034. ... Applicants

(By Advocate: Sh. A.K. Behera)

Versus

1. Union of India
through its Secretary
Ministry of Defence, South Block
New Delhi - 110 011.
2. The Joint Secretary (Training) & CAO
C-II, Hutmants, Dalhousie Road
Ministry of Defence
DHQ, PO: New Delhi - 110 011.
3. Union Public Service Commission
through its Secretary
Dholpur House
Shahjahan Road
New Delhi - 110 003.
4. The Secretary
Department of Personnel & Training
North Block
New Delhi - 110 011.

5. Shri J.R.Goyal
s/o Shri Prakash Chand
aged about 53 years
r/o H.No.D-9
Near Hanuman Mandir
Budha Vihar
Delhi - 110 041.
6. Sh. Jasbir Singh
s/o Sh. Pritam Singh
aged 52 years
E-151, Nanakpura
Moti Bagh
New Delhi.
7. Shri S.K.Jasra
s/o Shri Chaman Lal
aged 49 years
168, LaxmiBai Nagar
New Delhi - 110 023.
8. Shri K.V.Shankar
s/o Late Shri K.E. Vishwanath
aged 50 years
202/1, Sector-1, Pushp Vihar
New Delhi.
9. Shri Gautam Ray
s/o Sh. Hrishikesh Ray
aged 50 years
GI-941, Sarojini Nagar
New Delhi.
10. Shri R.B.D.Sharma
s/o Late Sh. Ishar Dass Sharma
aged 51 years
1245, Sec-12, R.K.Puram
New Delhi - 22.
11. Shri TNM Nair
s/o Sh. V.G.Narayanan Nair
aged 48 years
D-208, MS Appts, K.G.Marg
New Delhi.
12. Sh. Ram Chander
aged about 59 years
s/o Late Shri Hari Singh
187, Village Basant Nagar
New Delhi.
13. Shri Daulat Ram
aged about 59 years
s/o Shri Ishar Das
r/o A-1/140, Keshav Puram
Lawrence Road
New Delhi.
14. Shri Kirti Chaudhary
aged about 47 years
s/o Dr. Savit Ranjan Chaudhary
H.No.C-520, Pragati Ciher Hostel
Lodi Road
New Delhi.

15. Sh. Shyam Sunder
aged about 50 years
s/o Sh. Hukam Chand
H.No. 2027, Sec-37
Noida (UP).
16. Shri Hemant Kumar
s/o Shri J.R. Sharma
aged about 50 years
r/o 1360, Sec-16
Sonipat - 131 001 (Haryana).
17. Shri Jagdev Singh
s/o Late Shri Diwan Singh
aged about 62 years
Nagar Panchayat,
Babugarh Cantt.
Tehsil - Hapur
Dist-Ghaziabad (UP).
18. Sh. Chaman Lal
(Already retired)
s/o Shri Dal Chand Lal
aged about 62 years
r/o As per Service Record/Service Book
Sitalpur Khatena
P.O.-Lohamandi
Jagdishpura
Agra (UP).
19. Sh. Kailashi
aged about 62 years
s/o Sh. Hira Lal
23/693, DDA Flats
Sector-III
Dr. Ambedkar Nagar
New Delhi - 62.
20. Sh. Bihari Lal
aged about 62 years
s/o Shri Mohan Lal
Sadar Bazar
Lansdowne,
P.O.-Lansdowne
Distt. - Pauri Garhwal (UA).
21. Sh. Ram Das
aged about 61 years
s/o Late Sh. Nagendra Dutt
r/o No. 76, Sitapur, Devi Road
Kotdwar
Pauri Garhwal, (Uttaranchal).
22. Sh. P.N. Kanojia
aged about 62 years
s/o Sh. Sohan Lal Kanojia
r/o F-45, Lajpat Nagar-I
New Delhi - 24.
23. Sh. Prabhu Dayal
aged about 61 years
s/o Late Sh. Mangtu Ram
Vill+P.O.-Mohanpur
Distt.-Hissar, (Haryana).

24. Sh. Ram Kumar
aged about 61 years
s/o late Sh. Lok Ram
Vill-Kumbha. Tehsil-Hansi
Distt.-Hissar, (Haryana).
25. Sh. Ganga Ram (Already Retd.)
aged about 61 years
s/o Sh. Bihari Lal
r/o Address as per Service/Service Record
H.No.179 G, Vill-Vasant Nagar
P.O.-Vasant Vihar,
New Delhi - 57.
26. Sh. Hari Ram
aged about 60 years
s/o Sh. Bhartu Ram
r/o WZ-67, Bundela, Vikspuri
New Delhi - 110 057.
27. Sh. Gur Dayal
aged about 60 years
s/o Sh. Kacharu Mal
Vill+P.O.-Tigaon
Mohalla Boochna Patti
Faridabad (Haryana).
28. Sh. Gian Singh (Already retired)
aged about 60 years
s/o Late Sh. Nanak Ram
r/o as per Service Record/Service Book
Vill-Powhari, P.O. - Dayalpur
Tehsil-Phillaur
Distt-Jalandhar, (Punjab).
29. Sh. G.C.Paul
s/o Shri Hari Ram Paul
aged about 60 years
r/o H.No.929, Sec-8, R.K.Puram
New Delhi - 110 022. ... Respondents

(By Advocate: Sh. Madhav Panikar for Rs-1 to 4;
Sh. Santosh Kumar for Rs.15 and 16;
None for other respondents.)

O R D E R

Justice V.S. Aggarwal:-

The short and the only question agitated was that the respondents had wrongly prepared the select list in violation of the necessary instructions, i.e., Office Memorandums of 10.4.1989 and 12.10.1998.

2. Since the matter was confined to the said controversy and is within a short compass, it becomes unnecessary for us to mention all the details.

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3. The applicants contend that select list had been prepared to the grade of Civilian Staff Officer (for short CSO). The instructions provided that eligible officers for consideration should be considered for vacancies when they arose by the Departmental Promotion Committee even if the Departmental Promotion Committee meeting is held later on and even those who had retired were also to be considered. The respondents had not held the DPC meeting in time. When they were held years thereafter, some of the officers had retired. In this process, zone of consideration as well as eligibility and seniority have been violated. It caused prejudice to the applicants. It is in this backdrop, that the relief had been prayed seeking quashing of the decision of the respondents rejecting the representation of the applicants and for holding a review DPC to the grade of CSO from 1988-89 to 1993-94 in accordance with the different Office Memorandums referred to above.

4. The application has been contested. The grades in AFHQ Civil Service had been described to be:

Sl. No.	Grade	Revised Nomenclature	Mode of filling up the posts
1.	SAG (L-II) Group 'A' Gaz. (Rs. 18400-22400)	Principal Director	Promotion of Director
2.	Director Group 'A' Gaz. (Rs. 14300-18300)	Director	Promotion of Jt. Directors (erstwhile CSO)
3.	SCSO/ Jt. Director Group 'A' Gaz. (Rs. 12000-16500)	Joint Director	Promotion of Dy. Directors (erstwhile CSO)

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4. CSO Group 'A' Gaz. (Rs.10000-15200)	Dy. Director	Promotion of Section Offi- cers (erstwhile CSO)
5. ACSO Group 'B' Gaz. (Rs.6500-10500)	Section Officer	(a) Promotion of Assistant. (b) Direct Recruitment by UPSC through Civil Service Examination.
6. Assistants Group 'B' Non- Gazetted (Rs.5500-9000)	Assistant	(a) Promotion of UDCs. (b) Direct recruitment through Asstt. Grade Exam.

5. It is abundantly clear from the aforesaid that, as has been pleaded, posts of Assistant Civilian Staff Officer and Assistant were filled both by promotion and direct recruitment. The rules provide for specific quota for direct recruitment and promotion. It also provided for reckoning the relative seniority between the direct recruits and promotees on the basis of the rotation of vacancies. There was a seniority dispute in the feeder grades. Consequent to implementation of the directions of this Tribunal in OA 1211/1987, the select lists of promotion to the grade of CSO were drawn long after they were due. They had only considered the names of the serving officers as per the advice of Department of Personnel & Training's Office Memorandum dated 10.4.1989 and as per the rules on the subject. They firstly calculated the number of officers actually available in service on 1.10.1990 for the year 1990-91 and have drawn the list accordingly. According to the respondents, there is no illegality or irregularity in this regard.

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6. Private respondents No.15 and 16 have filed their separate replies.

7. As already pointed above, during the course of the submissions, the argument was basically confined to the manner of preparation of select list and as to whether persons who have attained the age of superannuation and have since retired should be included in the yearly panel or not?

8. At the outset, we deem it necessary to mention that great stress was laid on the Office Memorandums issued by the Department of Personnel & Training but the settled principles of law is that Office Memorandums can only be supplementary to the rules and cannot supplant the same.

9. It was not in dispute that for many years, Departmental Promotion Committee meeting could not be held. The reason being pendency of the previous litigation between the parties.

10. The Office Memorandum of 12.10.1998 relied upon reads:

"The undersigned is directed to invite reference to the Department of Personnel and Training (DOP&T) Office Memorandum No.22011/5/86-Estt(D) dated April 10, 1989 containing the consolidated instructions on DPCs. The provisions made in paragraph 6.4.1 of the aforesaid Office Memorandum lay down the following procedure for preparation of year-wise panel(s) where for reasons beyond control, DPC(s) could not be held for the year(s) even though vacancies arose during the year(s):-

(i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately

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preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

(iii) Prepare a 'Select List' by placing the select list of the earlier year above the one for the next year and so on.

Doubts have been expressed in this regard as to the consideration of employees who have since retired but would also have been considered for promotion if the DPC(s) for the relevant year(s) had been held in time.

3. The matter has been examined in consultation with the Ministry of Law (Department of Legal Affairs). It may be pointed out in this regard that there is no specific bar in the aforesaid Office Memorandum dated April 10, 1989 or any other related instructions of the Department of Personnel and Training for consideration of retired employees, while preparing year-wise panel(s), who were within the zone of consideration in the relevant year(s). According to legal opinion also it would not be in order if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held, are not considered while preparing year-wise zone of consideration/panel and, consequently, their juniors are considered (in their places) who would not have been in the zone of consideration if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant year(s). Names of the retired officials may also be included in the panel(s). Such retired officials would, however, have no right for actual promotion. The DPC(s), may, if need be, prepare extended panel(s) following the principles prescribed in the Department of Personnel and Training Office Memorandum No.22011/8/87-Estt(D) dated April 9, 1996."

(Emphasis supplied)

It is clear from the aforesaid that this OM is of general character.

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11. In the present case before us, the Armed Forces Headquarters Civil Service (Promotion to Civilian Staff Officer and Assistant Civilian Staff Officer) Regulations, 1968 have been framed (for short 'Regulation'). Regulation 2(a) defines 'eligible officer':

"eligible officer" means an officer eligible to be considered for appointment to the grade of Civilian Staff Officer or Assistant Civilian Staff Officer of the Service, as the case may be, referred to in the Third Schedule to the rules, as on the 1st October of the year in which the Select List is prepared;"

12. Select List has also defined in Regulation 2(d) in the following words:

"(d) "Select List" means the list of eligible officers considered fit for appointment to the Grade of Civilian Staff Officer or Assistant Civilian Staff Officer of the service, as the case may be, and prepared in accordance with regulation 4;"

13. Regulation 4 provides method of 'preparation of the select list'. The select list for promotion to the grades of Civilian Staff Officers and Assistant Civilian Staff Officer shall be prepared at least once in every year.

14. Regulation 4(3) further provides:

"(3) The names of officers who fulfil the eligibility conditions prescribed for promotion to the Grade concerned shall be arranged in a single seniority list."

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15. Furthermore, the regulation 4(4) provided that the field of selection shall ordinarily extend from three to five times the number of officers to be included in the select list.

16. Learned counsel for the respondents however relied upon the Regulation 5(3) and contended that persons who die or retire from service or whose services are otherwise terminated, their names are removed from the select list. The relevant portion of the Regulations are:

"(3) The names of persons of the following categories shall be removed from the Select List for the concerned Grade:-

(a) persons substantively appointed to the Grade;

(b) persons transferred substantively to another service or post;

(c) persons who die or retire from service or whose services are otherwise terminated;"

17. A conjoint reading of the Regulations do not support the respondents' version. It is clear from the aforesaid that select lists have to be prepared at least once a year and the field of selection has to extend from three to five times the number of officers to be included in the Select List and if a person superannuates or dies, his name has to be removed from the select list.

18. It is abundantly clear from the aforesaid that name of the person necessarily has to appear in the select list as per the Regulations. His name has to continue to be in the select list till it removes from the same. In other words, if a person is

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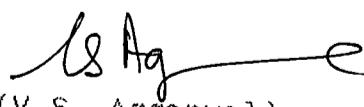
included in the select list, it would be removed only in accordance with the Regulation 5, which we have referred to above.

19. So far as the Office Memorandum dated 12.10.1998 is concerned, perusal of the same clearly shows that it does not in unambiguous terms stated that the name of the retired officer must be included. The Office Memorandum simply uses the expression that they may be included therein. For example, if the select list has to be prepared in the year 1990, those persons who were in service or were alive necessarily should be included in the select list of that year. May be if by the time the actual promotion or grade is to be given if they have superannuated or died their names have to be removed. This is the only interpretation that can be arrived from the application and in all the Regulations which we have referred to above.

20. No other arguments have been advanced.

21. For these reasons, keeping in view the question that was posed and is being answered, we dispose of the present Original Application with the direction that the respondents should hold a review DPC pertaining to the actual vacancies which arose during the relevant DPC years, following the principles of zone of consideration and prepare the select list keeping in view the same and the regulations referred to above. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/