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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2437/2001

This the 26th day of May, 2003

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE-CHAIRMAN (J)

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

S.N.Panigrahi S/O Padmanabha Panigrahi,
214 Laxmibai Nagar,
New Delhi-110023.

... Applicant

(By Shri N.K.Aggarwal, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Information
and Broadcasting, Shastri Bhawan,
New Delhi-110001.
2. Secretary,
Ministry of Personnel, Public Grievances
and Pensions, North Block,
New Delhi-110001.
3. Joseph Chandra Kumar,
Joint Director,
Doordarshan Kendra, Chennai.
4. John Churchill,
Special Correspondent,
Prasar Bharati,
Hong Kong.
5. D.N.Mohanty,
DPIO, PIB, Shastri Bhawan,
New Delhi-110001. ... Respondents

(By Shri R.P.Aggarwal, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant has challenged OM dated 12.9.2000 (Annexure A-4) whereby his representations against termination of his ad hoc officiation in Junior Administrative Grade (JAG) of the Indian Information Service (IIS) Group "A" have been rejected. He has sought setting aside of this OM and also a direction to respondents to give him promotions to the JAG w.e.f.

5.6.1998, from the date his juniors were promoted vide orders dated 5.6.1998, with consequential benefits.

2. Initially this application had been filed by two applicants, the present applicant and one Shri Cherian Abraham. From Tribunal's order dated 29.1.2003 it is clear that the learned counsel of applicants submitted that he would like to proceed with the case of Shri S.N.Panigrahi alone and so far as the case of Shri Cherian Abraham was concerned, he wanted liberty to file fresh OA. The prayer was allowed. Thus this application is being considered as made on behalf of Shri S.N.Panigrahi alone.

3. Applicant was supposed to file an amended memo of parties. On 23.4.2003, the learned counsel of applicant Shri N.K.Agarwal was permitted to correct the application in accordance with rules. We find that a large number of cuttings in the array of parties as well as in the various paragraphs of the application have been made on behalf of applicant but they have not been authenticated by signing either by applicant or his counsel. Names of respondents 3, 4 and 5 S/Shri Joseph Chandra Kumar, John Churchill and D.N.Mohanty have been scored out without appending signatures either by applicant or by the counsel. The learned counsel of applicant could not render any satisfactory explanation for not authenticating the amendments made in the array of parties as also in the pleadings of the OA. Such corrections in the amended application in the array of parties or in the pleadings of the OA are not acceptable being unlawful.

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4. At the outset, the learned counsel of respondents contended that the application is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. He stated that applicant is seeking relief for his promotion from 1998 while the application has been filed on 12.9.2001 after inordinate delay. He stated that applicant had earlier filed OA No.1568/2000 against his reversion from ad hoc JAG after his non-promotion to JAG of the IIS Group 'A' on the basis of the recommendations of the DPC held in 1998. His non-promotion on regular basis to JAG on the basis of DPC held in 1998 stood considered and decided by the Tribunal in the above referred OA and, therefore, the principle of res judicata also applies. He further stated that the impugned OM dated 12.9.2000 had already been considered by this Tribunal in OA No.1568/2000. That OA was dismissed vide order dated 18.12.2000. RA No.170/2001 filed in that OA was also dismissed vide order dated 10.5.2001. However, the Hon'ble Delhi High Court on an appeal has remitted the case to this Tribunal for adjudication vide order dated 15.1.2002 in CWP No.268/2002. Applicant filed MA No.466/2002 in OA No.1568/2000 consequent upon the Hon'ble High court's order dated 15.1.2002, seeking condonation of delay. As applicant had failed to establish that he had actually filed appeal on 15.1.1999 against order dated 1.12.1998, MA-466/2002 was dismissed. In this view of the matter, the OA is barred by limitation. However, we proceed to consider the OA on merit as well.

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5. The learned counsel of applicant stated that applicant had made a representation to Secretary, Ministry of Information and Broadcasting on 24.9.1998 against his reversion in which he had also expressed his apprehension that his ACRs for the years 1995-96 and 1996-97 would be destroyed. The learned counsel stated that applicant had filed statutory appeal dated 5.4.1999 to the President and the State Minister dated 15.2.1999 seeking ad hoc promotion to JAG. In this connection, the learned counsel of applicant relied on Rule 23(4) of Central Civil Services (Classification, Control and Appeal) Rules (CCA Rules) stating that an appeal lies against an order which denies benefits from conditions of service. He further relied on Government of India, Ministry of Defence OM dated 7.6.1967 stating that an appeal against supersession in the matter of promotion falls within the purview of Rule 23(4) ibid. In this connection, the learned counsel of respondents stated that instructions or clarification issued by the Ministry of Defence would not govern the case of applicant who belongs to the IIS. In these instructions it has been pointed out that they had been issued on a clarification issued by the Ministry of Home Affairs with regard to the provisions of Rule 23(4). Although the clarification issued by the Ministry of Home Affairs has not been placed before us and even if it is accepted that an appeal against supersession in the matter of promotion would fall within the purview of Rule 23(4), as has already been concluded above that no such appeal had been filed before the President, these provisions are of no assistance to the case of applicant.

6. The learned counsel of applicant next alleged on behalf of applicant that applicant's superiors S/Shri I.P.Tiwari, H.T.Khuma and G.D.Belia bore bias against applicant and as such recorded adverse ACRs against applicant. On being pointed out that allegations and instances of bias against the superiors have to be narrated specifically in detail in the first flush but there is not even a whisper about this in the OA, the learned counsel stated that these allegations have been made in paragraph 4(h) of the rejoinder. The learned counsel of respondents stated that as applicant did not make any such references in the main OA, respondents did not get an opportunity to rebut them and furthermore, these persons have not been impleaded as parties against whom allegations of bias and mala fides have been made. The learned counsel of respondents also stated that S/Shri I.P.Tiwari and H.T.Khuma are no longer in service. As such, the only question to be considered here is whether Shri G.D.Belia, Joint Director, bore bias against applicant. Although applicant has come up with this allegation only in the rejoinder, we have perused the rejoinder in detail and also gone through the ACRs of applicant for the relevant period recorded by Shri G.D.Belia. The only ACR written by Shri Belia on the work of applicant relates to the period 1994-95. According to applicant, Shri Belia had conveyed an invitation to applicant on behalf of the Director for a party at the Director's residence. However, applicant declined the invitation, which according to applicant, displeased Shri Belia. Shri Belia was not hosting the party himself. He had only conveyed a message on behalf

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of the Director. We are not convinced that applicant's disinclination to attend the party at the residence of the Director could have displeased Shri Belia so much that he would have recorded adverse entries against applicant in his ACR. We have perused the relevant ACRs of applicant. We find that Shri Belia has not recorded any adverse remarks against applicant. In this view of the matter, we find that applicant has failed in establishing the allegation of bias/mala fides against Shri G.D.Belia, who, in any case, has not been impleaded in this OA.

7. The learned counsel of applicant relied on the judgment in the case of **U.P.Jal Nigam & Ors. v Prabhat Chandra Jain & Ors.**, 1996 SCC (L&S) 519 contending that gradings in the ACR falling short of benchmark for promotion to the post of JAG were not communicated to him and as such, his non-promotion is liable to be set aside. On the other hand, the learned counsel of respondents sought support from CAT Full Bench decision dated 23.7.2002 in **Manik Chand v Union of India & Ors.**, 2002 (3) ATJ 268. He stated that such remarks per se may not be adverse and need not be communicated. He also relied on order dated 4.3.2003 in OA No.1768/2001 (Principal Bench) : **M.S.Reddy v Union of India & Ors.** In both these cases, among other cases, the decision in the case of **U.P.Jal Nigam** (supra) was also considered. The Full Bench in the case of **Manik Chand** (supra) had considered the following reference :

"In the case of selection, where a particular bench mark has been prescribed, whether any gradings in the ACR which fall

short of bench mark need to be communicated to the reportee even though the grading/report perse may not be adverse."

After considering various rulings and pros and cons, the reference was answered as follows :

"17. That apart, in our considered view, in the matter of selection, what matters is comparative merit, the better person wins. It is likely that a person may achieve the bench mark grading and yet may not get selected. It is a competition among the eligible candidates when it comes to selection. Considering the above discussion and the practical difficulties involved, we hold the view that it is not necessary to communicate the remarks/gradings which are not below the bench mark prescribed for promotion to a particular post in respect of selection posts. There is no quarrel for communication of those grading/remark, which have been down graded or whether there is a steep fall as has been held in U.P.Jal Nigam (supra) and Gurdyal Singh Fiji (supra).

18. Having regard to the discussion and the reasons recorded above, we answer the reference before us in the negative. The matter shall now go before the Division Bench to decide the OA based on the above decision."

In the case of M.S.Reddy (supra) the following observations were made :

"8. In that view of the matter, necessarily it must follow that unless it was the plea of the applicant that his Confidential Report has been downgraded, he could not take advantage of the decision of the Supreme Court in the case of U.P.Jal Nigam (supra). It is not even asserted by the applicant in this regard and, therefore, his contention in this regard must fail. Keeping in view the above finding, the hypothetical plea raised by the applicant that he must be communicated all the confidential dossiers as indicated above becomes insignificant."

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In the present case too applicant has made vague assertions regarding uncommunicated adverse entries relating to his non-promotion in the year 1998. The ratios of the cases of **Manik Chand** (supra) and **M.S.Reddy** (supra) in which the case of **U.P.Jal Nigam** (supra) has been extensively discussed are squarely applicable to the facts of the present case. Applicant seems to have failed in comparative merit and did not earn his promotion in 1998. Furthermore, he has not challenged his non-promotion to the JAG in the years 2001 and 2002.

8. Having regard to the above discussion, we do not find any merit in the OA and dismiss the same accordingly. No costs.

V.K.Majotra

(V. K. Majotra)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

/as/