

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3370/2001

New Delhi, this the 11<sup>th</sup> day of September, 2002

Hon'ble Shri M. P. Singh, Member (A)  
Hon'ble Shri Shanker Raju, Member (J)

P. N. Dwivedi  
B-1, Pandav Nagar  
Meerut

.. Applicant

(Shri R. Venkataramani, Sr. Counsel with  
Shri Santosh Kumar, Advocate)

Versus

Union of India, through

1. Secretary  
Ministry of Information & Broadcasting  
New Delhi
2. Secretary  
Department of Personnel & Training  
South Block, New Delhi
3. Secretary  
Union Public Service Commission  
Dholpur House, New Delhi

.. Respondents

(Shri R. P. Aggarwal, Advocate)

ORDER

Shri M. P. Singh, Member (A)

By the present OA, applicant seeks directions to the respondents that he is deemed to have been promoted to Senior Administrative Grade (SAG) w.e.f. 7/8.3.2001 and to the post of Junior Administrative Grade (JAG) from the date in the year 1990-91 instead of 17.1.94 and that he should be given all consequential benefits.

2. Briefly stated, <sup>the applicant</sup> who joined the Indian Information Service (IIS) on 15.3.1966, was elevated to the level of Joint Director, Publications Division, New Delhi. He retired from service on 31.7.2001 on superannuation. According to the applicant, three vacancies in SAG were not taken into account by the DPC held in September, 2000 because of which <sup>Thereafter, another</sup> he was denied promotion to that post. / DPC was held on 28.2.2001. For only one vacancy of SAG while there were three more

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vacancies. His name was not kept on panel in the DPC held on 28.6.2001. Orders in pursuance of this DPC were issued on 21.8.2001 while the applicant had retired from service on 31.7.2001.

3. It is also the case of the applicant that respondents have not held DPCs from November, 1983 to March, 1995 for promotion to JAG though a large of vacancies had been existing and increasing from year to year. He was promoted to JAG on ad hoc basis vide order dated 14.12.1993 and he was regularised as such on 28.4.1995 though the vacancy against which he was promoted had arisen in the year 1990-91. Applicant had made a number of representations between 21.12.1995 and 18.8.1999 but the respondents took a general stand vide its OM dated 14.2.2000 that revision of seniority lists of various grades of IIS would be taken up only after the issue is decided by the Supreme Court. Aggrieved by this, he has failed this OA seeking the above relief.

4. Respondents in their reply have stated that as per IIS (Group A) Rules, 1987 as amended from time to time, the applicant became eligible for consideration for promotion to SAG (Group-A) w.e.f. 1.1.2000 for the vacancies of 2000-01. A proposal was sent to UPSC on 14.7.2000 for convening a meeting of DPC for considering promotion of JAG officers to SAG for the one vacancy of the year 1999-2000 and four vacancies of the year 2000-2001 and the name of the applicant was included in the extended zone of consideration for the year 2000-01 as he fulfilled the eligibility criteria only on 1.1.2000. In the DPC held on 27.9.2000, name of applicant was not recommended for promotion as he was too junior in the consideration zone. Subsequently one more vacancy of SAG occurred due to proceedings of Shri D.Mukhopadhyay on deputation to NFDC for a period of 5 years w.e.f. 16.10.2000. Another proposal to fill up one more vacancy was sent to UPSC on 18.1.2001. In the DPC held on 22.2.2001 applicant's name was not recommended due to lack of sufficient number of vacancies.

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4. Another proposal was sent to UPSC on 10.4.2001 for filling up anticipated vacancies in SAG for the year 2001-2002 & the earliest vacancy for which was to occur on 1.6.2001. Applicant's name was again included in the consideration zone. A panel of 5 officers was recommended by DPC in its meeting held on 28.6.2001, which included applicant's name also for promotion to SAG. A proposal was forwarded to the Estt. Officer, DoPT on 6.7.2001 seeking approval of the ACC for appointment of all JAG officers recommended by the DPC and ACC's approval was communicated to the respondents on 3.8.2001, i.e. after the retirement of the applicant on 31.7.2001. ACC had not approved the appointment of the applicant to SAG in terms of DoPT's OM dated 25.1.1990, which provides for non-promotion of officers to posts falling within the purview of ACC with less than three months of service left before superannuation. Officers approved for promotion by the ACC were promoted from time to time depending upon the occurrence of the vacancies during the year. As regards the DPC held in September, 2000, respondents have stated that <sup>one</sup> ~~the~~ vacancy of an SAG Officer being on deputation was not included due to uncertainty relating to the incumbent's return to the cadre. Respondents have contended that the extended panels in the DPCs held in September, 2000 and on 28.6.2001 were given due to the retirement of the officers empanelled by the respective DPCs. In the case of DPC held on 22.2.2001, there was no such eventuality and therefore no extended panel was required to be given.

5. As regards applicant's contention regarding promotion to JAG, respondents have stated that DPC meetings for promotion to this grade were held in 1985 and 1987. After 1987, DPC could not be held regularly because of the various

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decisions of the Tribunal which involved revision and re-revision of the seniority lists of different grades of the service. A proposal for convening the meeting of DPC for promotion to JAG for the vacancies for the year 1989 to 1993 was sent to UPSC on 13.5.93. The meeting of the DPC was held on 28.2.95 and 1.3.95 and on the basis of the recommendations of the DPC applicant was promoted to JAG on regular basis w.e.f. 28.4.1995. It is stated by the respondents that it is a settled law that promotions are given prospectively on the recommendations of the DPC and cannot be ante-dated prior to the date of the DPC even though the vacancies may relate to an earlier year. As regards applicants challenge to OM dated 14.2.2000, it is stated that the said OM is not relevant in this case and relates to some other officer in some other context. In view of this position, the applicant is not entitled for any reliefs and the OA be dismissed.

6. We have heard the learned counsel for the parties and perused the records.

7. During the course of the arguments, the learned counsel for the applicant has contended that the applicant ought to have been considered for promotion in SAG in September, 2000 since he has been approved by DPC for promotion. He has placed reliance on the judgement of the apex court in the case of UOI Vs. N.R. Banerjee (1986). According to him, there were 27 sanctioned posts of SAG as on 1.9.2000 out of which 20 ~~were~~ <sup>vacancies incumbents</sup> were in position, including one officer, <sup>namely Shri U. K. Mishra</sup> who was on deputation <sup>since 1996</sup>. Thus there were 8 vacancies that had arisen during 1999-2000 & 2000-2001 but the respondents reported only 5 vacancies.

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8. On the other hand, the learned counsel for the respondents has rebutted the aforesaid contentions. He has vehemently argued that there were only 5 vacancies - one of 1999-2000 and 4 anticipated for 2000-2001 and accordingly a proposal was sent to UPSC for filling up these five vacancies. The learned counsel drew our attention to Gazette notification dated 16.9.99 and gave a copy of this notification which has been taken on record. According to this notification, two SAG level posts were upgraded to that of Higher Administrative Grade (HAG). One more post of SAG which became vacant due to deputation of one of the officers was not reported to UPSC as there was an uncertainty relating to the incumbent's return to the post. The applicant became eligible for consideration for promotion to SAG only w.e.f. 1.1.2000 for the vacancies for the year 2000-01. In its meeting held on 27.9.2000, DPC had not recommended the name of the applicant for SAG for the vacancies for the year 2000-2001, as he was too junior in the consideration zone.

9. We have perused the file relating to DPC proceedings furnished by the respondents and we are satisfied with the submissions made by the respondents.

10. In so far as applicant's contention that he should have been promoted to JAG during the year 1990-91, we find that the DPCs could not be held from 1987 regularly because of various decisions of the Tribunal involving revision or re-revision of the seniority lists of different grades of the service. Ultimately, the respondents could send the proposal for the year-wise vacancies upto 1993 to UPSC only on 13.5.93 and the UPSC held the DPC on 28.2.95 and 1.3.95, as a result of which the applicant was promoted to JAG on regular basis from 28.4.1995. The learned counsel <sup>for the respondents</sup> has contended that after a post falls

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vacant for any reason whatsoever, a promotion to that post ~~should be from the date the promotion is granted~~ <sup>is granted from a prospective date *W*</sup> and not from the date on which such post falls vacant. In this connection he has placed reliance on the judgement of the Supreme Court in the case of UOI Vs. K. K. Vadera ATR 1990 (1) SC 292. In view of this, the contention of the applicant that he should have been promoted in 1990-91 has no force and as such the same is rejected.

11. As regards applicant's prayer for promotion to SAG against 2000-01 vacancies, we find that there were only five vacancies of SAG during that year and not 8 (eight) vacancies as claimed by the applicant. Out of 8 vacant posts, 2 posts were upgraded to the next higher grade and one vacancy released by U. K. Mishra being on deputation could not be reported as there was an uncertainty relating to the incumbent's return to the post after completing his tenure of deputation. The contention of the learned counsel for the applicant that with the upgradation of 2 posts of SAG to HAG, two incumbents of these SAG posts could have been appointed to the HAG and released two resultant vacancies in SAG can not be accepted as out of 27 posts of SAG, 15 posts were temporarily upgraded from JAG in May, 1995. With the further upgradation of 2 posts from SAG to HAG level, these posts would not have been available in SAG. DPC in its meeting held on 22.2.2001 did not recommend name of the applicant due to lack of sufficient number of vacancies despite the fact that his name was included in the extended zone of consideration. After perusing the records, we are satisfied that even if the vacancy of U. K. Mishra had been reported in the year of 2000-2001 the applicant could not have been included in the panel of 6 persons during that year.

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12. Again, the respondents have sent another proposal to UPSC on 10.4.2001 for the anticipated vacancies for the year 2001-2002, out of which the earliest vacancy was to occur on 1.6.2001. The DPC in its meeting held on 28.6.2001, recommended applicant's name for promotion to SAG. Approval of ACC communicated to the respondents only on 3.8.2001, i.e. after the retirement of the applicant on 31.7.2001. Actual promotion orders were issued only on 21.8.2001. Therefore, in terms of the guidelines of the DoPT dated 25.1.90, the applicant could not be promoted before his retirement. As per the law settled by the apex court in the case of Baij Nath Sharma Vs. Hon'ble Rajasthan High Court at Jodhpur (1998) 7 SCC 44, retired employee cannot complain when promotions were made prospectively after his retirement. When the applicant has retired from service on 31.7.2001, he should have no grievance against the promotion order dated 21.8.2001, which was passed on receipt of ACC's approval by the respondents on 3.8.2001.

13. Therefore, for the reasons recorded above, we find no merit in the present OA and the same is accordingly dismissed. No costs.

S. Raju  
(Shanker Raju)  
Member (J)

M. P. Singh  
(M. P. Singh)  
Member (A)

/gtv/