

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 440/2001

This the 28th day of February, 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. C.S. CHADHA, MEMBER (A)

Mr. K.C. Brahmachary,
S/o Late Dr. K.K. Brahmachary,
E-815, Chittarajanjan Park,
New Delhi-110019.

(By Advocate: Sh. Shyam Babu)

Versus

1. Union of India
(through the Secretary)
Ministry of Home Affairs,
North Block,
New Delhi-110001.
2. The Lt. Governor,
Government of NCT of Delhi,
Raj Niwas Marg,
Delhi-110054.
3. Chief Secretary,
Govt. of NCT of Delhi,
5, Sham Nath Marg,
Delhi-110054.

(By Advocate: Sh. N.S. Mehta for Resp. No.1
Sh. Vijay Pandita for Resp. No.2)

ORDER

By Sh. Kuldip Singh, Member (J)

Applicant is aggrieved of the fact that respondents have not convened the review DPC to consider him for promotion to the post of Delhi Andaman & Nicobar Islands Civil Service (DANICS) in spite of the fact that this Tribunal had given directions in its judgment and order dated 12.7.99 in OA-3243/92 and 2577/94 which required Resp. No.2 & 3 to convene a review DPC to consider the fitness of the applicant for promotion to DANICS.

2. Facts in brief, as alleged by the applicant, are that applicant is appointed to Grade I (Executive in the pay scale of Rs.550-990 in the Delhi Administration on 2.1.91.

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Applicant was issued a charge sheet for some misconduct while he was functioning as Assistant Sales Tax Officer. When the chargesheet was pending applicant's juniors were promoted and inducted in the DANICS but the case of the applicant was not considered at all. Applicant was imposed major penalty of reduction to two lower stages in his scale of pay for a period of 2 years with the direction that this reduction will not have the effect of postponing the future increments of pay. So applicant filed OA-3243/92 seeking a direction to the respondents to consider the applicant's case for which he was eligible. The penalty order was received by the applicant somewhere in June 1993. So the applicant filed another OA-2577/94 and challenged the disciplinary proceedings.

3. Both these OAs were decided by a common order where the penalty order was quashed and directions were given to the respondents to pass suitable consequential orders to hold a review DPC for promotion of the applicant.

4. Since the applicant was not promoted, applicant came up with a contempt petition. Reply was filed on behalf of the respondents, Govt. of NCT of Delhi and the Lt. Governor stating therein that the Lt. Governor has no power to order even ad hoc promotion to DANICS. So disobedience on their part was not wilful rather rules did not permit to pass any orders as directed by the Tribunal on their own. So on this ground, the contempt was dismissed.

5. A DPC was held in respect of vacancies for the year 1990-1992 which was convened by UPSC. But since the applicant had already retired from service, so his name was not in the select list for being inducted to the DANICS. Hence this OA.

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6. Respondents had filed their reply. Respondents, Union of India had taken a stand that applicant had become eligible for the first time within the zone of consideration for promotion to Grade-II of the erstwhile DANICS against the vacancies pertaining to the years 1990, 1991 and 1992 and was accordingly considered, alongwith other eligible officers in the zone of consideration, for promotion by a DPC convened on 7.11.2000 under the aegis of the UPSC. Applicant could not be given promotion to the service by acting on the recommendations of the DPC on 7.11.2000 on the ground that applicant had retired from service on 31.10.93, which was a date prior to the date of convening the DPC and the date on which the proceedings of the DPC became valid.

7. Respondents for this purpose relied upon the instructions issued by DOPT which provide as under:-

"6.4.4 Promotions only prospective - While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s).

Date from which promotion are to be treated as regular

17.10 The general principle is that promotion of officers included in the panel would be regular from the date of validity of the panel or the date of their actual promotion, whichever is later."

8. Respondents submitted that because of the fact that the promotion could only be effective and could be prospective and DPC was held after the applicant had retired. So the applicant could not be given promotion.

9. We have heard the learned counsel for the parties and gone through the record.

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10. Learned counsel for applicant submitted that the applicant had earlier filed an OA seeking promotion and since there were direction for convening a review DPC, so the respondents were under the direction of the court and were supposed to convene the review DPC for giving promotion to the applicant or the date from which his juniors have been promoted. In reply to this, counsel for respondents submitted that in the earlier OA, Union of India was not a party. So there was no direction to the Union of India to hold a review DPC or any DPC for considering the case of the applicant for promotion to DANICS. So those directions are not binding on the Union of India.

5 11. On the contrary, counsel for applicant insisted that merely because in the earlier OA applicant had failed to array Union of India as a party that does not mean that direction given in the earlier OA will go waste or will be washed away.


12. In my view the contentions as raised by the applicant have not merits because the relief of convening DPC was to be granted against Union of India and it is the UPSC who was to hold DPC/review DPC. But neither the UPSC nor the Union of India was a party to the earlier petition. So no opportunity was afforded to Union of India or to UPSC to defend the earlier OA. Thus, the directions given to Resp. No.2 & 3 that is the Lt. Governor and Delhi Administration cannot be binding upon the Union of India or upon the UPSC. Court has rightly consigned the contempt petition to the record room when the contempt petition was filed against the Lt. Governor and the Chief Secretary of Delhi Administration because they were not in a position to abide by the directions given by the Court. Since the Union of India and UPSC had no opportunity

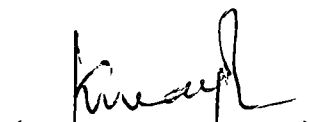
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to defend the case, Union of India cannot be held to be under legal obligation to abide by the directions given in the earlier OA.

13. As regards the position in the present case is concerned, the Union of India has taken a specific stand that as per the instructions issued by the DOPT, since all the promotions are to be prospective in nature and the DPC was held on 7.11.2000 when the applicant had already retired on 31.10.93, so he could not have been given the promotion.

14. As regards the promotions give to the juniors is concerned, counsel for applicant submitted that the juniors to the applicant had already been promoted. But Sh. Mehta appearing for the respondents categorically submitted that the DPC held on 7.11.2000 was held for the first time to consider the vacancies pertaining to the year 1990-93. No regular promotion was earlier granted to any of the juniors to the applicant. So on that score also, applicant cannot have any claim. Thus, in view of this situation, I find that applicant cannot be granted promotion since the promotions are to be prospective as per the DOPT instructions. Thus the OA is without any merits and the same is hereby dismissed.


(C.S. CHADHA)
Member (A)


(KULDIP SINGH)
Member (J)

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