

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 2647/99

New Delhi this the 26th day of July, 2000

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. V.K. Majotra, Member (A)

Madhukar
51, Delhi Administration Flats,
Greater Kailash-1,
New Delhi.

...Applicant
(By Advocate: Shri A.K. Behera)

Versus

1. Union of India through
The Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001.
2. Chief Secretary,
Govt. of NCT of Delhi,
5, Sham Nath Marg,
Delhi-110054.
3. Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110011.
4. Smt. Achla Singh
Deputy Commissioner Sales Tax,
Bikrikar Bhawan,
Near ITO, New Delhi-110002.

..Respondents

(By Advocate: Shri A.K. Bhardwaj)

ORDER (Oral)

By Mr. V.K. Majotra, Member (A)

The applicant has challenged the order dated 9.8.1996 Annexure A-1 wherein the applicant has not been promoted to the Junior Administrative Grade of DANICS while his juniors have been so promoted. The said order was passed by the respondents in supersession of earlier promotion order dated 31.1.92. The applicant had challenged the earlier promotion order dated 31.1.92 in OA No. 1752/93. On the contention of the respondents that the promotion order dated 31.1.92 has already been

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superseded by the impugned order dated 9.8.1996.

The earlier OA 1752/93 was disposed of with liberty to the applicant to challenge the order dated 9.8.96 and hence the present OA by the applicant. The applicant is a member of DANICS (1981 batch). He became eligible for promotion to the Junior Administrative Grade against the vacancies for the year 1992 onwards. No DPC was convened for the year 1992. The DPC was held on 10.8.93 for the years 1991 and 1992. By an order passed on 9.11.93 whereas a number of juniors of the applicant were promoted, the applicant was not promoted. It is alleged that ACRs of the applicant for the years 1990-91, 1992-92 and 1992-93 were not taken into consideration by the DPC held on 10.8.93, Even though the ACRs for these years in respect of all other candidates were taken into consideration after the disposal of the earlier OA namely, 1752/93, On 6.8.99, The applicant has now challenged the impugned order of 9.8.96 which also did not include the applicant's name while the names of some juniors of the applicant were included. It has been contended that whereas in the case of the applicant the ACRs of the years 1990-91, and 1991-92 were not put before the DPC for consideration against the vacancies of the year 1992 and similarly the ACRs of the years 1990-91, 1991-92, 1992-93 were not placed before the DPC consideration against the vacancies of the years 1993. The applicant has alleged that the respondents have resorted to arbitrary action and have violated the instructions of the Government in regard to consideration of the ACRs of the applicant by DPC for the purpose of promotion. The applicant has sought quashing of the order dated

9.8.96 qua the applicant and direction to the respondents to hold a review DPC in respect of the applicant for the vacancies of the years 1992 and 1993 after taking into consideration the ACRs of the applicant for the years 1990-91, 1991-92, 1992-93 and ^{on} ~~as~~ being found fit for promotion, he should be so promoted with effect from the date his junior was so promoted with all consequential benefits.

2. In the counter, respondents have maintained that in the DPC meeting held on 10.8.93 for the vacancies pertaining to the years 1992 and 1993, the applicant was not recommended by the Selection Committee as he failed to obtain the minimum required benchmark grading. However, the DPC met in July 1996, ~~as~~ on account of revision of the seniority of officers in Grade-1 of DANICS and some officers having become eligible but not considered earlier. The respondents have admitted that in the DPC meeting held on 10.8.93, the ACRs of the applicant for the years 1990-91, 1991-92 & 1992-93 had not been considered because they were not duly written and completed by the concerned authorities. The Review Selection Committee which was convened in July 1996 to review the proceedings of the Selection Committee of August, 1993 did not re-assess those officers, including the applicant, ^{they} ~~as~~ had already been assessed by the original Selection Committee, and decided to accept the gradings assigned to them by the original Selection Committee. The respondents have maintained that under instructions where the up-to-date ACRs of eligible officers are not available in such cases, in order to avoid further delay in making W promotions, they are assessed on the basis of the

available ACRs. It has further been contended by the respondents that there is no violation of any rules and procedures with regard to the assessment of the applicant by the Selection Committee and Review Selection Committee. We have heard the learned counsel of the parties and carefully considered the material available in record. We have also gone through the records of the original DPC held on 10.8.93 and the review DPC held on 3-4/7/96. The learned counsel of the applicant ^{and Supplemental} re-iterated the points made by him in the OA ~~pleaded~~ that even in the review DPC when the ACRs for the years 1990-91, 1991-92 and 1992-93 were available and which to the information of the applicant were 'outstanding' were not considered by the respondents. He has relied on the ratio in the following orders in support of his contention:-

i) OA-1558/94 decided on 2.11.95
B.C. Kandpal Vs. Central Social Welfare Board & Ors.

ii) OA-1704/99 decided on 24.12.99
K.D. Maiti Vs. Union of India

3. In the above cases, ACRs of the applicants for certain years had not been considered by the DPC and the applicants in these cases were not recommended for promotion while their juniors ^{-d baw} ~~have~~ recommended for promotion. In these cases, directions were issued to the respondents to convene review DPC meeting within a stipulated period and re-consider the applicants' cases after taking into account the ACRs for those years which were not considered earlier on.

4. Learned counsel of the respondents referred to 1991(2) SLT (CAT) 555 H.S. Saini Vs. Delhi Administration & Ors, wherein it has been held

that this is beyond the scope of the Tribunal unless the malafide is specifically alleged and established against the constitution of DPC or its members. It has been further held that Tribunal could not alter the decision of the DPC.

5. It is established from the Minutes of the meeting of DPC held on 10.8.93 and those of the review DPC held on 3-4/7/94 that ACRs of the applicant for the years 1990-91, 1991-92 and 1992-93 were not taken into consideration by the DPC while formulating the recommendations in respect of the applicant. This has been admitted by the respondents in their counter reply as well. According to the respondents, they have not violated any instructions on the subject in not considering the ACRs of the applicant which became available at a later stage but before the review DPC was held. As per the procedure when the relevant ACRs are not available, the ACRs for the previous years can be considered and the review DPC does not consider the ACRs which were not available earlier but become available later on.

6. In our view the ratio in the case of H.S. Saini(supra) is not applicable to the facts of the present case. In that case, it was not the case that ACRs for certain years were not available and were not considered even later on in the review DPC. It was only that the Tribunal had directed the respondents to place the petitioner in the promotion 'F' list, after giving him due seniority and above his next junior in the said list. It was held that the Tribunal should not interfere with the process of selection unless the malafide in the selection process had been established. The ratio in the case

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of B.C. Kandpal (supra) and in K.D. Maiti (supra) is squarely applicable to the facts and circumstances of the present case. (3)

7. Under the circumstances, we dispose of this OA with a direction to the respondents to convene a review DPC within three months from the date of receipt of a copy of this order and re-consider the applicant's case against vacancies ^{and 1993} for the years 1992-93 after taking into account the ACRs for the years 1990-91, 1991-92 and 1992-93 respectively.

8. After the review DPC makes its recommendations, the respondents should take a final decision thereon within two weeks of its receipt. In the event that the applicant is promoted, such promotion will take effect from the date of promotion of his immediate junior and he will be entitled to all consequential benefits. No costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

Ashok Agarwal

(Ashok Agarwal)
Chairman

CC.