

Central Administrative Tribunal, Principal Bench

Original Application No. 2832 of 1999

New Delhi, this the 14 day of October, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

Sh. P.D. Gupta
Joint Director,
Central Statistics Organisation,
Ministry of Statistics and Programme Implementation,
Sardar Patel Bhawan,
Sansad Marg,
New Delhi-110 001. - Applicant

(By Advocate - Shri H.S. Dahiya)

Versus

Union of India
Through Secretary,
Ministry of Statistics and Programme Implementation,
Sardar Patel Bhawan,
Sansad Marg,
New Delhi-110 001. - Respondents

(By Advocate - Sh. P.H. Ramchandani, Sr. Counsel with
Shri Gajender Giri)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

The short question which requires consideration in this case is whether the applicant who had refused promotion is entitled to be placed along with the same panel wherein he was promoted from Group IV to Group III of the Indian Statistical Service (hereinafter referred to as ISS).

2. The facts in brief are that the applicant was appointed to Group IV post of ISS on 7.1.1977 and was placed in the select list at S.No.356 of the seniority list of Grade-IV officers and vide an order dated 23.6.89 he was promoted to Grade-III service of the ISS and on promotion he was posted to Calcutta and

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the applicant alleges that since he was not in a position to move out of Delhi so he made a representation but the same was not accepted and he was told that in case he did not join the new place of posting it will be treated as refusal to the promotion. To that effect an order was also issued by the Department on 18.4.90 whereby the applicant was also informed of the consequence of such refusal and the promotion order was cancelled. The applicant claims that it should not have been cancelled but it should have been kept in abeyance till the availability of next vacancy.

3. He further alleges that since there were only two officers below him in the list of promoted officers so the applicant was to suffer loss of being superseded only by those two officers. The applicant also expected to be promoted either on expiry of one year or whenever the vacancy arose, whichever was later.

4. However, in the meanwhile, the Hon'ble Supreme Court of India in another matter, i.e., Union of India and Others Vs. Pratap Narain and Others (14973/89) passed an interim order dated 14.1.1990 for the status quo in regard to the promotions from Group IV to Group III and Group III to Junior Administrative Grade (JAG) of the ISS. Therefore from June 1989 onwards no regular promotions were made till March-April, 1993 though on an application filed by

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the Union of India before the Hon'ble Supreme Court the department was allowed to make ad hoc promotions subject to the outcome of the SLP.

5. He further pleaded that as vacancy in Grade-III was available so the applicant was entitled to be promoted within one year from 29.12.1990 from the date of refusal but could not be regularly promoted because of the stay order of the Hon'ble Supreme Court. Regular promotions of 138 officers were made only on 2.4.93, vide Anneuxre A-7.

6. It is further stated that the Hon'ble Supreme Court in a matter of U.O.I. and Others Vs. I.R. Mohanty and Others, set aside the promotions from Grade IV to Grade III by striking down the retrospective operation of Rule 13 of ISS Rules, 1961 which was made by Notification dated 20.2.1989. Consequently all the promotion orders issued vide dates 22.5.86, 1.9.87, 24.11.1987, 13.6.1988, 23.6.89 and 2.4.93 were withdrawn and after reviewing the same, fresh orders were issued vide order dated 4.1.1996. The applicant states that he has been wrongly denied promotion as per the promotion order issued on 4.1.1996. In the order dated 4.1.1996 the applicant was further superseded by as many as 39 juniors who were placed above the applicant in the promotion list and this supersession by the 39 officers are stated to be illegal.

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7. Further injustice was done to the applicant when his juniors had been promoted to the JAG grade whereas he has been denied promotion to the same. The order of 4.1.1996 was again challenged and the Tribunal passed an order on 16.7.98 directing the respondents to review the order dated 4.1.96. As a result of this review, the department issued a new promotion order dated 31.8.1998 in supersession of the promotions made earlier by the department vide order dated 4.1.1996 and now promoted 160 grade IV officers to Grade III instead of 138 officers. But in this case the seniority of the applicant was again depressed by downgrading the applicant from S.No.43 to S.No.60.

8. It is further stated that the action of the respondents in downgrading the applicant on every occasion of review of the earlier promotion order is blatantly arbitrary causing grave injustice to the applicant as he has been superseded by as many as 81 junior officers in promotion from Grade IV to Grade III. He made a representation also but to no effect and the applicant claims that he should be given promotion w.e.f. 29.12.1990, i.e., one year after when the vacancy was available and the refusal on the part of the applicant not to give promotion w.e.f. 29.12.1990 is illegal, arbitrary and is in violation of the principles of natural justice. Hence, the applicant prays for quashing of the order dated 4.1.1996 as well as the order dated 31.8.98 to the extent of illegal supersession of the seniority of the applicant in the promotion list issued after review of

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the earlier promotion and respondents be directed to consider the applicant for promotion with all consequential, promotional and financial benefits w.e.f. 23.6.89 irrespective of the fact that the applicant had refused promotion because the order dated 23.6.1989 was itself withdrawn and became non-existent and hence no consequence of such non-existent order could be made to bear upon the applicant and to deny him promotion and the respondents be directed to promote the applicant w.e.f. 24.12.1990.

9. The respondents contested the O.A. and they have pleaded that on 23.6.1989 the applicant was promoted and posted to Calcutta but since the applicant did not join the said post at Calcutta even after being advised of the consequences, i.e., his debarment for promotion to Grade-III for a period of one year from the date of refusal or till next vacancy arose whichever is later, so his failure to join the promoted post is treated as refusal of promotion and the applicant is debarred for promotion in terms of the existing guidelines.

10. It is further pleaded that certain officials belonging to SC community were promoted by way of reservation from Grade-IV to Grade-III. Their promotion was challenged before the Tribunal by Shri T.R. Mohanty, a general category officer that the promotion by way of reservation, overriding his claim was contrary to the existing provisions of Rule 13 of the ISS Rules, 1961. These promotions were made vide

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order dated 24.11.1987. The OA was allowed vide order dated 28.11.88 and respondents were directed to allow to the applicant the consequential benefits of seniority and monetary benefits including arrears of salary etc. The Tribunal, however, observed that the promotion of the reserved category officers need not be disturbed. The Department had amended the Rule 13 of the ISS Rules, 1961 and made the amended provisions operative retrospectively with effect from 27.11.1972 and after the amendment, department filed a SLP against the judgment of the Tribunal dated 28.11.1988 before the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the appeal of the Department and held that the amended Rule 13 to the extent that it had been made operative retrospectively is violative of Articles 14 and 16 of the Constitution of India as it took away the vested right of the applicant and other general category candidates senior to respondent No.2-9 (reserved category). Thus the Hon'ble Supreme Court struck down the retrospective operation of the amended Rule 13 which was made by Notification dated 20.2.1989. So after this judgment of the Hon'ble Supreme Court various consultations with the Ministry of Law, Finance and DOP&T were held and ultimately it was decided to undertake review of all the promotions made earlier to Grade-III in which reservation had been provided to SC/ST under unamended/amended rules on the basis of the integrated seniorities of the reserved category and general category officers assigned in Grade-IV Seniority List as on 11.2.1986. So accordingly the department cancelled the promotions of SC/ST in Grade-III retrospectively and thereafter

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undertook a review of all the promotions to Grade-III made under unamended rule on the basis of inter-se seniority of reserved category and the general category officers in the seniority list of Grade-IV as on 11.2.1986 or any other Grade-IV seniority list issued thereafter and as a consequence thereof also the promotions to the JAG was also reviewed and the review orders of promotions were issued on 4.1.1996.

11. But as far as the case of the applicant is concerned, the department pleaded that the applicant along with others were promoted to Grade-III of ISS vide order dated 23.6.1989 but since the applicant did not join the promoted post, so a bar of one year was imposed on his promotion by order dated 29.12.1989. However, the respondents could not make fresh promotions after June, 1989 because on account of stay order of the Hon'ble Supreme Court in the case of Pratap Narain's case (Supra). After availability of final judgment on 29.4.92, the process for fresh promotions were initiated and applicant along with others were promoted as Grade-III on the basis of Grade IV seniority list. It may be pointed out that as the promotions were being made after a period of almost 4 years, vacancies were calculated year-wise for the purpose of giving reservation in promotion. The applicant's name was placed at S.No.4 of the order. It was, however, later realised that the applicant cannot be promoted to Grade-III in 1988-89 vacancies as a bar of one year was operating on his promotion w.e.f. 29.12.1989. While reviewing the

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order dated 2.4.93, the applicant and other similarly placed officers who had refused their promotions in the post was governed for promotion to Grade III against the vacancies of 1990-91. It was in this light that the applicant was placed at S.No.43.

12. However, Shri T.R. Mohanty again challenged the promotions made by order dated 4.1.1996 and the Tribunal vide order dated 2.2.1998 directed to recalculate the vacancies which became available each year in accordance with the rules. So on account of an increase in the number of vacancies in pre-1990-91 period, due to inclusion of deputation vacancies, so as a consequence thereof, applicant was placed junior to some more officers and this is all as a consequence of refusal made by the applicant in the order dated 23.6.1989. The applicant had then filed an OA 1531 of 1997 for quashing of the order dated 4.1.1996 wherein it was observed that since the exercise of review was still underway and the plea of the applicant that he is entitled to promotion from June, 1989 itself show that the bar operating against him which came into effect only later, i.e., December, 1989 could not adversely prejudice his case. The respondents state that this judgment was also duly considered before issuing promotion order dated 31.8.98 wherein applicant had been placed at S.No.60 and the department is still insisting that the applicant has been depressed in his seniority only because of his consequence of his refusal to accept the promotion and to join at Calcutta.

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13. We have heard the learned counsel for the parties and have gone through the record of the case.

14. The DOP&T instructions on point of refusal are contained in Swamy's Manual which are reproduced hereinbelow:-

" 17.12 When a Government employee does not want to accept a promotion which is offered to him he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the selection list may be promoted. However, since it may be not administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises whichever is later. On the eventual promotions to the higher grade, such Government servant will lose seniority vis-a-vis juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above mentioned policy will not apply where ad hoc promotions against short term vacancies are refused".

(emphasis supplied)

15. Reading the above quoted portion the learned counsel for the applicant submitted that the bar imposed by the department on the applicant for not being considered for promotion for a period of one year from the date of his refusal had expired in December, 1990 itself. Since by virtue of the judgment of the Hon'ble Supreme Court all promotions orders issued so far have been cancelled and fresh orders of promotions have been passed and thus

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promotion orders had been passed much after the expiry of period of one year, so while passing the fresh orders, the said bar should not have been considered. However, to our view this contention of the learned counsel for the applicant has no merits because the department was compelled to undertake an overall review of all the promotions made by virtue of the judgment given by the Hon'ble Supreme Court. Had it not been so probably the said order dated 23.6.89 vide which the applicant was considered for promotion and posted at Calcutta and had refused, might not have been reviewed. Merely the department was under a legal obligation to undertake the overall review and since department have passed the fresh orders by reviewing the earlier orders, that does not mean that the effect of the bar imposed upon the applicant for not being considered for promotion for a period of one year from December 1989 to December, 1990 can be said to be wiped off.

16. The next contention raised by the learned counsel for the applicant in this regard is that the Tribunal in the case of N.C. Chakraborty Vs. U.O.I. & Others, reported in 1989 (11) ATC 107 had held that the applicant on whom a bar had been imposed is not liable to be subjected to a further process of selection by any DPC and the applicant in that case was directed to be given promotion and adjusted against a vacancy arising immediately on the expiry of the bar. So the learned counsel for the applicant contended that his panel position as held by him in the promotion order issued in June, 1989 should have

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been maintained and he should have been offered promotion in accordance with that panel. However, to our mind, this contention of the applicant is again without merit because in the case cited by the learned counsel for the applicant, the petitioner therein was considered for promotion by selection method and was included in the panel in the year 1986. He was offered a posting at some station but the petitioner in that case did not like to join the station and he communicated his unwillingness to accept the promotion and subsequently the next promotion panel was published in which his name did not find a place so he challenged the question of validity of the DPC grading which had denied him the promotion. He, therefore, contended that when he had been considered fit by the earlier DPC then why he had been denied promotion and had been debarred from promotion for a period of one year. So in that context the Hon'ble Tribunal observed that the petitioner cannot be subjected to go through the process of selection by the DPC and it was held that having once gone through the process of selection of DPC, it is not proper to subject him to a further process by selection by another DPC. As such the respondents were directed to give promotion to the applicant and adjust him against the vacancy immediately on the expiry of the bar.

17. After referring to this judgment, the learned counsel for the applicant has also pleaded that the applicant was to be adjusted against a vacancy which immediately arose after the expiry of the bar so he should have been considered for a

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promotion in the month of December, 1990 itself when his period of bar expired. In reply to this, the counsel for the respondents submitted that, in fact, it had been so done, the applicant was considered after the expiry of the bar for the post which had immediately arisen after the expiry of the bar. The learned counsel for the respondents assured us that in between 23.6.89 when the applicant was earlier promoted and the second promotion which was held in April, 1993, no promotions were made. No DPC had met for considering the promotions since there was a stay operating against the department to make any promotions by virtue of the interim order passed by the Hon'ble Supreme Court and April, 1993 was the first occasion after the expiry of the bar when the department had made promotions, so the applicant had been considered therein. Probably had it been so simple, the applicant might not have challenged the same since after June, 1989 and this was the only first occasion after 1989 when his promotion order was issued by the department in which he would have been considered in accordance with the previous panel. It appears that the applicant is more aggrieved of the fact that because of the overall review undertaken by the department in pursuance of the directions given by the Hon'ble Supreme Court his seniority has been depressed to such an extent that from S.No.4 he went down to S.No.60. To this the learned counsel for the respondents have given an explanation that since the department had given promotions to reserved category candidates when there being no rule for the same and when department amended Rule 13, it started applying

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the same with retrospective effect which was struck down by the Hon'ble Supreme Court, so in the overall review many reserved class candidates who were given promotion had to be withdrawn and their place was to be filled up by the general category candidates and in that process, various positions had fallen vacant upto 23.6.1989 and in that exercise of review, certain juniors to the applicant must have been accommodated in those vacancies and the seniority of the applicant had been depressed because he could not be accommodated till the month of December, 1990 as bar imposed against him was in operation and the earliest given promotions were made in the year 1993 and the applicant was given promotion accordingly.

18. The respondents counsel also submitted that the applicant had not been subjected to fresh selection process. Moreover, the promotion from Grade IV to Grade III is by way of non-selection method so even otherwise the respondents could not have subjected him to selection by second DPC.

19. We have gone through the judgment cited by the learned counsel for the applicant. We find that in the order issued by the authorities in the case of N.C. Chakravorty (Supra) it was specifically mentioned that the applicant therein will also lose his panel seniority and also will be debarred for promotion for a period of one year. So interpreting the same, the Tribunal has observed that as per the order issued by the respondents in that case the applicant had to lose both his panel seniority as well

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as bar for promotion for a period of one year and in that context the Tribunal has held that the applicant will not lose his panel seniority and he will not be subjected to second DPC because in the case of second DPC, he would have to be again considered on merits and placed on seniority as per his merit position since in that case the method of promotions were by way of selection-cum-merit and that is why the Tribunal had given direction that the applicant in that case will not lose panel position. However, the circular referred to by the applicant himself in his O.A. reproduced above, does show that the Government servant has to lose seniority vis-a-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the post in question is filled by selection or otherwise. So there was no compromise on the position that the applicant has to lose seniority in accordance with the DOP&T's instructions once he makes refusal to the promoted post.

20. In this case we may further refer that the applicant has been unable to point out that if any promotion had been made after the expiry of the ban on 23.12.1990 till 2.4.93. As such we find that the applicant in fact had been given promotion immediately after the expiry of the ban when the first vacancy arose, hence we are of the considered opinion that the OA has no merits and the same is dismissed. No costs.

(S.A.T. Rizvi)
Member (A)

(Kuldip Singh)
Member (J)

/Rakesh/