

Central Administrative Tribunal, Principal Bench

O.A. No. 1476 of 1998

New Delhi, this the 4th day of November, 2000

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

Shri Karnail Chand
S/o Late Shri Nand Lal
R/o WZ-107, Street No.14,
Krishna Puri,
P.O. Tilak Nagar,
New Delhi.

...Applicant

By Advocate Shri D.R. Gupta.

Versus

1. Union of India through
Secretary,
Ministry of Home Affairs,
North Block, New Delhi-11.
2. The Govt. of NCT of Delhi,
through Secretary (Services)
Delhi Administration,
5, Sham Nath Marg,
Delhi.

..Respondents

By Advocate: Sh.N.S. Mehta.

ORDER

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

The applicant in this OA is aggrieved of the fact that while issuing the Notification dated 4.9.90 (Annexure A-1), the respondents have not followed the instructions issued by the Government of India providing for reservation in promotion to the SC/ST candidates while making promotions from the feeder cadre to the Grade-II of DANI Civil Service, which has resulted to the effect that the seniority of the applicant has not been correctly fixed.

2. It is further submitted that the question of seniority was also a subject matter of challenge in OA

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No.1156/88 in the matter of Zahir Ahmed and Others Vs. U.O.I. & Others. Though the said OA was dismissed, yet a liberty was given to the applicant to seek direction from the Tribunal by filing a fresh OA for the extension of benefits of concessions in the matter of promotion. The applicant was authorised by the Central Administrative Tribunal vide their order dated 3.6.1988 to seek re-cast/review of the seniority in the light of the Government instructions providing for reservation in Government services. Thus in terms of the liberty given to the applicant, he has filed the present OA. 21

3. The case of the applicant is that initially he was appointed as Inspector under the Government of NCT of Delhi w.e.f. 20.11.1965 and was subsequently promoted as Grade-I (Executive) w.e.f. 11.4.75 and the he was confirmed in Grade-II (Executive) w.e.f. 1.10.1976. Subsequently he was promoted to Grade-II of DANICS w.e.f. 29.2.1980 as Sales Tax Officer, where he continued to work and he was regularised as Grade-II of DANICS vide Notification dated 4.9.90 (Annexure A-I).

4. Applicant further allege that he being a Scheduled Caste was entitled to promotion against the promotion post reserved for SC in terms of the roster given in Annexure to the Brochure on Reservation for SC & ST. However, respondents while preparing the seniority list on the basis of the promotion made by them from Grade-I of the DASS to Grade-II of the DANICS, have altogether ignored the provisions pertaining to the grant

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of reservation to the SCs/STs in DANICS Service Rules, 1971 while making the aforesaid promotion vide Annexure A-I. Thus the applicant is challenging the seniority list of Grade-II of DANICS since it was prepared by ignoring the instructions provided for reservations in promotion.

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5. It is further pleaded by the applicant that had the respondents followed the said roster, the applicant would have been regularised and assigned seniority along with 1984 batch of direct recruits and on that basis he would have become eligible for further promotion to the selection grade of DANICS which was denied to him on the basis of wrong seniority of Grade-II.

6. The applicant has also annexed a draft seniority list and relative position showing the vacancy arising year-wise for the reserved categories.

7. The applicant also claims that as he was holding the Grade-II post of DANICS from 1980 since he was appointed on a clear vacancy available at that time, he should not have been treated as ad hoc promotee in the year 1980 itself since he belongs to SC candidate. However, he also stated that he was entitled to be promoted in his turn in 1984 against the reserved post which the respondents did not do so without any rational justification.

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8. The respondents contested the OA. They submit that since the applicant was one of the applicants in OA 1156/88 which was dismissed by the Hon'ble Tribunal, so the present application is barred by the principles of constructive res judicata. 23

9. They also pleaded that a meeting of the DPC for appointment to Grade-II of DANICS against vacancies from the year 1983 to 1989 was convened in UPSC in June-August, 1990 and the applicant who belongs to SC community, his case was considered accordingly taking into consideration the Government policy on reservation while making appointment from the feeder service to the Grade II of DANI Civil Service and the reservation policy laid down in the Brochure on Reservation for SCs/STs was followed scrupulously.

10. As regards 1984 panel is concerned, there were total 17 vacancies of which 2 each were reserved for SC and ST candidates and for these 17 vacancies, 52 eligible officers were considered and out of these 52, 14 candidates belonged to SC category. The name of the applicant figured at S.No.10 amongst the 14 SC candidates. There were 7 SC candidates in total appointed to the service on the basis of 1984 panel. The last SC candidate was Shri V.B. Singh who figured at S.No.9 amongst the SCs candidates. As such the applicant could not find place against the vacancies reserved for SC category in the year 1984.

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11. However, the applicant was within the zone of consideration for appointment to Grade-II of DANICS for the year 1985, for which year, there were 16 vacancies of which two were for the SC and one for ST candidates were reserved. For these 16 vacancies, the DPC recommended the applicant as well as Shri Durga Dass for appointment to Grade-II of DANI Civil Service and they were accordingly appointed against the two reserved (SC) vacancies in the year 1985 and as such the applicant has been assigned seniority according to the rules after his induction to the DANI Civil Service.

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12. It is further claimed by the applicant that while deciding OA 1156/887 it was opined that the applicant had failed to bring particular claim with respect to the number of reserved vacancies for promotion quota in previous years and also his own seniority relative to other category promotees and in the present OA also the applicant is not specific about his claim as he has not brought out any particular claim with regard to his appointment against the reserved vacancies falling in previous year. The applicant has already been assigned his due seniority and has failed to bring as to what seniority he should have been assigned.

13. In the rejoinder while controverting this stand of respondents, the applicant has submitted that he was entitled to be considered for appointment to the Grade-II of DANIC Service against the reserved vacancy of 1984. Even if the contention of the respondents is accepted that the applicant was considered and found suitable for promotion against the reserved vacancy of

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1985, it does not stand to reason as to why he was not considered to have been promoted on regular basis from that year when there was no carry forward of reserved posts due to non-availability of reserved candidates. The applicant and another candidate Shri Durga Dass was recommended to Grade-II of DANIC Service against the 2 reserved SC vacancies in the year 1985 but they were not considered to have been appointed against those vacancies of the year 1985 and assigned seniority on that basis. There was no excess SC candidates which necessitated their adjustment to subsequent years, as such the applicant and Shri Durga Dass were entitled to be appointed against the reserved slot meant for scheduled caste and not according to the position assigned to them in the selection list. Therefore, the respondents have not correctly assigned the seniority to the reserved candidates by not following the instructions on the subject.

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14. It is further pleaded by the applicant that he had provided a draft seniority list showing the roster points which was not challenged by the respondents. However, while deciding the earlier case the Tribunal had lost sight of the same and even now the applicant has placed on record the said draft list, as such the applicant has prayed that he is entitled to seniority w.e.f. Grade-II of the DANICS from the year 1984 against the reservation roster.

15. We have heard the learned counsel for the parties and have gone through the records of the case.

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16. From a perusal of the counter-affidavit filed by the respondents, we find that it is an admitted case of the respondents themselves that in the year 1985 there were 16 vacancies of which two were for SC and one for ST candidates were reserved and the DPC had recommended the applicant as well as Shri Durga Dass for appointment to Grade-II of DANI Civil Service and accordingly they were appointed against the two reserved vacancies of the year 1985. In the counter-affidavit the respondents have also admitted that the DPC was held to consider the case of appointment to Grade-II of DANI Civil Service for the years 1983 to 1989. Thus the DPC was supposed to consider the candidates for yearwise vacancies and rightly they had considered the applicant for the vacancy of 1985. However, the respondents themselves show that for the vacancies of the year 1984 also the applicant was considered and his name figured at S.No.10 amongst the 14 candidates. There were 7 SC candidates in total appointed to the Service on the basis of 1984 panel. The last SC candidate was Shri V.B. Singh who figured at S.No.9 amongst the SC candidates. As such the applicant could not be appointed against the reserved vacancy of the year 1984. But as regards 1985 vacancies are concerned, the respondents admit that the applicant along with one Shri Durga Dass was considered against the vacancies of 1985 and they were thus appointed in the 1985. However, the Notification which has been challenged by the applicant shows that the appointments had been made w.e.f. 3.9.1990 and the applicant seems to be at S.No.43 of the said Notification. Since a plain reading of the Notification shows that he has been given appointment w.e.f.

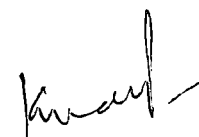
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3.9.1990. So we find no reason as to why the applicant who was considered against the vacancy of the year 1985 but has not been given appointment w.e.f. 1985 itself, as such we find that the OA has merits because the applicant having been considered for the vacancies which were available in the year 1985 and was recommended by the regularly constituted DPC, should have been given appointment from the year 1985 itself.

17. In view of the above, the impugned order so far it concerns applicant is quashed and the respondents are directed to re-fix the seniority in the Grade-II of DANI Civil Service w.e.f. 1985 and consequently he will also be entitled to next promotion on the basis of re-fixation in his seniority for which he may have become eligible. These benefits have to be given notionally and his retiral benefits are to be re-fixed accordingly. These directions should be complied with within a period of 3 months from the date of receipt of a copy of this order. No costs.


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


(Kuldip Singh)
Member (J)

/Rakesh/