

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1609/95

New Delhi this the 8th day of May, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MRS. SHANTA SHAstry, MEMBER (ADMNV)

Shri Suprabhat Biswas,
S/o late Sh. Manindra Nath Biswas,
R/o D-II/59, Kidwai Nagar (West),
New Delhi-110 023.

...Applicant

(Applicant in person)

-Versus-

1. Union of India through
the Secretary,
M/o Finance, Deptt. of Expenditure,
North Block, New Delhi.
2. Controller General of Accounts,
'C' Wing, Lok Nayak Bhavan,
Khan Market, New Delhi.
3. Establishment Officer &
Secretary to the
Appointments Committee of the Cabinet,
North Block, New Delhi.
4. Chairman,
UPSC, Dholpur House,
Shahjahan Road,
New Delhi.
5. Smt. Nirmala Dhume,
Principal Chief Controller of Accounts,
CBEC, AGCR, Building,
New Delhi.
6. Mr. B.K. Chaturvedi (resigned)
7. Mr. M. Sampathkumaran,
Chief Controller of Accounts,
Dept. of Space, Antariksh Bhavan,
New Bel Road, Bangalore.
8. Mr. D.V.K. Chari (Retired)
9. Mr. A.M. Sehgal,
Chief Controller of Accounts,
M/o Industry, 172 Udyog Bhavan,
New Delhi.
10. Smt. Usha Sahajpal,
Jt. Secretary & F.A.,
M/o Agriculture & Coop
New Delhi.
11. Mr. N.C. Aggarwal,
Financial Advisor, CSIR,
New Delhi.



✓ 12. Mr. S.R. Shivrain,
JS & FA, M/o Power,
Shram Shakti Bhavan,
New Delhi.

13. Mr. M.K. Jain (Retired) ... Respondents
(By Advocate Shri P.H. Ramchandani)

O R D E R

By Reddy, J.-

This case is a sequel to the decision of the Hon'ble Supreme Court in a batch of appeals in Union of India v. N.P. Dhamania and Others, which included C.A. No.3332/1988, which was filed by Union of India against the applicant.

2. The applicant is a member of Indian Civil Accounts Service (ICAS for short) Group 'A' of 1963 batch. He got promotion to the level of Junior Administrative Grade in 1975 and got selection grade in 1985. In February 1986 he and others were considered for promotion to Senior Administrative Grade (Level-II) of ICAS by departmental promotion committee (DPC for short). Though, ACC approved the names of officers juniors to the applicant for promotion, it did not approve the name of the applicant, resulting in promotion of three juniors to the applicant. Again in November, 1986, the applicant was considered for promotion along with others and again DPC recommended his name but the Government (ACC) did not approve his name. He was ultimately promoted w.e.f. 5.1.98, accepting the recommendations of DPC held in October, 1987.

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3. Aggrieved by the action of the respondents in promoting his juniors, the applicant filed OA No.551/87 before the Calcutta Bench of the Tribunal and by judgment dated 28.3.88 the OA was allowed and it was directed that the applicant was deemed to have been promoted with effect from the date of promotion of his juniors, with all benefits. Against the above judgement, the respondents filed CA No.3332/88 before the Hon'ble Supreme Court. The Hon'ble Supreme Court, while allowing the appeal which was heard and disposed of along with a batch of appeals by judgement dated 20.10.94 and 24.10.94 held, inter alia, that notwithstanding the fact that it was open to the ACC to differ from the recommendations of the DPC, "it must give reasons for so differing to ward off any attack of arbitrariness" and the reasons will have to be recorded in the file. It was further held that the reasons need not be communicated to the officer concerned. The matter was remitted to the respondents to reconsider the case of the applicant and if he was found suitable he should be given promotion from the date of his immediate junior's promotion, with all consequential benefits.

4. Purporting to implement the above directions of the Supreme Court the ACC has reconsidered the recommendations of the DPC in the light of the observations of the Supreme Court and passed the impugned order dated 19.4.95 stating that the ACC had adequate grounds for disagreeing with the recommendations of the DPC. Accordingly the Committee has reiterated its earlier decision. This order is under challenge in this OA.

CAB



5. The applicant argued in person and also filed written arguments. He contends that the ACC could differ from the recommendations of the DPC only in exceptional circumstances and that too in public interest. As the Hon'ble Supreme Court did not find any reason recorded by ACC, the ACC should have promoted the applicant from the date when his immediate junior was promoted. It was further contended that in case the ACC seeks to differ from the recommendations of the DPC the ACC should have sent back the file to the UPSC recording the reasons for disagreement and the UPSC should have been afforded an opportunity to justify its recommendations. The ACC does not have unilateral, uncontrolled and unguided power in the matter of selection. Thus, it was contended that the reconsideration of the matter by the ACC was not in accordance with the observations made by the Hon'ble Supreme Court.

6. The learned counsel for the respondents, however, submits that the impugned order is in accordance with the directions issued by the Supreme Court in the Civil Appeal filed by the Union of India and that it is not open to the applicant to re-agitate the questions that were raised and decided in the previous litigation afresh in this OA. What was to be complied with by the respondents was only to carry out the directions given by the Supreme Court in the above appeal. The contentions raised by the applicant are hit by the principle of res judicata and therefore, cannot be gone into. It is also submitted that it is not correct to argue that the impugned order was not in accordance with the directions of the Hon'ble Supreme Court.



7. We have carefully considered the pleadings as well as the contentions advanced. In order to dispose of this case it is necessary to notice the observations made by the Supreme Court in the above batch of appeals which are stated at pages 10 and 11 of the judgement.

8. Their Lordships observed that the recommendations of the DPC are only advisory in nature and they are not binding on the appointing authority. It is open to the appointing authority to differ from the recommendations in public interest. The ACC being the appointing authority has to give reasons for differing from the recommendations of the DPC, in order to ward off any attack of arbitrariness. Those reasons will have to be recorded in the file. The Supreme Court after perusing the file observed that no reasons were recorded in the file for differing from the recommendations of the DPC. As to the question whether the reasons recorded are required to be communicated to the officer concerned, the answer was given in the negative in para 11. "There is no need to communicate those reasons. When challenged, it is always open to the authority concerned to produce the necessary records before the Court." Turning to the grant of 'deemed promotion' the Supreme Court held that the Tribunal exceeded in its jurisdiction. Accordingly, the Supreme Court set aside this part of the order declaring the applicant as deemed to have been promoted with effect from the date his immediate junior was promoted from the said date and the appeal was allowed to this extent.

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10. We have carefully perused the directions of the Hon'ble Supreme Court. The contentions raised by the applicant, we are afraid, are wholly untenable. It should be noticed that the grievance of the applicant with regard to his promotion with retrospective effect, has already been considered by the Tribunal as well as the Hon'ble Supreme Court. The matter is now remanded to the respondents only to reconsider the case of the applicant as per the observations made by the Hon'ble Supreme Court. The Hon'ble Supreme Court have not made any observations, much less issued directions to the respondents to consult with the UPSC before a final order was passed by the ACC. The Hon'ble Supreme Court, finding that the ACC had not recorded any reasons for differing from the recommendations of the DPC, remanded the matter to the ACC for reconsidering the matter. Now, in the impugned order it was said that the ACC had reconsidered the case of the applicant and reiterated its earlier decision to disagree with the recommendations of the UPSC, stating that there were sufficient reasons to disagree with the DPC.

11. We have perused the relevant files produced by the respondents, including the Minutes of the DPC held on 27.2.86, ACC's decision on the DPC recommendations and the CR Dossiers of the applicant. The ACC had re-examined the matter in pursuance of the directions of the Hon'ble Supreme Court, on 16.3.95. It has reviewed the CRs of the relevant years from 1982-84. Having considered the gradings given by the Reporting Officer and the Reviewing Officer and also having taken into consideration the penalty of censure awarded to the applicant, the ACC

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disagreed with the recommendations of the DPC of 27.2.86 and 27.11.86, for promotion of the officer. We are satisfied that the decision of the ACC is based upon the record, which the ACC had re-examined and that its action is not arbitrary. We are, therefore, of the view that the ACC has re-considered the matter in accordance with the directions given by the Hon'ble Supreme Court.

12. In the aforesaid circumstances, it has to be held that the impugned order is in accordance with the directions given by the Hon'ble Supreme Court in its Judgment and that the same is not vitiated on any ground. The OA, therefore fails, and is accordingly dismissed. We do not, however, order costs.



(Smt. Shanta Shastry)
Member (Admnv)

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(V. Rajagopala Reddy)
Vice-Chairman (J)