

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No.2151 /1996

Date of Decision: 27 - 10-1998

Shri Bhim Sen

APPLICANT

(By Advocate Shri R. K. Kamal

versus

Union of India & Ors.

RESPONDENTS

(By Advocate Shri K.C.D. Gangwani

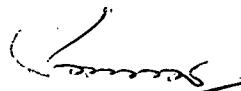
CCRAM:

THE HON'BLE SHRI T.N. Bhat, Member (J)

THE HON'BLE SHRI S.P. BISWAS, MEMBER (A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member (A)

Cases referred:

1. N. Ghadha & Ors. Vs. UO & Ors. (CWP No. 2604/85 in CWP No. 1595/79)
2. State of Orissa Vs. Dr. (Ms.) Binapani Dei & Ors. AIR 1967 SC 1269
3. T.B. Barret V. African Products Ltd. AIR 1928 PC 261
4. General Medical Council Vs. Spackmen (1943) AC 627 at 644
5. State of Orissa Vs. A.K. Patnaik (1976) 3 SCC 579
6. A.K. Chatterjee Vs. SERly AIR 1985 SC 482

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2151/1996

New Delhi, this 27th day of October, 1998

(18)

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Bhim Sen
Joint Director
Agricultural Census
Dept. of Agriculture & Cooperation
Krishi Bhavan, New Delhi .. Applicant

(By Advocate Shri R.K. Kamal)

versus

Union of India, through
Secretary
Department of Statistics
M/Planning & Prog. Implementation
Sardar Patel Bhavan, New Delhi .. Respondent

(By Advocate Shri K.C.D. Gangwani)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, a Joint Director in the Department of Agriculture and Cooperation, is aggrieved by A-1 (colly) orders dated 4.1.96, by which his seniority position in Grade III of Indian Statistical Service (ISS for short) has been downgraded with retrospective effect. He also stands reverted from Non-Functional Selection Grade (NFSG for short in Rs.4500-5700) to a lower grade in Rs.3700-5000. Consequently, he seeks issuance of directions to the respondent to quash A-1 and A-2 orders and restore his status back to Selection Grade of ISS.

2. It is the case of the applicant that after being initially appointed as Assistant Director (AD for short) in National Sample Survey Organisation

of

(NSSO for short), Calcutta on 31.3.76, he was promoted to the rank of Senior Programmer in the scale of Rs.3000-4500 in Planning Commission w.e.f. 31.12.81 by A-5 order. (19)

3. The post of Senior Programmer is equivalent to Gr.III of ISS. Thereafter, on an option given by him, the applicant was inducted into the cadre of ISS Gr.III by A-6 order dated 22.5.86 but with retrospective effect of 6.1.81. Because of his meritorious work, the applicant was subsequently promoted as Joint Director in the Department of Statistics (Gr.II in Rs.3700-5000) by A-7 order w.e.f. 28.4.88. He was further placed in NFSG (Rs.4500-5700) by A-8 order w.e.f. 9.9.92.

4. Applicant was shocked to receive A-1 orders dated 4.1.96 which contain the following two adverse effects on his service career:

(1) Date of seniority in Gr.III, assigned to applicant earlier w.e.f. 6.6.81, has now been graded downwards to 23.6.89 by A-2 order; and

(2) Consequent to downgrading of his seniority in Gr. III, his seniority in Gr.II and promotion to NFSG is adversely affected and he stands reverted from the grade of Rs.4500-5700 to Rs.3700-4500.

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5. Applicant claims to have submitted his representation on 11.4.96 (A-9) but without any result.

6. The main plank of applicant's attack on the aforesaid two orders is that had he not been offered the post of ISS Gr.III vide notification dated 22.5.86, he would have remained as Senior Programmer in CSD/Planning Commission. Services of Senior Programmers, later on, had been included in National Informatics Centre/Planning Commission in the beginning of 1986 and all the Senior Programmers had been promoted to the higher post of Principal Systems Analysts in the pay scale of Rs.3700-4500. Presently, even the junior most Senior Programmer has been promoted as Technical Director in the scale of Rs.4500-150-5700 from October, 1995. Applicant alleges that principles of natural justice of "Audi Alteram Partem" has been grossly violated in his case. He also asserts that the aforesaid principle has been equated by the Hon'ble Supreme Court with the fundamental rights under Articles 14 and 16 of the Constitution. Options were taken from him for his absorption in ISS Gr.III in 1981 and reversal of the same after 15 years in 1996 is illegal, and arbitrary and violative of Article 14 of the Constitution of India, the applicant would contend.

7. Respondent has denied the claim and has submitted that the post of Senior Programmer in CSD/Planning Commission was never included in ISS.

Applicant was holding lien on the post of AD in NSSO on the date of encadrement of the post in ISS and became eligible for being considered for induction into Gr.IV of ISS and was recommended by UPSC for appointment to Gr.IV of ISS vide order dated 25.8.84. Applicant subsequently gave option and willingness for being considered for induction in Gr.IV of ISS which was communicated to the respondent vide letter dated 9.11.84. Based on the recommendations of the UPSC, the applicant was appointed in Gr.IV of ISS as a departmental candidate w.e.f. 25.8.84. Seniority list of all the officials in Gr.IV as on 11.2.86 was drawn up in implementation of the judgement of the Hon'ble Supreme Court in N.Chadha & Ors. Vs. UOI & Ors. (CMP No.2604/85 in CWP No.1595/79) decided on 11.2.86 and the seniority of the applicant was fixed at Sl.No.342 of the list. In N.Chadha's case, the Hon'ble Supreme Court has also directed to undertake a review of all promotions made from Gr.IV to higher posts (including Gr.III) in the light of the revised seniority list. Accordingly, all the promotions made in ISS from Gr.IV to Gr.III (STS) and above of the Service were reviewed and revised orders of promotions issued on 22.5.86. Respondent has submitted that officers at Sl.No.69 to 74 of the notification dated 22.5.86 (A-6) were promoted to Gr.III of the Service w.e.f. 6.1.81 by way of reservation and not on the basis of inter-se seniority. Respondent would also submit that applicant at no time was a direct recruit to any of the Grades of ISS. He was inducted in Gr.IV of ISS

as a departmental candidate and was assigned seniority from the date of his appointment as AD in NSSO/Calcutta. Based on the seniority assigned to him w.e.f. 20.4.76, applicant was promoted by way of reservation to Gr.III w.e.f. 6.1.81 and based on this enhanced seniority in Gr.III by way of reservation he was further promoted to the next higher post in JAG w.e.f. 20.4.88 and to NFSG w.e.f. 9.9.92. Promotion of SC/ST officers by way of reservation in Gr.III of ISS was challenged by one Shri T.R. Mohanty (intervenor in the present OA) in OA 336/88 filed at Calcutta Bench of this Tribunal. The said OA was allowed as it was found that reservation in question was contrary to the unamended provisions of Rule 13 of ISS Rules, 1961. Respondent amended Rule 13 of ISS Rules on 20.2.89 with retrospective effect from 27.11.72 and thereafter filed an appeal (SLP No.3844/89) in the Supreme Court against the order of the Calcutta Bench of this Tribunal.

8. The aforesaid appeal by the Union of India was dismissed by the Hon'ble Supreme Court vide its judgement dated 14.7.94. The Apex Court also struck down amended Rule 13 to the extent that it had been operative retrospectively. In implementation of its subsequent clarificatory order dated 27.3.95, the department reviewed all the promotions made to Gr.III and upwards on the basis of unamended Rules which did not provide for reservation in promotions. The orders issued on

4.1.96 are resultant effects of the **implementation** of the Supreme Court's subsequent order in the matter.

9. The claim of the applicant that he is direct recruit to Gr.III of ISS has been denied by the respondent. Respondent has further asserted that the dispute in N. Chadha's case, which was later on clarified in Pratap Narain's case by the Supreme Court was between direct recruits and promotees and was not applicable to any other category of officers. Further, the dispute of seniority amongst direct recruits and promotees was in Gr.IV of service and not in any other grade and, therefore, the question of grant of seniority to the applicant in Gr.III on the basis of the judgement of the Hon'ble Supreme Court in N.Chadha's case does not arise.

10. In short, as per the respondent, promotion of the applicant to Gr.III by way of reservation was contrary to those unamended Rule 13 of ISS Rules, 1961. His promotion to JAG, based on revised seniority in Gr.III, was in implementation of the judgement of the Supreme Court dated 14.7.94 read with clarificatory order given by their Lordships by order dated 27.3.95. Since cancellation of promotion to higher grade has been made as part of the implementation of the Hon'ble Supreme Court's judgement, the question of giving any show cause notice to the applicant does not arise. However, based on revised seniority list in Gr.III on the ^{and}

basis of his revised date of promotion to this grade w.e.f. 23.6.89 (instead of 6.1.81) the applicant has been promoted to JAG w.e.f. 29.3.93.

11. Before we examine the merits of rival contentions, it would be apposite to mention that ~~Sri~~ T.R.Mohanty has filed an MA (2381/96) as intervenor. The intervenor belongs to general category and is equally aggrieved, like the applicant in the present OA, by para 8 of the aforesaid order dated 4.1.96. In the said para, it has been mentioned that:

"8. Sh. T.R. Mohanty who had earlier been promoted to Grade III (STS) by order of promotion dated 2.4.93 (referred to above) was promoted to that grade retrospectively with effect from 24.11.87 by order No.11024/22/88-ISS(Vol.VII) dated 17.2.95 in implementation of the Hon'ble CAT, Calcutta Bench order dated 28.11.88 (in OA 336 of 1988 - T.R.Mohanty Vs. UOI & Ors.). This order is being cancelled ab initio as a consequence of review in question. Separate orders are being issued simultaneously in this regard".

12. Besides defending his case, the intervenor seeks to support the pleas of the applicant herein on the ground that the applicant's promotion ordered more than a decade before has never been challenged by any person. The intervenor also seeks to assert that respondent ~~has~~ failed to take all possible steps to protect the interests of reserved category officers as well as of the intervenor before effecting any reversion of the reserved category officers as desired by the Apex Court in its order dated 27.3.95. The intervenor

has filed as many as six (6) OAs (317/96, 1094/96, 1827/96, 1828/96, 1830/96 and 2205/96) and also argued that all the eight (8) Original Applications could be heard together since they touch upon matters concerning promotions of those belonging to the same category. We also find that this Tribunal provided partial reliefs in OA 317/96, decided on 2.2.98, in favour of the intervenor, by quashing the same order (in part) dated 4.1.96. His contentions, therefore, deserve acceptance.

13. - The short issue that arises for consideration is whether the respondent has violated the principles of natural justice while issuing the orders dated 4.1.96?

14. It is well settled for a long time that an order to the detriment of an official cannot be made without affording him/her an opportunity to show cause against the proposed order. It is not in doubt that the applicant was given seniority in ISS Gr.III w.e.f. 6.1.81 by A-6 order dated 22.5.86. The applicant was holding the post of Senior Programmer on regular basis in CSD/Planning Commission w.e.f. 31.12.81. He was also selected as Senior Programmer through UPSC. Against this, applicant's seniority in the same category has now been downgraded from 6.1.81 to 23.6.89 by A-2 order dated 4.1.96. The affected person must know the reasons before such an adverse action has been proposed. Authority is legion for this proposition and it is available in a long catena of decisions

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starting from State of Orissa Vs. Dr. Binapani Dei & Ors. AIR 1967 SC 1269. Admittedly, the impugned orders were passed without disclosing the details of reasons thereof to the applicant (as well as the intervenor) and that too without affording an opportunity to the applicant to explain his stand against the adverse orders. For this short reason, the impugned orders deserve to be quashed as void ab initio. In the absence of any mention by the Apex Court, the Executive authorities cannot approximate themselves to oracles or arrogate to themselves ordinances. In a system governed by rule of law, when a decision affects rights of parties, it envisions pre-decisional hearing. As observed by Lord Buck Master in T.B. Barret V. African Products Ltd. (AIR 1928 PC -261) "no forms or procedures should ever be permitted to exclude the presentation of a litigant's defence".

15. From the nature of the case, it would appear that a fair hearing, if allowed, would have made no difference. Even judges may often be tempted to refuse reliefs on the ground that fair hearing could have made no difference to the result. But in particular, it is vital that procedure and merits should be kept strictly apart, since otherwise the merits may be prejudiced unfairly. We shall do well to recollect the relevant portion of the judgement pronounced by Lord Wright in General Medical Council Vs. Spackman (1943) AC 627 at 644. It has been held therein that:-

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If the principles of natural justice are violated in respect of any decision, it is, indeed, only immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision".

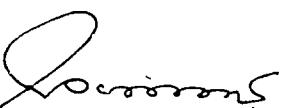
16. We also find support in this respect from the judgement of the apex court in the case of State of Orissa Vs. A.K. Patnaik (1976) 3 SCC 579 where their Lordships held that in matters regarding challenge to promotion, the delays should not be lightly excused as the applicant's rival who has already got the higher post is entitled to sit back and feel secure therein after normal time for challenge to it has lapsed. Similarly, in the case of A.K.Chatterjee Vs. SE Rly. AIR 1985 SC 482, the Apex Court rejected the plea to correct the seniority list after 9 years in the absence of sufficient explanation and justification. The same situation prevails in the present case, inasmuch as the respondent seeks to revise applicant's seniority position in 1996, which was assigned to him in May, 1986, besides affecting his promotion in NFSG.

16. Based on the principles enunciated aforesaid, the impugned orders dated 4.1.96 are in violation of principles of natural justice and deserve to be ~~set aside~~ The OA is accordingly allowed with the following ~~order~~ orders:

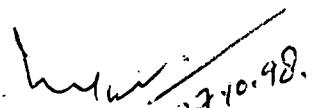
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- (1) The impugned orders at A-1 and A-2 dated 4.1.96 to the extent that they relate to the position of applicant above are hereby quashed and set aside;
- (2) Respondent is directed not to downgrade the seniority of the applicant in any grade retrospectively, and restore his status in selection grade of ISS;
- (3) If the respondent has a case, the applicant shall be put to notice, his defence be considered and decision taken thereon shall be communicated to him by speaking orders alongwith reasons, in accordance with the rules; and
- (4) There shall be no order as to costs.



(S.P. Biswas)
Member (A)



(T.N. Bhat)
Member (J)

/gtv/