

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No.689 of 1996

New Delhi, dated this the 31st March, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri V.N. Nanoo,
S/o Shri V.G. Narayanan,
R/o F-8, Nightingale Apartments,
Vikaspuri,
New Delhi-110018. APPLICANT

(By Advocate: Shri B.B. Raval)

VERSUS

1. Union of India
through the Secretary,
Dept. of Economic Affairs,
Ministry of Finance,
North Block,
New Delhi.
2. The Chairman,
U.P.S.C.,
Dholpur House,
Shahjahan Road,
New Delhi-110011 ... RESPONDENTS

(By Advocate: Shri K.R. Sachdeva)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicant seeks promotion in SAG of
IES (Rs.5900 - 6700) w.e.f. 1.5.92.

2. Being dissatisfied with his non-promotion to SAG in IES w.e.f. 1.5.92, he had earlier filed O.A. No.503/93 which after completion of pleadings and hearing both parties were disposed of by judgment dated 30.11.1994 (Ann. A-3) with the following directions:

" The respondents shall consider the case of promotion of the applicant to SAG level by constituting a Review DPC if so recommended by the DPC he should be given the benefit of SAG level grade

either on one of the upgraded posts or in any of the vacancies existing thereafter. The applicant will be entitled to all consequential benefits of refixation of pay and will also be entitled to the arrears and also revised pensionary benefits according to refixed pay if he has been cleared and recommended by the Review DPC."

3. It is not denied that pursuant to those directions respondents did hold a review DPC chaired by a Member, UPSC in which applicant's case was considered for inclusion in the panel for 1990-91, but the review DPC rated the applicant only "average" and therefore did not recommend him for promotion, which was also accepted by the competent authority.

4. Shri Raval has contended that this assessment of applicant's suitability by the review DPC by verifying his ACRs went against the Tribunal's judgment dated 30.11.94 and against the DP&T's guidelines dated 4.2.92. It is his contention that the review DPC was not required to go into applicant's suitability for promotion to SAG, but only to go into his eligibility, and as it is not in doubt that applicant was eligible for promotion to SAG, respondents could not refuse him the same. Reliance in this connection has been placed on the ruling in K.C.Patnaik Vs. State of Orissa 1988 Labour and Industrial cases page 88.

5. It has been noticed in judgment dated 30.11.1994 (Supra) that consequent to the amendment dated 5.10.1989 in the IES Rules, "all vacancies in SAG shall be filled by promotion...
...Promotion shall be made on the basis of merit with due regard to seniority..... on the recommendation of the DPC presided over by Chairman/Member UPSC."

6. The Tribunal in its judgment dated 30.11.94 (Supra) has also repelled the contention that the 23 posts approved for upgradation to SAG vide Finance Ministry's order dated 19.2.91, against one of which applicant claims promotion, was to be filled by some other mode of promotion and has categorically held that all posts of SAG have to be filled by promotion as above. These rules are statutory in nature, and have the protection of Art. 309 of the Constitution. Applicant's counsel has emphasised that the DPC should have adhered to the guidelines contained in DP&T's O.M. dated 4.2.92, but the Tribunal itself in paragraph 7 of judgment dated 30.11.94 has held that these guidelines cannot supplement the IES Recruitment Rules which were amended by Notification dated 5.10.89 and are statutory in nature.

7. The Tribunal in its judgment dated 30.11.94 directed that the applicant's case for promotion to SAG be reconsidered by a review DPC. The applicant has a legally enforceable right only to be considered for promotion and admittedly this has been done. Applicant has no legally enforceable right to be promoted. Respondents have reconsidered applicant's case in the light of provisions of Rule 8(1)(f) IES Rec. Rules, according to which promotions are to be made on the basis of merit with due regard to seniority. There is nothing in the rules which states that members of SC Community, to which applicant

belongs, are exempted from the operation of these rules. In other words promotion to SAG of IES is to be made by selection and as per DP&T's O.M. dated 10.4.89 for promotion by selection at that level, those being considered have to possess a minimum benchmark of 'good' on the basis of their service record for the relevant period, before they can be promoted. In the instant case a validly constituted DPC has graded applicant only as 'average' and it is well settled that we as a Tribunal cannot sit in judgment and substitute our own assessment for that of the DPC. Under the circumstances we find ourselves unable to interfere in the matter and Patnaik's case (Supra) relied upon by Shri Raval does not help the applicant.

8. The O.A. fails and is dismissed.
No costs.



(DR. A. VEDAVALLI)
Member (J)
/GK/


(S.R. ADIGE)
Member (A)