

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA NO. 1140/97

New Delhi: this the 7<sup>th</sup> day of MARCH, 2001

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

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Shri M.N.Sridhar Rao,  
Indian Postal Service,  
Junior Administrative Grade,  
Department of Posts,  
Ministry of Communications,  
Dak Bhawan,  
New Delhi-1

at present on  
deputation to

Dept. of Youth Affairs &  
Sports,  
Ministry of Human Resource Development,  
Govt. of India .....Applicant.

(In person)

Versus

1. Union of India  
through the Secretary,  
Dept. of Posts,  
Ministry of Communications,  
Dak Bhawan,  
New Delhi-1
2. UPSC  
through  
Chairman of the Commission,  
Dholpur House, Shahjehan Road,  
New Delhi.
3. Shri A.N.Nanda,  
Director Postal Service,  
Ranchi, Bihar.
4. P.K.Bisoi,  
Principal, PTTC,  
Saharanpur (UP)
5. Smt. A.Ghosh,  
Director Postal Service,  
Calcutta.
6. Vineet Pandey,  
Postal Desk,  
TCIL Ltd., Nehru Place,  
New Delhi.
7. V.Pati,  
Deputy Secretary,  
Central Vigilance Commission, Jaisalmer House,  
New Delhi

8. A.P.Singh,  
Deputy Secretary,  
Ministry of Welfare,  
7th Floor, Shastri Bhawan,  
New Delhi-1

(12)

9. Shri Uday Krishna,  
Director Postal Services,  
Allahabad (UP) .... Respondents

(By Advocate: Shri P.H.Ramchandani )

ORDER

S.R. Adige, VC (A):

Applicant impugns:

- i) Respondents' order dated 2.11.95 (Annexure-I) and Notification dated 13.11.95 (Annexure-II) whereby he has been superseded by 4 of his juniors in JAG of Indian Postal Service;
- ii) Alleged non-reporting of actual number of vacancies in JAG for 1994-95 by Respondent No.1;
- iii) Alleged inclusion of Shri A.N.Nanda (1982 batch) at Sl.No.1 of aforesaid order dated 2.11.95 by showing him against a vacancy of 1994-95 which was carried forward and thereby relegating applicant to a vacancy for 1995-96;
- iv) Alleged incorrect computation of vacancies in JAG from 1990-91 onwards leading to applicants' alleged unjustifiable supersession in the DPC held in September, 1995;
- v) alleged non-convening of DPCs in time from December, 1989 onwards;
- vi) Alleged incorrect grading and assessment of applicants for the years 1990-91, 1991-92, and 1993-94.

2. Admittedly applicant appeared in CSE, 1984 and

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(A)

was appointed to JTS of Indian Postal Service in 1985.

He was appointed to STS on 26.8.89. In March, 1990 he was posted as ADG(International Mails) where he worked up to April, 1995 upon which he was appointed on deputation as Deputy Secretary, Ministry of Law, Justice and Company Affairs. In July, 1996 he was appointed as Private Secretary to MOS HRD Ministry.

3. Applicant himself avers vide para 4(xxx) of OA that as per Indian Postal Service Recruitment Rules, he became eligible for promotion to JAG(Rs. 3700-5000) w.e.f. 1.10.94, upon completion of 9 years of service, including 5 years of service in feeder grade of STS. He states further that a DPC met in January/February, 1994 to consider promotion to JAG possibly against vacancies for 1993-94 and 1994-95, and 5 officers of a senior batch i.e. 1983 batch were promoted.

4. He states further that thereafter a DPC met on 6/7.12.94 for considering promotions to certain vacancies in JAG against vacancies pertaining to 1994-95. He states that although he was in the zone of consideration, 3 officers of his batch who were senior to him, were promoted vide order dated 12.12.94 (Annexure-XII) and no officer junior to him was promoted.

5. He states further that a DPC was thereafter held in September, 1995 and based on its recommendations, Respondents issued impugned order dated 2.11.95. In that order, 4 officers junior to him namely Smt.A.Ghosh, S/Shri Vineet Pandey, Vishvapavan Pati and Ashok Pal Singh were shown at Sl.No.3, 4, 5 and 6 respectively, and applicant who was senior to them was shown at Sl.No.8. Applicant also states that in the aforesaid order dated 2.11.95, Shri A.N.Nanda who belongs to 1982 batch was shown at Sl.No.1, while Shri Udai Krishna of 1984 batch

(b)

was shown at Sl.No.7. In between Shri Nanda at Sl.No.1 and the 4 Officers of 1986 batch who are junior to applicant, an officer of 1985 batch (Shri P.K.Bisai) has been shown. Applicant avers that from these placings, it appears that the DPC which met in September, 1995 possibly prepared yearwise panels for promotions against JAG vacancies for 1994-95 and 1995-96 based on which impugned order dated 2.11.95 and impugned notification dated 9.11.95 issued.

6. Applicant contends that Respondents grossly erred in calculation of vacancies for each of these years, which belief is strengthened by the fact that Respondent No.1 held a DPC in December, 1994 for a certain number of vacancies for 1994-95, and within less than one year held another DPC inter alia pertaining to vacancies for the same year 1994-95, not to mention another DPC which had been held earlier in January, 1994. In this connection support has been drawn from CAT Jabalpur Bench order dated 24.1.94 in OA No.450/93 P.K.Tripathi Vs. UOI wherein the Tribunal had noted the incorrect computation of vacancies for the year 1990-91 leading to non-preparation of the panel for that year, resulting in a direction to respondents to recompute the vacancies and thereafter hold review DPC for 1990-91. It is pointed out that non-reporting of at least 3 vacancies for 1990-91 had been accepted by Respondent No.1 vide order dated 11.1.96(Annexure-XII) and a review DPC for 1990-91 after recomputing the vacancies in the light of the CAT Jabalpur Bench order dated 24.1.94 was accordingly held in February, 1995 and revised panel issued.

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7. Applicant avers that if these 3 vacancies, and certain other vacancies had been reported to the DPC in December, 1994, he would have been included for promotion in the order dated 13.12.94 (Annexure-XII) itself. By this erroneous action atleast 2 vacancies were carried forward into the year 1994-95 and were considered by the DPC meeting in September, 1995, where Shri A.K.Nanda, who was found unfit by the December, 1994 DPC made it against the vacancy of 1994-95 and thereby relegating applicant for consideration against the 1995-96 vacancies, as a result of which he was superseded by 4 officers of a junior batch.

8. Applicant also avers that Shri A.K.Nanda (1982 batch) who was considered by the December, 1994 DPC for promotion to JAG for vacancies pertaining to the year 1994-95, was not found fit for promotion on the basis of his CRs for the relevant 5 year period i.e. CRs for the year 1989-90; 1990-91; 1991-92; 1992-93; and 1993-94. It is contended that the September, 1995 DPC was also required to take the same set of ACRs for consideration, and as the December, 1994 DPC had found him unfit for promotion, the September, 1995 DPC erred in finding him fit for promotion. In this connection, it is asserted that even if Shri A.K.Nanda was included against the vacancies pertaining to the year 1994-95 by the DPC which met in September, 1995 on the basis of the same set of ACRs considered by the December, 1994 DPC, the September, 1995 DPC does not appear to have objectively assessed the suitability of Shri A.K.Nanda vis-a-vis applicant for promotion, whose record of service was marked superior to that of Shri Nanda.

(X)

9. It is also contended that as a result of the January/February, 1994 DPC, 5 officers of 1983 batch were promoted to JAG, out of whom as many as 3 were on deputation to Army Postal Service and were given proforma promotion by order dated 19.6.95 (Annexure-XIV), after a lapse of 1½ years, and after more officers were promoted to JAG w.e.f. 13.12.94 (Annexure-XII), which tends to cast doubts on the accuracy of the yearwise panels prepared by respondents.

10. It is further contended that in the order dated 13.12.94, as many as 9 officers on deputation were promoted, of whom atleast 6 were on deputation to APS. It is asserted that the posting on promotion of 4 of these 6 officers to APS was not shown, because the DPC was not aware whether these 4 officers would return to the deptt. on promotion or not because respondents had failed to obtained their options before the DPC met in December, 1994. It is averred that in respect of 2 such officers, the option to revert back from deputation was obtained by Respondent No.1 after the December, 1994 DPC which resulted in wrong preparation of the extended panel.

11. Applicant also asserts that the following irregularities were committed in respect of his ACRs for the relevant period:

i) In respect of ACRs for the year 1989-90; i.e. 1.4.89 to 19.12.90, the original CRs were misplaced by respondents, as a result of which the duplicate CRs; for the period were not reviewed, as the reviewing Officer had in the mean time passed away. Hence CRs for 1989-90 were incomplete for no fault of applicant.

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(b)

ii) For the year 1990-91 the entries were not made by the DDG (IR) who was the reporting officer, but were made by some other officer who acted as Reporting Officer (Annexure-X). The ACRs for 1990-91 also did not reflect his performance in the training course he had undergone during that period.

iii) The CRs for the year 1991-92 were not reviewed by any reviewing officer, though were existed for the period under report.

iv) The gradings for the year 1993-94 given to applicant were not one of the 5 gradings prescribe under the instructions. If the grading given by the reviewing officer was not one of the prescribed ones, the grading of the Reporting Officer should stand, and if the gradings of the reviewing officer amounted to a downgradation from the previous year, this would amount to violation of the principle of natural justice, as no downgrading had ever been communicated to applicant.

12. Applicant asserts that he submitted a representation to respondents on 24.4.96 (Annexure-XV) and on receiving no reply, was compelled to file this OA.

13. Respondents in their reply challenge the OA. Besides taking the plead of limitation and non-joinder of necessary parties, Respondents contend that applicant was duly promoted to JAG by impugned order dated 2.11.95 and the serial order in which his name appears was as

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per his position in the select list prepared by DPC convened by UPSC after assessment of the service records of the officers considered by the DPC. Respondents deny that there has been non-reporting of actual vacancies for the year 1994-95. It is asserted that Shri A.N.Nanda was senior to applicant in the feeder cadre also, and there is no substance in the contention that Shri Nanda has been incorrectly shown against SL.No.1 of the order. Respondents also deny that applicant's grading for 1990-91; 1991-92 and 1993-94 is incorrect as alleged by him. In short respondents contend that the OA warrants no interference and is fit to be dismissed.

14. Applicant has filed rejoinder in which he has broadly contested respondents' assertions and reiterated his own.

15. We have heard applicant who argued his case in person and Shri Ramchandani for respondents.

16. As per applicant's own averments, he became eligible for promotion to JAG(Rs.3700-5000) only w.e.f. 1.10.94 upon completion of 9 years of service. If, as he states, a DPC met in January/February, 1994 pursuant to which 5 officers of a batch senior to him, i.e. 1983 batch were promoted, applicant cannot have any legitimate grievance. Thereafter a DPC met on 6/7.12.94, in which although he came within the zone of consideration 3 officers of his batch who were senior to him were promoted vide order dated 12.12.94, and no officer junior to him was promoted. Here again, as none junior to applicant was promoted to JAG, he can have no legitimate grievance.

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17. We then come to the DPC of September, 1995, based upon whose recommendations, respondents issued impugned order dated 2.11.95. Sl. No.1 in that order is Shri A.N.Nanda, an officer of the 1982 batch, that is 3 batches senior to applicant. Respondents have stated in their reply that in the earlier DPC held in December, 1994 for vacancies for the year 1994-95 Shri Nanda was at Sl. No.3 of the list of officers considered, but he was not selected because he did not get the Bench mark of 'Very Good'. In this connection, respondents further point out that one of the ACRs of Shri A.N.Nanda viz. that of 1993-94 which was relevant to the DPC of December, 1994 as well as of September, 1995 was not reviewed by the competent authority at the time the DPC met in December, 1994, but was duly reviewed by the competent authority by the time the next DPC met in September, 1995, and on that basis he secured the overall bench mark of 'very good'. These specific assertions of respondents in their reply have not been controverted by applicant in the corresponding paras of his rejoinder. Even otherwise Shri Nanda is three batches senior to applicant, and if by the same impugned promotion order dated 2.11.95 promoting Shri Nanda as well as applicant to JAG, Shri Nanda is shown as senior to applicant, he cannot have a legitimate grievance.

18. Sl. No.2 in the impugned order dated 2.11.95 is another officer of 1985 batch namely Shri P.K.Bisoi. In the OA applicant has not voiced any specific grievance in regard to Shri Bisoi's position at Sl. No.2, while the person at Sl. No.7 immediately above applicant is Shri Udai Krishna who is also of a batch senior to that of applicant namely the 1984 batch.

19. In between Shri P.K.Bisoi at Sl. No.2 and Shri Udai Krishna at Sl. No.7 are Sl. No.3 Smt.A.Ghosh;

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Sl.No.4 Shri V.Pandey; Sl.No.5 Shri V.Pati and Sl.No.6 Shri Ashok Pal Singh, all of whom are junior to applicant and have superseded him.

20. We then have to address ourselves to the question whether applicant's supercession was justified. In this connection he has alleged certain infirmities in the recording /maintenance of his ACRs for the relevant period. These are

i) Applicant's CRs for the period 1.4.89 to 19.12.89 were not reviewed, and thus he was deprived of the benefit of the remarks of the reviewing authority for this period, for no fault of his own. Respondents have contended that the ACRs for the period 20.12.89 to 23.3.90 contained the remarks of the reviewing officer who was incidentally the reporting officer for the earlier period, and had accordingly observed the work and conduct of the applicant for a sufficient period to act as a reviewing authority, but the fact still remains that applicant was denied the benefit of the remarks of the reviewing authority for the period 1.4.89 to 19.12.89.

ii) Applicant has specifically averred in para 4(xxvi) (b) of the OA that for the year 1990-91, the entry in his ACR was not made by DIG(IR) who was the prescribed Reporting Officer in terms of para 1(vi) of respondents' Office order dated 31.10.90 (Annexure-X) but instead some other officer acted as reporting officer. In reply the respondents state "the fact remains that it

(22)

was written by the officer who was also made to supervise the work of the applicant and has been reviewed by DDG(IR) who has agreed with the views of the reporting officer". As per aforesaid order dated 31.10.90, the reporting officer in the case of applicant for 1990-91 was the DDG(IR); the reviewing officer was the Member (D) and the accepting officer was Secretary (P). Respondents' aforesaid reply reveals that the instructions contained in para 1 (vi) of order dated 31.10.90 were not adhered to.

iii) Similarly in respect of the ACRs for 1993-94 applicant's contention that the grading given by the reviewing officer was not in accordance with the prescribed instructions, and he downgraded applicant's remarks for that year, as compared to the remarks given by the reporting officer, without putting applicant to notice, has not been specifically denied by respondents who in their reply only state that there are no instructions to communicate anything other than adverse remarks. While these assertions might well be true, cases cannot be ruled out where downgrading is reflected by comparison, as pointed out by the Hon'ble Supreme Court in U.P. Jal Nigam & Ors. Vs. Prabhat Chandra Jain & Ors. (1996) 33 ATC 217.

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21. In this connection, it is important to note that applicant in his detailed representation dated 24.4.96 (Annexure-XV) had inter alia highlighted the aforementioned infirmities in the recording/maintenance of his ACRs for the relevant period and in para 9.2 of the aforementioned representation had specifically prayed for atleast his placement in the appropriate position in the panel of promoted officers prepared by the DPC held in September, 1995 i.e. in the impugned order dated 2.11.95.

22. As mentioned above, it is because he did not receive any reply to the aforesaid representation dated 24.4.96 that he was compelled to file this OA.

23. In the result we call upon respondents to examine as to what extent the infirmities in the recording/maintenance of applicant's ACRs for the relevant period, as noticed in para 20 above, was responsible for applicant's supercession by four officers of his own batch in promotion to JAG by impugned order dated 2.11.95, and if upon such examination, respondents conclude that applicant indeed ought not to have been superceded by four officers of his own batch, they should take necessary steps to convene a review DPC in accordance with law. However, it must be ensured by the respondents that any person who is likely to be affected adversely by the outcome of the said Review DPC is given a reasonable opportunity of making a representation against the proposed action and that such representation, if any, is considered on its merits and disposed of under intimation to the

(24)

person concerned before a final order regarding refixation of seniority is passed.

24. The OA is disposed of in terms of para 23 above.  
No costs.

A Vedavalli  
( DR.A.VEDAVALLI )  
MEMBER (J)

S.R.Adige  
( S.R. ADIGE )  
VICE CHAIRMAN (A).

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