

(290)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1328/97

T.A.No.

Date of decision 08-10-98

Smt.S.A.Tirmizi and Ors

... Petitioner

Shri G.U. Gupta

... Advocate for the
Petitioner(s)

VERSUS

UDI & Ors

... Respondents

Sh.K.C.D. Gangwani for R-1&3 ... Advocate for the Respondents
Mrs.B.Rana for R-2

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member(J)

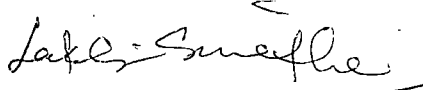
The Hon'ble Shri K.M. thukumar, Member(A)

1. To be referred to the Reporter or
not?.

Yes

2. Whether it needs to be circulated to
other Benches of the Tribunal?

No.


(Smt.Lakshmi Swaminathan)
Member(J)

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Central Administrative Tribunal
Principal Bench

O.A. 1328/97

New Delhi this 8 th day of October, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Hon'ble Shri K. Muthukumar, Member(A).

1. Smt. S.A. Tirmizi,
W/o Shri S.A.A. Tirmizi,
R/o A-8, M.S. Flats,
Pandara Park,
New Delhi.

2. Shri S.R. Kapoor,
S/o Shri R.N.S. Kapoor,
R/o V/14, P&T Complex,
Satellite Road,
Ahmedabad.

...Applicants.

By Advocate Shri G.D. Gupta.

Versus

1. Union of India through
the Secretary,
Ministry of Communications,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi.

2. Union Public Service Commission through
its Chairman,
Dholpur House,
Shahjehan Road,
New Delhi.

3. Member (Finance),
Telecom Commission,
Department of Telecommunications,
Sanchar Bhawan,
New Delhi.

4. Shri D.R. Nongrum,
presently working as
General Manager (Finance),
Calcutta Telephones,
Calcutta.

... Respondents.

By Advocates Shri K.C.D. Gangwani for Respondents 1 and 3,
Mrs. B. Rana for Respondent 2.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants have challenged the action of the official respondents in promoting their junior Shri D.R. Nongrum, Respondent 4, in the Senior Administrative Grade (SAG) w.e.f. 4.8.1992 whereas they have been promoted in the same grade w.e.f. 26.9.1995.

2. The two applicants were initially appointed in Junior Time Scale (JTS) of P&T Accounts and Finance Service (hereinafter referred to as 'the Service'), Group 'A' on 26.3.1976 and 3.1.1976 respectively on the basis of their selection in the Civil Service Examination (CSE) of 1974. They were confirmed on 12.10.1979 and 3.1.1978 respectively. They were later on promoted in STS on 26.3.1981 and further promoted to Junior Administrative Grade on 1.2.1985 and selection grade of JAG on 1.7.1989. They were later on promoted to SAG from 26.9. 1995 which, according to them, was against the vacancies of 1993. They have submitted that under the Indian Posts and Telegraphs Accounts and Finance Service (Group 'A' posts), Recruitment Rules, 1972 as amended from time to time (hereinafter referred to as 'the Rules'); appointment to the ¹³~~SAG~~ of the Service was by selection on merit from amongst the officers with 8 years regular service in the JAG or 17 years regular service in Group 'A', out of which at least 4 years service should be in the JAG. The applicants submit that Respondent 4 who belongs to the same 1975 batch of the Service, was the junior most officer of that batch as per the seniority decided by Respondent 2 i.e. UPSC. They have submitted that while Respondent 4 was asked to report for duty and he

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joined the service earlier in July, 1975, Applicant 1 was given appointment to JTS only on 10.3.1976 and joined on 26.3.1976, and Applicant 2 was given appointment order on 16.12.1975 and joined service on 3.1.1976. When the DPC for promotion was held in July, 1992 for promotion of Shri Saxena, although Respondent No. 4 had completed 17 years of service under the Rules, he was also not considered. However, a review DPC was held and it was pointed out by the UPSC to include Shri D.R. Nongrum- Respondent 4 and he was given promotion to the post of SAG w.e.f. 4.8.1992 by O.M. dated 7.3.1995. The grievance of the applicants is that they were promoted to SAG by O.M. dated 3.11.1995 although they stood senior to Shri Nongrum, who was promoted w.e.f. 4.8.1992. The learned counsel for the applicants has submitted that since Respondent 4 had always been junior to the applicants, when he was considered for promotion, under DOP&T O.M. dated 19.7.1989 they should also have been considered for promotion. In the circumstances, the applicants have claimed that they should also be considered and promoted from the same date Respondent 4 Shri Nongrum was considered and promoted to SAG level.

3. Respondent 1 i.e. the Ministry of Communications, Department of Telecom, has submitted that they had sent a proposal to convene a meeting of the DPC for consideration of officers for promotion to SAG, to the UPSC on 5.11.1991. At that time only Shri S.D. Saxena, who was the seniormost JAG officer, was eligible. The DPC was held only on 31.7.1992 when Respondent 4 and another person, Ms. Hem Lata Pant had also fulfilled the prescribed service condition of 17 years of service on 30.7.1992 and 16.7.1992 respectively. According to them, the applicants and one

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Shri O.P. Veer did not fulfil the eligibility conditions prescribed in the recruitment rules and were, therefore, not considered for promotion. The DPC recommended the name of Shri S.D. Saxena and he was appointed to SAG w.e.f. 4.8.1992. The Ministry sent another proposal to the UPSC on 18.12.1992 for holding a meeting of the DPC to assess the suitability of the two applicants, Shri O.P. Veer, Respondent 4 and Ms. Hem Lata Pant, who had all completed 17 years service in Group 'A'. They have stated that Respondent 2 - UPSC in their letter dated 3.6.1993 informed them that when the DPC was held on 31.7.1992 for promotion, there were 5 vacancies in SAG which had been carried forward to the year 1992-93. The UPSC has noted that there are now 7 vacancies at SAG level and they have also observed that 5 officers, including the two applicants were eligible for promotion to SAG when the DPC met on 31.7.1992. In the circumstances, they had asked Respondent 1 to clarify the position. By another letter dated 20.4.1993, the UPSC further informed the Ministry to take relaxation in the matter of service conditions in respect of the applicants and Shri O.P. Veer, if not already done. Accordingly, Respondent 1 has submitted that they obtained the approval of DOP&T to relax the eligibility service conditions in favour of the applicants and to consider their names along with Shri S.D. Saxena for promotion which they conveyed to the UPSC on 11.5.1993. They had also explained by their letter dated 2.9.1993 that at the time of convening the DPC they had not forwarded the name of Respondent 4 as he had not fulfilled the conditions at that time. They have also clearly stated that they have now sought and obtained, as advised by the UPSC, relaxation of the eligibility conditions from the competent authority which was conveyed

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to them on 11.5.1993. Thereafter, the UPSC again advised the Ministry to send the proposal for a review DPC and thereafter a new proposal was made in their letter dated 6.10.1993. Finally by their letter dated 5.11.1993 the Ministry requested UPSC to convene a review DPC and assess the suitability of the applicants, Shri O.P. Veer, Respondent 4 and Smt. Hem Lata Pant for promotion to SAG, against the 5 vacancies existing at the time DPC was held in 1992. Thereafter, they have stated that the UPSC informed them by letter dated 3.12.1993 that they have decided not to consider the applicants and the other persons in the review DPC, as the Department had proposed the relaxation of the rules in their cases, after the date of regular DPC held in July, 1992 and as per their policy they were not inclined to *agree for* relax^{ation} with retrospective effect. The Ministry has also submitted that on this, DOP&T had opined that the stand taken by the UPSC to consider only the eligible officers, ignoring the claims of seniors, is not in keeping with the provisions of their instructions contained in the O.M. dated 19.7.1989 and they have also added that there are numerous instances where such relaxation has been granted. Accordingly, the UPSC was again requested to review their stand but the UPSC vide their letter dated 31.8.1994 did not accept the recommendations and decided to consider the names of Shri D.R. Nongrum and Smt. Hem Lata Pant only. The review DPC was held on 23.1.1995 to review the recommendations of the DPC which met on 31.7.1992. Respondent 4 was found fit for promotion to SAG on regular basis with effect from 4.8.1992 and the applicants were dropped from consideration as being not qualified.

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4. Respondent 2 in their reply have stated that the application is based on wrong perceptions, misunderstanding and ignorance on the part of the applicants in respect of the provisions of the Rules and various instructions of DOP&T in regard to convening DPCs for promotion to higher grades. They have submitted that their actions are within the provisions of the Rules and the applicants' allegations to the contrary are unsustainable. We have also heard Smt. B. Rana extensively on their contentions. According to the UPSC when it came to their notice that apart from Shri S.D. Saxena there were also officers, like Respondent 4, who were eligible as they had completed 17 years service in Group 'A' post including JAG, therefore, they had suggested to Respondent 1 to review their recommendations of the DPC held on 31.7.1992. They have also referred to the facts mentioned above by the Ministry regarding obtaining their advice for relaxation of the Rules in respect of the other three officers who were senior to Respondent 4. They have submitted that the UPSC does not normally agree to relaxation of the provisions of the statutory Recruitment Rules retrospectively, as the same may affect the interests of other officers. Therefore, they have submitted that they did not agree to the relaxation in favour of the applicants when the review DPC was held on 23.1.1995 to review the recommendations of the DPC held on 31.7.1992 and recommendations for appointment to SAG were made against the vacancies of 1992-1993.

5. The applicants have filed their rejoinder to the replies filed by Respondents 1 and 2 and we have also heard Shri G.D. Gupta, learned counsel at length. Learned counsel, has very forcefully argued that the totality of the

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facts and circumstances have to be kept in view while dealing with the question of relaxation which was agreed to by the DOP&T in favour of the applicants. He has stated that the applicants being direct recruits and even though they joined later were placed senior to Shri Nongrum in the seniority list in the feeder cadre. He has laid great emphasis on the fact that the UPSC had itself asked the Ministry to obtain necessary relaxation in all such cases which was also obtained by them and conveyed to UPSC on 11.5.1993. Therefore, in the circumstances, he submits that it is not understandable how the UPSC has gone back on its own earlier stand without any rhyme or reason.

6. We have considered the pleadings and submissions made by the learned counsel for the parties as also the relevant records submitted by Respondent 1. Under the recruitment rules for selection for SAG, the eligibility condition prescribed is 8 years regular service in the JAG or 17 years regular service in Group 'A' post, out of which at least 4 years regular service should be in the JAG. For the DPC held on 31.7.1992, the official respondents have stated that there were 5 vacancies pertaining to the year 1992-93. The cut off date for eligibility of this DPC was 1.10.1992 for consideration of all eligible officers. Initially, Respondent 1 i.e. the Ministry had recommended only the name of Shri S.D. Saxena who was in the JAG and had completed 8 years service for consideration for promotion to SAG. He was promoted vide UPSC advice letter dated 31.7.1992. Subsequently, a review DPC was held on 23.1.1995 where two other persons, including Respondent 4, had been considered as they have completed 17 years regular service in Group 'A', including 4 years regular service in

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JAG. From the facts mentioned by Respondent 1 referred to above, it is seen that before holding the review DPC for the additional two persons, on the advice of the UPSC, they had taken necessary steps to obtain relaxation in respect of the two applicants and Shri O.P. Veer. The approval of DOP&T for relaxation in respect of these three persons had been obtained on 11.5.1993 and the position was duly conveyed to the UPSC. Admittedly, the review DPC was held on 23.1.1995 to review the recommendations of the DPC which had earlier met on 31.7.1992. As a result of the review DPC which found Respondent 4 fit for promotion, he was given promotion to SAG w.e.f. 4.8.1992, whereas the applicants have been promoted only w.e.f. 26.9.1995.

7. Respondent 1 has contended that the applicants cannot take the benefit of the DOP&T O.M. dated 19.7.1989 which is only the guidelines to justify insertion of a Note in the recruitment rules for various posts to the effect that when juniors have completed the eligibility period and are considered for promotion, their seniors should also be considered, irrespective of whether they have completed the requisite service. While their contention that since this Note has not been included in the Recruitment Rules the applicants cannot rely on these provisions may be so, as per their own averments in the reply, the facts and circumstances of the case cannot be ignored. On receipt of advice from the UPSC they took necessary steps to relax the eligibility service conditions in favour of the applicants and Shri O.P. Veer, the latter not being a party to this case, to consider their names along with Shri S.D. Saxena as far as back as 1993. This approval had also been conveyed to the UPSC. Admittedly,

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the applicants who were senior in merit in the feeder category to Respondent 4, by fortuitous circumstances had joined the service later ^{is} than him.

8. It is also relevant to note that Respondent 4 is stated to have completed 17 years service in Group 'A' on 30.7.1992. Shri S.D. Saxena belonged to the earlier batch of ^{is} 1974 and had joined service in January, 1975 whereas the applicants and Respondent 4 belong to the 1975 batch. From the seniority list of JTS dated 4.4.1983, (placed at pages 73, 74), it is seen that the applicants joined as JTS on 26.3.1976 and 3.1.1976 respectively, whereas Respondent 4 joined on 30.7.1975. So Shri Nongrum completed 17 years of service under the failing which clause in the recruitment rules one day prior to the DPC which was held on 31.7.1992, for which a review DPC was held on 23.1.1995 and he was promoted w.e.f. 4.8.1992. In the seniority list of JTS, even though the applicants have joined later than Respondent 4, they have been shown senior in accordance with the relevant rules and instructions. In the seniority list of Junior Administrative Grade dated 4.7.1995, the applicants have been shown senior to Respondent 4. Therefore, in the facts and circumstances it is seen that Respondent 1 has taken a conscious decision to exercise the powers of relaxation under the Rules regarding the applicants which was taken well before the review DPC was held on 23.1.1995 by the UPSC. From the documents on record, Respondent 2/UPSC has not explained satisfactorily why they went back on their earlier stand advising the Ministry to obtain relaxation in respect of the applicants and Shri O.P. Veer. The relevant portion of the letter dated 12.5.1994 from Respondent 1 to Respondent 2 reads as follows:

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"I am also directed to intimate that the view point of the Commission communicated to us vide their letter No. F.1/34(13)/921-AU.7 dated 3.12.93, that the relaxation of service conditions obtained in respect of Smt. S.A. Tirmizi, S/Sh. S.R. Kapoor and O.P. Veer was not acceptable to the Commission, has been examined in consultation with the Department of Personnel and Training (Establishment Division) who have opined that the relaxation granted by them is consistent with a well established policy which has been operative for a number of years. They have further stated that the argument of the Commission that the relaxation cannot be granted "retrospectively" is not tenable as the need for such relaxation has arisen only now when the Commission have suggested a review DPC. They have also highlighted that the Commission have themselves advised obtaining such relaxation from DOP&T in the past and have held many DPCs based on such relaxations".

9. The Department of Personnel and Training in their O.M. dated 19.7.1989 had reminded all Ministries/Departments of their earlier O.M. dated 18.3.1988. By this O.M. they had been requested to take necessary action urgently to amend the recruitment rules whenever necessary, by inserting a note for various posts to the effect that when juniors who have completed the eligibility period are considered for promotion, their

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seniors would also be considered irrespective of whether they have completed the requisite service, provided they have completed the probation period. It is stated that this should be done to ensure that seniors who might have joined later due to various reasons are not overlooked for promotion. However, in the present case, Respondents 1 and 3 have not amended the relevant Recruitment Rules as suggested by DOP&T, but the Rules do have a provision for relaxation. In the circumstances of the case, we cannot ignore the other actions taken by the respondents for relaxation of the Rules in favour of the applicants in dealing with the issues raised here. Nothing has been placed on record to show that the policy of the relaxation has not been followed in other similar cases so as to deprive the applicants the benefit of being considered in the review DPC held on 23.1.1995 following the earlier DPC held on 31.7.1992 along with Respondent 4. In the result, this application is entitled to succeed.

10. For the reasons given above, we find merit in the application and the O.A. is accordingly allowed. The applicants will be entitled for consideration for promotion to the post of SAG along with their junior Shri Nongrun - Respondent 4, by the ^{same} review DPC. The respondents shall take necessary action within one month from the date of receipt of a copy of this order. They shall also be entitled to consequential benefits in accordance with law and rules. No order as to costs.

(K. Muthukumar)
Member(A)

(Smt. Lakshmi Swaminathan)
Member(J)

"SRD"