

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(15)

O.A. No. 145197

199 92

T.A. No. 272197

428192

DATE OF DECISION

31/07/97

Shri S. P. Vashistha

Petitioner

Shri Jaswinder Kaur

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri KBS Rayen

Advocate for the Respondent(s)

Shri R.P. Aggarwal

CORAM

The Hon'ble Mr. Dr. Jose P. Verghese, Vice Chairman (T)

The Hon'ble Mr. Shri S.P. Biswas, MCA

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

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

(Dr. Jose P. Verghese)
VC (T)

Central Administrative Tribunal
Principal Bench: New Delhi

(6)

OA No. 145/97
OA No. 272/97
OA No. 428/97

New Delhi, this the 3rd day of October, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)
Hon'ble Shri S.P.Biswas, Member (A)

OA No. 145/97

Shri S.P.Vashistha,
s/o Late Sh. G.N. Vashishtha,
Joint Director (Legal),
Department of Company Affairs,
5, 'A' Wing, Shastri Bhavan,
Dr. Rajendra Prasad Road,
New Delhi. ...Applicant

(By Advocate: Ms Jasvinder Kaur)

versus

Union of India through:

1. Secretary,
Department of Company Affairs,
'A' Wing, 5th Floor,
Shastri Bhavan, Dr. R.P.Marg,
New Delhi.
2. U.P. S.C. through
The Chairman,
UPSC House, Shahajahan Road,
New Delhi.
3. Shri Chakradhar Paik,
Joint Director (Legal),
c/o Regional Director,
CGO Complex, A.J.C.B. Road,
Calcutta.
4. Shri Samir Biswas,
R.O.C. Delhi,
Parivarayan Bhawan,
CGO Complex, Lodhi Road
Industrial Area,
New Delhi. ...Respondents

(By Advocates: Sh. K.B.S.Rajan and
Shri R.P. Aggarwal)

OA No. 272/97

Shri S.P.Vashistha,
s/o Late Sh. G.N. Vashishtha,
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Union of India through:

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Department of Company Affairs,
'A' Wing, 5th Floor,
Shastri Bhavan, Dr. R.P.Marg,
New Delhi.

2. U.P. S.C. through

The Chairman,
UPSC House, Shahajahan Road,
New Delhi.

.. Respondents

(By Advocates: Sh. K.B.S.Rajan and
Shri R.P. Aggarwal)

OA No. 428/97

Sh. Mohan Lal Sharma
s/o Shri S.L. Sharma,
R/o A-112, Pratap Nagar,
Patparganj, Delhi.

....Applicant

(By Advocate: Ms Jasvinder Kaur)

versus

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... Respondents

(By Advocates: Sh. K.B.S.Rajan and
Shri R.P. Aggarwal)

O R D E R

[Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)]

The petitioner in OA No. 145/97, Sh. S.P. Vashishtha, is challenging the orders of upgradation of Grade-II to Grade-I of Central Service Law Services (for short CCSL) passed on 12.7.1990 and the same is to be operative with effect from 1.1.1986. The petitioner

therein also aggrieved by the seniority list issued on 2.12.1996. The petitioner in OA No. 272/97 is the same and in this OA he is seeking a restraint order against the respondents that the respondents shall not act upon the recruitment rules retrospectively while filling up the post in Senior Administrative Grade (for short SAG). Petitioner In OA No. 428/97 - Shri M.L. Sharma, is seeking to set aside the proceedings of the DPC held for promotion to the SAG held on 6.2.1997. The petitioner therein also seeking to set aside the seniority list of 15.11.1996 and issuance of seniority list in accordance with the merger order dated 12.7.1990.

2. The admitted case of the parties is that the respondents had by an order dated 12.7.1990 directed merger of Grade-II in the scale of Rs. 3000-5000/- in CCLS with post of Grade-I which carries pay scale of Rs. 3700-5000/-. The said order also had down-graded eleven posts of Grade-I to Grade-III w.e.f. 1.1.1990. These merger and down-gradation are said to have been necessitated due to a review of the structure of CCLS posts in various offices. Thus, by the said order the President had re-classified the existing 167 CCLS posts as per the annexure given to the said order in supersession of all the previous orders and these orders are to become effective from 1st Aug., 1990 except the merger of grade-II to grade-I which will be effective from 1.1.1986. The said order dated 12.7.1990 is reproduced herebelow:-

"The merger of Grade-II of Central Company Law Services with Grade-I w.e.f. 1.1.1986, the subsequent downgradation of 11 posts from Grade-I to Grade-III w.e.f. 1.1.1990 and the encadrement of a few posts of Company Law Board in CCLS (in terms of orders mentioned on the margin) have necessitated review of the

structure of CCLS posts in various offices. Consequent on such a review, the President is pleased to order the redep- brought of the existing 167 CCLS posts as in Annexures I to VI therein. The sanctioned strength as detailed in the said Annexures shall be in supersession of all previous orders in that regard. This shall come into effect from 1st August, 1990.

Consequently the Region-wise distribution of the CCLS posts shall be as under:-

Sl.No.	Region/ Office	Super- time	Grade-I 3700-5000	Grade-III 3000-4500	Grade-IV 2200-4000	Total
1.	Dept. of Company Affairs Proper Hqrs New Delhi.	2	6	2	-	10
2.	Northern Region.	1	8	6	15	30
3.	Eastern Region	1	5	14	24	44
4.	Southern Region	1	7	8	14	30
5.	Western Region	1	7	17	20	45
6.	Company Law Board	-	1	-	7	8
	Total	6	34	47	80	167

3. Thereafter the respondents had conducted the first ever cadre review of CCLS and in addition to 167 total CCLS posts, created 27 additional posts to the service by an order dated 25.8.1994 which necessitated the cadre review, and by a presidential order dated 1.9.1994, re-distribution of both 167 existing posts as well as the additional 25 CCLS posts (Total 192 posts) have been done as given in the order dated 1.9.1994. The said order is re-produced hereinbelow:-

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"The first-ever Cadre Review of the Central Company Law Service and consequent creation of 25 additional posts in this service (Vide this Department's letter No. A-12011/10/94-Admn.II dated 25.08.1994) have necessitated review of the structure of CCLS posts in various grades. Consequent of such a review and in supersession of all previous orders in this regard, the President is pleased to order the re-distribution of the existing 167 and the additional 25 CCLS posts (total 192) posts amongst various grades as under:-

Grade & Scale	Existing Cadre Structure		Proposed Cadre Changes Structure (+ or -)			
	A/C	Legal Total	A/C	Legal Total		
a. Senior Administrative Grade 5900-6700	-	-	-	-	6	6
b. Functional Selection Grade 4500-5700	-	6	-	-	-	6(-)
c. Junior Administrative Grade 3700-5000	22	12	34	25	13	38* 4(+)
d. Senior Time Scale 3000-4500	35	12	47	41	19	60 13(+)
e. Junior Time Scale 2200-4000	41	39	80	49	39	88 8(+) (Including 15 reserves)
Total:			167		192	25(+)

* Includes 15 posts in the non-functional selection grade (Rs. 4500-5700): 10 posts shall be allocated to Accounts Branch and 5 posts to the Legal Branch."

4. It is to be seen that consequent to abolition of Grade-II, the CCLS posts of Grade-I has been re-designated as Junior Administrative Grade (for short JAG) and the functional selection grade has been abolished with a result the promotion from JAG would now be made to SAG in the pay scale of Rs. 5900-6700/- This they have achieved by the cadre review and abolishing the six

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available functional selection grades and creating and upgrading them as SAG posts. The erstwhile 15 non-functional selection grade (4500-5700) has been downgraded to the erstwhile Grade-I which is re-designated now as JAG in the scale of Rs. 3700-5000/- . The grade-III and Grade-IV are re-designated as Senior Time Scale (for short STS) and Junior Time Scale(for short JTS) respectively.

5. Consequent upon these two orders the respondents passed appropriate orders effecting re-designation, upgradation etc. and in accordance with the terms of rule 12 of Central Company Law Service Rules, 1965 issued two seniority lists of officers in Grade-I that is to say the officers in the JAG as it stands now re-designated. Under the said rule the seniority lists of officers in Grade-I were to be issued both in the Accounts as well as Legal Branches separately. Accordingly, the provisional seniority list of Grade-I officers in Accounts Branch as on 15.11.1996 was issued indicating 25 total posts as cadre strength. The names of these 25 persons in the seniority list are reproduced herebelow:-

Sl.No.	Name (S/Shri)	Date of birth	Date of appointment to the grade
1.	V.S.Galgali	28.12.1938	10.01.1985
2.	G.Srinivasan	02.09.1939	01.11.1985
3.	S.Jeya	12.02.1939	01.01.1986
4.	Samir Biswas	26.09.1944	01.01.1986
5.	L.M.Gupta	05.07.1946	01.01.1986
6.	V.S.Rao	12.05.1948	01.01.1986
7.	R.K. Arora	04.11.1939	01.01.1986
8.	U.C.Nahata	17.08.1954	01.01.1986
9.	R.Vasudevan	15.03.1951	16.04.1986
10.	B.Anand	20.11.1947	07.06.1994
11.	B.L.Sinha (SC)	01.11.1950	11.10.1989
12.	Rakesh Chandra	29.06.1953	06.10.1994
13.	P.K.Bansal	08.01.1942	31.05.1995
14.	Diwan chand	10.02.1950	Yet to join
15.	B.K.Bansal	17.10.1956	23.01.1996

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16.	S.K.Saha (SC)	21.01.1941	02.06.1995
17.	Dhan Raj (SC)	03.08.1958	Yet to join
18.	B.M.Jain	07.09.1940	21.06.1995
19.	H.S. Sharma	14.08.1942	10.07.1995
20.	DR - vacant		
21.	S.K.Mangal	24.08.1942	02.06.1995
22.	DR - Vacant		
23.	S.S.Luthra	03.01.1946	14.11.1996
24.	DR- vacant		
25	DR - vacant		

6. Similarly, a separate provisional seniority list of Grade-I (Legal Branch of CCLS) was also issued indicating total cadre strength of 12, as on 15.11.1996. The 12 officers in the grade are shown herebelow:

Sl.No.	Name (S/Shri)	Date of birth	Date of appointment to the grade
1.	R.D.Kureel(SC)	01.12.1938	30.07.1984
2.	Chakradhara Paik(ST)	01.07.1945	01.01.1986
3.	S.P.Vashishtha	01.10.1940	17.08.1989
4.	H.Banerjee	21.06.1947	25.07.1990
5.	M.L.Sharma	01.12.1946	07.08.1990
6.	B.L.Meena (ST)	01.07.1943	27.10.1992
7.	Probodh	11.10.1941	03.08.1992
8.	Brij Kishore (SC)	15.09.1940	04.12.1992
9.	Shri Ram (SC)	25.06.1941	08.09.1993
10.	Ujjwal Roy	13.10.1947	15.09.1993
11.	Pooran Chandra (SC)	01.10.1941	17.08.1995
12.	S.Banerjee	14.02.1939	17.08.1995

7. The respondents did not finalise the recruitment rules for the post and the relevant recruitment rules for the post of SAG; the recruitment rules for the said purpose was notified only on 25.4.1997. According to the said recruitment rules, the eligibility condition for promotion to a duty post in SAG with a pay scale of Rs. 5900-6700/- are 8 years approved service in a duty post in JAG in the pay scale of Rs. 3700-5000/- or ten years

approved service in non-functional selection grade in case those officers were recruited from STS which before re-designation was known as Grade-III.

8. Now the question to be resolved in these cases is whether for the purpose of promotion to the post of SAG, the respondents can insist eligibility criteria of eight years approved service which was the requirement in the recruitment rules of 25.4.1997, while the DPC for the post was held on 6.2.1997. It was stated in OA 428/97 that the recruitment rules prior to the new recruitment rules had stipulated the eligibility criteria of five years approved service, for the purpose of consideration for promotion to the post of SAG and the respondents have wrongly applied the criteria of 8 years approved service which came into operation only on 25.4.1997 and the said new recruitment rules with new criteria, in the absence of any express retrospective effect in the rules, should not have been applied to those vacancies that arose prior to issuance of the said recruitment rules. Since the DPC was held on 6.2.1997 and the new recruitment rules had not been notified by that time, the DPC have held for considering available vacancies prior to issuance of the new recruitment rules, the obvious conclusion is that new rules are inapplicable for recruitment to the post of SAG which had become available as vacant prior to issuance of the new recruitment rules. Thus, the claim of the petitioners seems to be legitimate and the respondents are wrongly applying the new rules with the eligibility criteria of eight years approved service and are illegally excluding the petitioners who have five years approved service from considering for the post of SAG. The petitioners have a

right to be considered for the post of SAG as they had five years approved service at the time when the vacancies arose and the requirement of eight years approved service contained in rule that was notified subsequent to the date when the vacancies arose, and a review DPC will have to be held in accordance with the old rules wherein the requirement of eligibility was five years approved service. The respondents shall hold the DPC/review DPC for the post for which the DPC has been held on 6.2.1997, after cancelling the same and hold DPC or review DPC in accordance with old rules and applying principle that the recruitment rules applicable shall be the one which are available at the time when the vacancies arose. The Hon'ble Supreme Court in a number of cases has re-iterated the valuable principle. Even in the latest case of Goyal, this principle has been reiterated.

9. The next issue that comes up for resolution is whether the seniority list issued by the respondents in both the Branches namely Accounts as well as Legal Branch consisting of the officers of JAG/Grade-I is correct or not. It goes without saying that since the respondents had issued the merger order on 12.7.1990, as stated above, the officers who have been working in Grade-II will have to be treated as those working in JAG w.e.f. 1.1.1986. Since the order dated 12.07.1990 had clearly stated that the merger of Grade-II of CCLS with Grade-I shall be effective w.e.f. 1.1.1986. The seniority list will have to be amended as per this order and consider all persons who have been holding Grade-II as on 12.7.1990

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shall be considered to have been holding the post of Grade-I w.e.f. 1.1.1986 or w.e.f. the date they joined the posts subsequently but prior to 12.7.1990.

10. Similarly, since by the order dated 12.7.1990, eleven posts of Grade-I to Grade-III have been down-graded and made effective from 1.1.1990, those persons who have been holding those posts which have been downgraded, shall be treated as those holding the STS w.e.f. 1.1.1990 and the seniority list of those persons shall also be amended or revised accordingly. Since the issue at present is with regard to the seniority of those persons in Grade-I/JAG, the downgradation of eleven posts of Grade-I to Grade-III may not be relevant except for the purpose of excluding those officers from the seniority list of JAG/Grade-I, if found to be otherwise ineligible, since their posts have been downgraded to STC and they are no longer belonging to Grade-I w.e.f. 1.1.1990. Any mistake to this regard, shall also be made good by way of amendment or revision of the seniority list dated 12.11.1986 and the same shall be effected without any further delay.

11. The third important grievance of the petitioners in these OAs is that the promotion to the SAG shall be made only after finalising the seniority list and from the candidates who are holding the JAG/Grade-I in accordance with the old recruitment rules namely with five years approved service. The grievance of the petitioners has some substance. The promotion to the SAG for which the DPC was held on 6.2.1997 shall be held by DPC/review DPC only after finalising the seniority list in accordance with this judgement, and in the lines stated hereinabove. The respondents shall not hold DPC or review DPC for the purpose

of promoting officers to the SAG without finalising the seniority list of JAG/Grade-I in the lines suggested in this order hereinabove.

12. With this, all the three OAs stand partly allowed and the respondents are directed to give full effect to their own orders of merger and cadre review issued on 12.7.1990 and 1.9.1994 and thereafter revise the seniority of the officers belonging to the JAG/Grade-I, with effect from 1.1.1986 or from 1.1.1990 as stated in the face of the order itself and thereafter only proceed to hold the review DPc/DPC for filling the post of SAG.

13. The only other issue that remains to be decided is whether the order of merger dated 12.7.1990 and the order of cadre review dated 1.1.1990 is bad for the reason that it might have reduced chances of promotion of some of the petitioners vis-a-vis those similarly placed as that of the petitioners. Since these orders are issued in the nature of a policy decision and no mala fide or extreme perversity is shown against these orders, we are not inclined to interfere and set aside these orders merely on the ground that the chances of promotions have been adversely affected as far as the petitioners are concerned. We find that the exigencies of service sometimes entails minor infraction of chances of promotion, and the same cannot be a matter for review by this court.

14. Hon'ble Supreme Court in the case of Mohammed Suja Ali vs. UOI (AIR 1974 [SC] 1631) has held that a rule which merely affects chance of promotion cannot be regarded as varying a condition of service.

15. It was also held in the Director of Lift Irrigation Corporation Limited & Ors. vs. Parvat Kiran Mohanty & Ors. (JT 1991 [1] SC 430) that the chance of promotion or reduction is part of his right to be considered for promotion.

"Undoubtedly, in this process the respondent/writ petitioner lost some place in seniority which is consequential to amalgamation. He has not been deprived of his right to be considered for promotion, only his chances of promotion have been receded. It was not the case of the respondent that the action was actuated by mala fide or colourable exercise of power. There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with the relevant rules".

In another decision namely in Union of India & Ors. vs. S.L. Dutta and Another (JT 1990[4] SC 741, the Supreme Court was considering the effect of change of policy regarding promotion of Air Vice-Marshals in the Navigation Stream. Supreme Court was of the opinion that merely a chance of promotion as it has occurred in the present case did not affect a change in their conditions of service. Further in the case of State of Maharashtra and

Another Vs. Chandrakant Anant Kulkarni and Others (1981

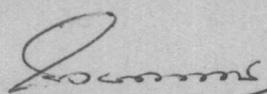
[4] SCC 130), a Bench of three judges of the Supreme Court stated that mere chances of promotion are not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount to change in the conditions of service. A right to be considered for promotion is a term of service; chances of promotion are not.

16. We have also proceeded to consider that the decision of the respondents in this case for merger of the two services is essentially a policy decision even though the same has been issued by Executive orders. The respondents are within their powers to lay down policies and frame Schemes by issue of executive orders. By merely having an effect of those executive orders, to reduce the chances of promotion and since the chances of promotion is not a condition of service, we are of the opinion that no illegality can be attributed to such policy decision, and therefore on that count the said policy decision cannot be quashed. On the other hand, the respondents are perfectly within their competence to change a policy or re-change it or adjust the same or re-adjust it according to the compulsions of circumstances. It has been so held by the Supreme Court in the case of Col. A.S. Sangawan vs. UOI reported in AIR 1981 [SC] 1545. It has been further held in the same case that it is entirely within the reasonable discretion of the Union of India who may stick to the earlier policy or give it up on its discretion. In the case of Parvat Kiran Mohanty, cited above, the Supreme Court has held that the policy decision is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle. No such grounds have been

shown or advanced against the order of merger by the parties in this case. Again in the case of Col. A.S. Sangawan, it was stated by the Supreme Court that the executive power of the Union of India, when it is not trammelled by any statute or rule, is wide and pursuant to its power, it can make executive policy. Indeed, in the strategic and sensitive area of Defence, courts should be cautious, although courts are not powerless. The Union of India having framed a policy has relieved itself of the charge of acting capriciously or arbitrarily or in response to any ulterior considerations so long as it pursued a consistent policy.

17. Thus a policy once formulated is not good for ever. It is perfectly within the competence of the Union of India to change it, re-change it, adjust it and re-adjust it according to the compulsions of the circumstances and the imperative of the national considerations.

18. These OAs, as stated above, partly allowed with no order as to costs.



(S.P. Biswas) .
Member (A)



(Dr. Jose P. Verghese)
Vice Chairman (J)

Naresh