

(35)

Central Administrative Tribunal
Principal Bench

O.A. No. 2357/97

Decided on 30.8.2001

Shri Jawahar Thakur ... Applicant

(By Advocate: Shri M.K.Gupta)

Versus

U.O.I. & Others ... Respondents

(By Advocate: Shri P.H. Ramchandani)

CORAM

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying
benches of the Tribunal or not? NO

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

Central Administrative Tribunal
Principal Bench

O.A. No. 2357 of 1997

New Delhi, dated this 30th AUGUST, 2001

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

Shri Jawahar Thakur,
Jt. Controller General of Accounts,
R/o Qr. No. 1237, Sector 12,
R.K. Puram,
New Delhi-110022.

... Applicant

(By Advocate: Shri M.K. Gupta)

Versus

1. Union Public Service Commission
through the Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110011.
2. Union of India through
the Establishment Officer,
Dept. of Personnel & Training,
North Block, New Delhi-110001.
3. The Controller General of Accounts,
Ministry of Finance,
Dept. of Expenditure,
Lok Nayak Bhawan,
7th Floor, Khan Market,
New Delhi-110003.
4. The Secretary,
Ministry of Finance,
Dept. of Expenditure,
North Block, New Delhi-110001.
5. Shri S.K. Mishra,
Ex-Member, UPSC
6. Shri M.J. Joseph,
Chief Controller of Accounts,
Ministry of Information & Broadcasting,
Tropical Building, H Block,
Connaught Place, New Delhi.
7. Shri S.M. Kumar,
Financial Adviser,
United Insurance Co. Ltd.,
Chennai.
8. Shri P.J. Vincent,
Chief Controller of Accounts,
Ministry of Finance,
North Block, New Delhi. ... Respondents

(By Advocate: Shri P.H. Ramchandani with
Shri Madhav Panikar)

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ORDERS.R. ADIGE, VC (A)

Applicant impugns respondents' Memo dated 29.8.97 (Annexure A-2) and seeks a declaration that action of official respondents in downgrading his seniority relative to private respondents 6 to 8 is illegal and arbitrary. He seeks a direction to restore his seniority in its original place in Indian Civil Accounts Service above respondents 6 to 8.

2. Applicant as well as respondents 6 to 8 are direct recruits of the 1979 batch of ICAS. Applicant's position was above respondents 6 to 8 in that batch. He joined ICAS on 20.7.79 in Junior Time Scale of ICAS and was thereafter promoted to Sr. Time Scale, Junior Administrative Grade (on 1.7.92) and Selection Grade of JAG from time to time.

3. The next promotional level is that of Senior Administrative Grade, for which under Rule 20(1)(v) of the ICAS Rules appointment is to be made by selection on merit from amongst officers who have put in 8 years regular service in JAG (including service if any in non-functional grade of JAG) or 17 years regular service in Group 'A' posts of which atleast four years regular service shall be in JAG.

4. During 1995-96 one vacancy arose in SAG w.e.f. 31.1.96 and respondents admit that applicant was the senior most candidate of JAG but as neither

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he nor any other candidates had the required length of service prescribed in Rule 20(1)(v) ICAS Rules, no promotion was made. During 1996-97, two more vacancies in SAG arose in August-October, 1996 and one vacancy arose in 1.2.97.

5. Respondents sent a proposal to UPSC vide letter dated 6.11.96 for preparing a panel of suitable officers for filling up these vacancies. The UPSC vide its letter dated 6.12.96 conveyed its decision to hold the DPC meeting on 21.1.97 at Chennai. The DPC consisted of S/Shri S.K. Mishra, Member, UPSC as Chairman (Respondent No.5); Shri C. Ramachandran, Secretary, Dept. of Expenditure as Member and Ms. Mira Saxena, Controller General of Accounts as the second Member.

6. The DPC met at Chennai on 2.1.97 as per schedule. Secretary (Expenditure), however, could not participate. The C.R. dossier, integrity certificates, inter se seniority of candidates were reportedly placed before the DPC, which, after assessing the merit of the candidates within the zone of consideration, recommended the panel in the following order:

Shri M.M. Joseph (Respondent No.6)

Shri S.M. Kumar (Respondent No. 7)

Shri P.J. Vincent (Respondent No.8)

Shri Jawahar Thakur (Applicant)

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7. The aforesaid approved panel was forwarded by UPSC to Respondent No.3, and was approved by the Finance Minister on 18.2.97 upon which the panel along with the C.R. dossiers and other related documents were sent to the Establishment Officer, DOPT for obtaining ACC's approval, and upon the E.O. conveying ACC's approval on 21.4.97, the promotion orders were issued.

8. Meanwhile applicant had submitted a representation dated 18.2.97 (Annexure R-1) which after examination have rejected vide Memo dated 29.8.97 giving rise to the present O.A.

9. DOPT's O.M. dated 10.4.89 (Annexure A-3) contains the consolidated instructions on the constitution and functioning of DPCs and related matters. Para 5 of those instructions lays down that each DPC should decide its own method and procedure for objective assessment of suitability of the candidates. Para 6.2.1 states that C.Rs are the basic inputs on the basis of which assessment is to be made by the DPC. The DPC is required to assess the suitability of the officers for promotion on the basis of their service record ^{and int.} ~~in~~ ^{is} particular reference to the C.Rs for the preceding five years, but when the qualifying service ^{is} more than five years, the DPC should see the record with reference to the C.Rs for the years equal to the required qualifying service. Where an officer is officiating in the next higher grade, and has earned C.Rs in that grade his C.Rs in that grade may be considered by the DPC in

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order to assess his work, conduct and performance, but no extra weightage may be given merely on the ground that he has been officiating in the higher grade. The DPC should not be guided merely by the over all grading if any, that may be recorded in the C.Rs; but should make its own assessment on the basis of the C.R. entries. Para 6.3.1 (ii) states that in respect of all posts in the level of Rs.3700-5000 and above [admittedly these SAG posts are in the scale of Rs.5900-6700(pre-revised)], the benchmark is to be Very Good. However, officers who are graded as outstanding would rank en bloc senior to those who are graded as Very Good, and placed in the select panel accordingly, upto the number of vacancies. Officers with the same grading would retain their inter se seniority.

10. We have perused the CRs of applicant as well as that S/Shri Joseph (R-6); Kumar (R-7) and Vincent (R-8). A tabular statement of the grading given to the above mentioned four officers for 8 years commencing 1988-89 and ending 1995-96 (as the DPC was held on 21.1.97, CRs for 1996-97 would not have been available) is given below:

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<u>Applicant</u>	<u>R-6</u>	<u>R-7</u>	<u>R-8</u>
1988-89	0	0	0
1989-90	0	0	0
1990-91	VG	0	0
1991-92	0	0	0
1992-93	0	0	0
1993-94	0	0	0
1994-95	VG	0	VG+
1995-96	VG	0	0

O = Outstanding

VG= Very Good

11. A glance at the aforesaid gradings reveals that the CRs of R-6, 7 and 8 have a clear edge over that of applicant, and ^{going strictly by their gradings} respondents, ^{therefore,} cannot be faulted for placing them above applicant in the select panel.

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12. Applicant has, however, challenged the DPC's conclusions on various grounds.

13. Firstly it is contended that applicant was holding the higher post of Executive Director, while on deputation to Sports Authority of India, during the period 3.11.93 to 31.12.96, and the grading in his CRs for the years 1994-95 and 1995-96 should, therefore, be upgraded from Very Good to Outstanding in terms of the CAT, Hyderabad (Full) Bench's order in S.S. Sambhus Vs. Union of India & Ors. and connected case (1992) 19 ATC 571 which has been approved by the Hon'ble Supreme Court in Prem Shankar Gupta Vs. UOI (quoted in Shiv Kumar Sharma & Anr. Vs. UOI & Ors. 1997 (11) SCC 112) with the following observations:

"We are satisfied that the formula evolved by the Full Bench of CAT is proper and just one having regard to the facts and circumstances of the case and the practicabilities of the situation."

and on the basis of which benefits were extended to appellant Shiv Kumar Sharma and intervenor Shri H.N. Srivastava in Shiv Kumar Sharma Vs. UOI 1997 (11) SCC 112.

14. We have considered the ruling in Sambhus' case (supra) carefully.

15. That was a case where promotions to the post of Assistant Surveyors (Works) had to be made through selection. Certain Surveyor Assistants Grade I were officiating in Class I promotional posts of ASWs on adhoc basis, while their juniors continued to hold the post

of SA Grade I. For the purpose of regular selection against the vacancies of ASW for relevant years, the performance of Sambhus and others as adhoc ASW, was sought to be compared with the performance of their juniors who were working in lower post of SA-I. In the course of selection, the grading as 'good' of Sambhus & others as Class I ASW was treated as lower than the grading as Very good/outstanding of their juniors as SAs-I, as a result of which Sambhus and others were superseded by their juniors for regular promotion as ASW, although as an adhoc ASW, one of the applicants had even written the CR of one of his juniors who was working as SA-I under him. Sambhus and others complained that comparing their performance as ASWs with the performance of their juniors as SA-I would be violative of Articles 14 and 16 of the Constitution.

16. Allowing their applications in part the Tribunal in S.S. Sambhus's case (supra) held that

"The only reasonable and just suggestion that in our opinion can be made to meet the ends of justice in the circumstances of the case is that for the period during which the applicants shouldered the higher responsibilities for the higher Class-I posts of ASW/SW the gradation as SA should be treated as one level higher than the grading awarded to them as ASW as per the ACRs for that period. That is if the ACR as ASW reflected 'good' it should be taken as 'very good', and if 'very good', then it should be taken as outstanding. In this manner they are placed on equal footing for the purpose of assessment of comparative merits."

17. This formula worked out by the Full Bench of the Tribunal came up for scrutiny before the Hon'ble Supreme Court in P.S. Gupta Vs. UOI & connected cases (supra) where the Hon'ble Supreme Court expressed their

satisfaction with the aforesaid formula as being a proper and just one having regard to the facts and circumstances of the case and the practicabilities of the situation.

18. Accordingly, in Shiv Kumar Sharma's case (supra) he and intervenor H.N.Srivastava, both of whom had already been promoted as Joint Supdt. Police several years previously, but were shouldering responsibilities of higher posts pleaded for the application of the aforesaid formula for the purpose of grading, for inclusion in IPS from an earlier date, contending that during the period they shouldered the responsibilities of the higher posts, their gradings should be taken one level higher than what they had been actually awarded. They argued that if this formula was adopted even on the basis of the categorisation made by the UPSC, they would have been better placed in so far as assessment of their work was concerned, and would have stood the chance of being selected for entry into the IPS cadre at an earlier date when others with lesser record got the benefit.

19. Without expressing any opinion on the merits of the matter, this plea was accepted by the Hon'ble Supreme Court in the aforesaid case, and UPSC were directed to reconsider their cases in the light of the aforesaid CAT Full Bench's order.

20. In the light of the foregoing Shri M.K.Gupta argued that applicant's CRs for the years 1994-95 and 1995-96 should be upgraded from Very Good to outstanding.

21. On the other hand, respondents' counsel Shri P.H.

Ramchandani contended that the aforesaid formula had been approved by the Hon'ble Supreme Court in P.S. Gupta's case (*supra*) subject to the facts and circumstances of that case, and the practicabilities of that situation (emphasis supplied) which need not necessarily obtain in other cases like the present one. He emphasised that the formula evolved in Sambhus's case (*supra*) was in the specific context where persons had been promoted to higher posts on adhoc basis, based upon the principle of seniority who found themselves superseded by their own juniors at the time of regular promotions, because of the imbalance created while comparing their performance on the higher posts with that of their juniors in the lower posts. In Shiv Kumar Sharma's case (*supra*) also, he and H.N. Srivastava were shouldering higher responsibilities of posts within the department. On the other hand, in the present case applicant had not been promoted but had gone on deputation to another organisation (SAI). He emphasised that in cases of deputation it was not always the seniormost person who was deputed, and if the principle enshrined in Sambhus's case (*supra*) was extended to cases like the present one which was one of deputation, there was nothing to prevent a relatively junior person who went on deputation to a post carrying higher responsibilities, having his CRs upgraded for the relevant period and thus stealing a march over his seniors.

22. While it is no doubt true that in Sambhus's case (*supra*) those applicants had been officiating on the higher posts of ASW on a dhoc basis, while in the present case applicant was functioning on the post of Ex. Director SAI (which admittedly carries a higher pay

scale than what his colleagues were drawing at the time) on deputation, the crucial issue in our opinion is not so much whether the individual concerned was holding the higher post on promotion basis or deputation basis, but the manner in which performance is to be compared when persons are holding posts at two different levels. The question which the Full Bench in Sambhus's case (sought to answer) was required to answer was whether ~~whether~~ an officer who was officiating in the next higher grade and had earned CRs in that grade was entitled to receive certain extra weightage because he had officiated in the higher grade or not. The Full Bench in its order in Sambhus' case (supra) noticed that para 2.2.1(d) DPAR's OM dated 10.3.89 did not provide for such extra weightage to be granted, but after holding that comparison of performance of a candidate at Class III level of SA, with the quality of performance of another at Class I level of ASW on equal posting would be comparing the incomparable, and would be illogical, irrational and violative of Article 14 of the Constitution went on to evolve the formula extracted in para 16 above. Indeed in para 8 of its order it suggested that para 2.2.1(d) of DPAR's OM dated 10.3.89 should be reviewed and modified to equalise the yardstick of performance at 2 different levels, but despite that suggestion, para 6.2.1 of DPAR's subsequent OM dated 10.4.89 repeats what was stated in para 2.2.1(d) of the earlier OM dated 10.3.89.

23. In the present case also we are required to compare applicant's performance as Ex. Director SAI where he was posted on deputation for the years 1994-95 and 1995-96 with that of his colleagues who remained

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within the cadre. Admittedly as Ex. Director SAI applicant was drawing a higher pay scale than his colleagues. As it cannot be denied that there is a direct co-relation between the pay scales of a post and its grade/status it would be unreasonable not to extend the formula contained in the Tribunal's order in Sambhus' case (supra) to the present case also, merely because applicant was sent on deputation to SAI as Ex. Director, moreso when the Hon'ble Supreme Court have themselves applied that formula in Shiv Kumar Sharma's case (supra) and again in Prem Shankar Gupta's case (supra). In any case respondents' apprehension that extending this formula in cases of deputation also would result in a relative junior stealing a march over his seniors, would not be relevant in the present case, because admittedly applicant was the seniormost in his batch, and therefore the question of his superseding his junior within his batch would not arise.

24. During arguments, applicant's counsel alleged bias and malafide on the part of one of the DPC members. It was also alleged that the DPC meeting was deliberately held outside Delhi at Chennai, so that one of the candidates before the DPC who happened to be posted at Chennai could be helped, and as a result of the fixation of the DPC venue at Chennai, the Secretary (Expenditure) who was a member of the DPC could not participate. In our view as the OA is entitled to succeed on the grounds discussed in the foregoing paragraphs, it is not necessary for us to discuss these grounds of bias etc. alleged by applicant.

(SC)

25. In the result, in the particular facts and which is not to be treated as precedent, circumstance of this case, the OA succeeds and is allowed to the extent that the impugned letter dated 29.8.97 is quashed and set aside. Respondents will reconsider applicant's case for restoration of his seniority relative to respondents 6 to 8 in the light of the CAT Full Bench ruling in Sambhus' case (supra), ^{upheld by} ~~upholding~~ the Hon'ble Supreme Court's judgment in P.S.Gupta's case (supra) and extended by their Lordships to the applicant and intervenor in Shiv Kumar Sharma's case (supra). If consequent to these directions, anyone is adversely affected, he shall be put to notice and given a reasonable opportunity of being heard before any final decision adverse to him is taken. These directions should be implemented as expeditiously as possible and preferably within 6 months from the date of receipt of a copy of this order. No costs.

A.Vedavalli

(DR.A.VEDAVALLI)
MEMBER (J)

S.R.Adige

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

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