

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA-869/94

New Delhi this the 28th day of July, 1999.

Hon'ble Sh. A.V. Haridasan, Vice-Chairman(J)
Hon'ble Sh. S.P. Biswas, Member(A)

Sh. Vimal Chandra Pandey,
S/o Sh. R.N. Pandey,
R/o A-6, Transit Hostel,
2-Battery Lane, Rajpur
Road, Delhi. Applicant

(through Sh. A.K. Behera, advocate)

versus

1. Chief Secretary,
National Capital of Delhi,
5 Sham Nath Marg,
Delhi-54.
2. Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
3. Secretary,
UPSC, Dholpur House,
Shahjahan Road,
New Delhi. Respondents

(through Sh. N.S. Mehta, advocate)

ORDER(ORAL)

Hon'ble Sh. A.V. haridasan, Vice-Chairman(J)

The applicant was appointed to Grade-II of Delhi Andaman Nicobar Island Civil Service (DANICS for short) w.e.f. 25.6.72 on his success in the Civil Services Examination held in the year 1977. His services were terminated by order dated 13.9.82. He challenged the termination by filing a Writ Petition before the High Court of Delhi which was subsequently transferred

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to the Principal Bench of the Central Administrative Tribunal, renumbered as TA-838/85 and was disposed of by order dated 5.5.89 directing his reinstatement setting aside the order of termination with all consequential benefits. There was a criminal case against the applicant which was finally disposed of by acquitting him. Though the applicant was reinstated on the basis of the final order passed in TA-838/85. Since the respondents did not give him the consequential benefits, namely, consideration for promotion, the applicant filed OA-2214/90 before the Principal Bench of this Tribunal which was disposed of vide its order dated 11.12.91 with direction to respondents to consider the applicant for promotion w.e.f. the date his junior Sh. Girish Chandra Joshi was considered and promoted. In pursuance to the above judgement of the Tribunal, the respondents constituted a review D.P.C. to consider the case of the applicant for promotion to Senior Scale w.e.f. the date Shri Joshi was promoted and promoted him. The applicant was further considered for promotion to the Junior Administrative Grade by a review D.P.C. which was held on 15.9.92 but he was not promoted w.e.f. the date on which Shri Joshi was promoted. The applicant, aggrieved by his non-promotion, has filed this application for quashing the recommendations of the review D.P.C. which met on 15.9.92 and for direction to respondents to appoint him to Junior Administrative Grade (JAG for short of DANICS w.e.f. 17.5.89 with all consequential benefits.

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2. The respondents in their reply have stated that they have faithfully implemented the direction of the Tribunal in its order in OA-2214/90 by considering and promoting the applicant to Sr. Scale of DANICS w.e.f. the date Shri Joshi was promoted and seek to justify the non-promotion of the applicant to JAG on the ground that the review D.P.C. which met on 15.9.92 considered the case of the applicant for promotion to JAG of DANICS for the year 1989 as per the DOP/T instructions dated 10.4.89 and did not recommend him for promotion since he did not get the Bench Mark Very Good required for promotion to that grade.

3. The applicant has raised a contention that the respondents have promoted even persons who had obtained grading as "good" and, therefore, he has been discriminated.

4. We have gone through the pleadings and the documents produced by the learned counsel for the respondents and have also heard the learned counsel for the parties.

5. The learned counsel for the applicant strenuously argued that the DPC did not consider the case of the applicant for promotion to JAG as per the instructions of the DOP/T dated 10.4.89 (AnnexureA-7). Now it is pertinent to mention here that the DPC should consider 5 years ACRs immediately preceding 1989. Since the applicant was discharged from probation on 21.9.82 on the ground of unsuitability and was reinstated only in 1989,

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the DPC has taken into consideration all the ACRs which were available upto the relevant date i.e. 17.5.89. The Counsel argued that this action of the DPC was not justified. He invited our attention to the instructions contained in Annexure A-7 in regard to the CRs, a relevant portion of which is extracted below:-

6.2.1 Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence-

- (a) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject to (c) below.
- (b) The DPC should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the DPC should see the record with particular reference to the CRs for the years equal to the required qualifying service. (If more than one CR has been written for a particular year, all the CRs for the relevant year shall be considered together as the CR for one year).

If two alternative eligibility conditions are prescribed and the officers satisfying these conditions are considered simultaneously instead of under a "failing which" clause, the DPC may consider the service record of all the officers with particular reference to the ACRs (including ACRs in respect of service in the lower grade if necessary) for the lesser number of years as between the two alternative periods of eligibility service or five years, whichever is longer. To cite an instance, if for promotion to a post in the scale of Rs.5,900-6,700, it is prescribed in the Recruitment Rules that officers with 8 years service in the scale of Rs.3,700-5,000 or those with 17 years service in Group 'A' including four years service in the scale of Rs. 3,700-5,000 are eligible, the DPC may consider the service record of all officers with particular reference to the ACRs for 8 years (including Annual Confidential Report for service in the lower grade if necessary).

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(c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. if this is also not possible, all the available CRs should be taken into accounts."

The learned counsel further argued that in the absence of ACR for the required period of 5 years, even by going down the ACRs of the applicant which he had earned even after his reinstatement till the date of holding of the Review DPC should have been considered.

6. A proper interpretation of the above instructions, according to the applicant support his arguments. The learned counsel argued that by a litteral interpretation of a rule or instructions could lead to an absurd situation the Court read and interpret it to give the real meaning taking into account the intentions of the rule making authority. To butress this arguments the learned counsel placed reliance on the decision of the Division Bench of the Principal Bench of the Central Administrative Tribunal in OA-380/93 titled as Sh. lalit Vikran Vs. Director General, Doordarshan & Anr. decided on 20.8.93.

7. We do not disagree with the principle of law discussed and observed in the ruling and are in respectful agreement but we would like to state that the facts and circumstances of case under citation have absolutely no similarly to the case on hand. In the light of

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the clear instructions given by the DOP/T in regard to the consideration of the ACR for promotion, we do not find any difficulty in construing ~~to~~ the various instructions contained in A-7. If the ACRs for 5 years are not available, it is permissible to go down. The DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered. Even then the required number of ACRs are not available, the DPC can consider all the ACRs available upto 7.5.89 only because that the Review DPC met in 1992 ~~which~~ was for the year 1989.

8. The respondents have in their reply statement stated that the DPC did not recommend the applicant for promotion to JAG as he did not make the grade "Very Good" which was the benchmark for promotion to JAG. The contention that the benckmark required for the post of JAG was "Very Good" is not disputed. The applicant has raised a contention that the respondents have themselves promoted persons who have had attained grading good but did not promote the applicant which amounts to hostile discrimination. This argument has no force because as per the rules and instructions the benchmark required was Very Good. Had the applicant who did not get this grading has no right for promotion while other person was promoted has not been stated. Even if somebody who was not eligible for promotion was promoted the applicant cannot claim such promotion on the basis of the availability of the instructions.

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9. Lastly the learned counsel for the applicant argued that the services of the applicant were terminated by the respondents wrongly and for the consequent absence of ACRs the respondents should not be allowed to take advantage of their own wrong. It is true that the termination was set aside by the Tribunal and the applicant was directed to be reinstated with all consequential benefits. He has been reinstated in service, promoted to Senior Scale and considered for promotion to JAG. Since he was not found suitable for the post of JAG as he did not make this required grade, the applicant cannot seriously contend that the respondents have taken advantage of their wrong.

10. In the result, we do not find any merit in the application, which is dismissed. No costs.



(S.P. Biswas)
Member(A)



(A.V. Haridasan)
Vice-Chairman(J)

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