

Central Administrative Tribunal, Principal Bench

(12)

Original Applications Nos.1318,1339,1359 & 1373 of 2000

New Delhi, this the 16th day of February,2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)
Hon'ble Mr.Shanker Raju, Member(J)

(1) Original Application No.1318 of 2000

Udaya Shankar Pant, Chief Controller of
Accounts, Ministry of Steel & Mines, C-35,
South Moti Bagh, New Delhi - Applicant

(Applicant in person)

Versus

Union of India & others Through

1. The Controller General of Accounts,
Ministry of Finance, Department of
Expenditure, Lok Nayak Bhavan, Khan
Market, New Delhi-110003.
2. The Secretary, Min. of Finance,
Department of Expenditure, North Block,
New Delhi-110001
3. The Secretary, D/o Personnel & Training,
North Block, New Delhi-110001.
4. Secretary, Union Public Service
Commission, New Delhi. - Respondents

(By Advocate Shri P.H.Ramchandani)

(2) Original Application No. 1339 of 2000

Sudhir Bhandari, Chief Controller of
Accounts, Ministry of Information &
Broadcasting, H-Block, Tropical Building,
Connaught Circus, New Delhi-110001 - Applicant

(Applicant in person)

Versus

Union of India & others Through

1. The Controller General of Accounts, Min.
of Finance, D/o Expenditure, Lok Nayak
Bhavan, Khan Market, New Delhi-110003.
2. The Secretary, Min. of Finance, Deptt.
of Expenditure, North Block, New Delhi.
3. The Secretary, Ministry of Personnel,
Public Grievances & Pension, Deptt. of
Personnel & Training, North Block, New
Delhi.
4. The Secretary, Union Public Service
Commission, New Delhi. - Respondents

(By Advocate Shri P.H.Ramchandani)

(3) Original Application No.1359 of 2000

Amarendra Nath Bokshi, CCA(UD), B-30,
Parijat Apartments, Opp. Mangolpuri, B-Block,
New Delhi-110034 - Applicant
(Applicant in person)

Versus

Union of India & others Through

1. The Controller General of Accounts,
Ministry of Finance, D/o Expenditure, Lok
Nayak Bhavan, Khan Market, New
Delhi-110003.
2. The Secretary, Min. of Finance, D/o
Expenditure, North Block, New
Delhi-110001
3. The Secretary, D/o Personnel & Training,
North Block, New Delhi-110001.
4. Secretary, Union Public Service
Commission, New Delhi. - Respondents
(By Advocate Shri P.H.Ramchandani)

(4) Original Application No. 1373 of 2000

M.Pran Konchady, Chief Controller of
Accounts, Ministry of Surface Transport, IDA
Building, Jam Nagar House, Shahjahan Road,
New Delhi-110011 - Applicant
(Applicant in person)

Versus

Union of India & others

1. The Controller General of Accounts, M/o
Finance, D/o Expenditure, Lok Nayak
Bhavan, Khan Market, New Delhi-110003.
2. The Secretary, Min. of Finance, Deptt.
of Expenditure, North Block, New Delhi.
3. The Secretary, Ministry of Personnel,
Public Grievances & Pension, Deptt. of
Personnel & Training, North Block, New
Delhi.
4. The Secretary, Union Public Service
Commission, New Delhi. - Respondents
(By Advocate Shri P.H.Ramchandani)

Common Order

By V.K.Majotra, Member(Admnv) -

As the facts and issues involved in these four
cases are identical, they are being taken up together
for disposal. The facts have been mainly culled out
from OAs 1318 & 1339 of 2000.

2. The applicants have claimed as follows: They are members of the Indian Civil Accounts Service (for short 'ICAS') Group 'A'. Their basic particulars are given below:-

Name of the Applicant	Civil Services Exam	ICAS Batch	Date of joining ICAS	Holding current charge in SAG	Date of Promotion to SAG
U.C.Pant	1981	1982	1.9.1982	28.5.1999	26.4.2000
S.Bhandari	1981	1982	21.12.82	19.7.1999	26.4.2000
A.N.Bokshi	1981	1982	1.9.1982	29.12.99	26.4.2000
M.P.Konchady	1981	1982	9.5.1983	20.4.1999	26.4.2000

They are eligible for consideration for promotion to Senior Administrative Grade (for short 'SAG') (Rs.18400-500-22400) in terms of ICAS Group 'A' Recruitment Rules, 1977 as amended vide GSR 125 dated 27.1.1989; GSR 434(E) dated 24.4.1992; and GSR 12(E) dated 3.1.2000. They have completed 17 years' regular service in Group 'A' posts including four years regular service in the Junior Administrative Grade (for short 'JAG') as on 1.1.1999. As per DoPT's OM No. 22011/1/98-Estt(D) dated April 20, 1998, 7 vacancies in the SAG were available (for the vacancy year 1998-99) for filling up. The DPC meeting was held in March-April, 1999. Whereas 3 vacant posts in the SAG were carried forward out of 6 reportable vacancies, DPC considered 3 officers only for the remaining 3 vacancies. Even though the 1982 Batch officers were eligible for consideration for promotion in the SAG against 7 vacancies including the 3 carried forward vacancies with effect from 1.1.1999, only 3 officers were considered. Another DPC meeting was held on 16.11.1999 for the vacancy year 1999-2000 in which 6 vacancies out of 7 available vacancies were considered by the DPC. In this meeting all officers of 1982 Batch including the applicants were recommended for promotion.

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These applicants were promoted to the SAG with effect from 26.4.2000. Since they had been holding the charge of the post of Chief Controller of Accounts in different Ministries since 1999, they should be deemed to have been appointed with effect from the same date in 1999 to the SAG on regular basis. They made several representations in this regard. However, these representations remained unrepplied. The applicants have sought the following reliefs - (i) the respondents should hold a review DPC for all the 6 vacancies available at the time of holding of the DPC in March-April, 1999 as the applicants were eligible for promotion to the SAG in terms of Rule 20(1)(v) with effect from 1.1.1999; (ii) regular appointment to the SAG with effect from the date the applicants held charge of the post of Chief Controller of Accounts instead of 26.4.2000; and (iii) sanction of pay and other related benefits of the post of Chief Controller of Accounts from the date they have held charge of the post of Chief Controller of Accounts and have discharged duties and responsibilities of the higher post and were appointed on regular basis to the same post without a break.

3. In their counter the respondents have contended that the applicants were not eligible for promotion to SAG with effect from 1.1.1999. As a matter of fact their claims could be considered in the second DPC dated 16.11.1999 only after relaxing the condition of their eligibility. The respondents have maintained that the vacancies for both the DPCs were correctly calculated. They have also taken exception to these OAs on the ground of non-joinder of necessary parties.

4. The applicants have filed their rejoinders and the respondents have also filed their additional counter replies.

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5. We have perused the material available on record as also the records of the DPC proceedings.

6. At the outset Shri Ramchandani, learned counsel of the respondents raised objection to non-impleadment of personnel who had been promoted to SAG on the basis of the recommendations of DPC held in April, 1999. In their rejoinder to respondents supplementary reply the applicants have stated that Shri P. Sudhir Kumar is an officer of 1980 Batch and the applicants belong to 1982 Batch. Shri P. Sudhir Kumar was promoted to SAG not on the basis of the DPC held in March-April, 1999 but on the basis of an earlier DPC when he had not completed a total service of 17 years from the date he actually joined the service. He had joined ICAS on 28.2.1983. From the DPC file it is clear that he was recommended for promotion to SAG in the DPC meeting held on 5.12.1997. Certainly, he was considered for promotion to SAG and promoted before completion of 17 years of service. The applicants have also stated that Shri A.S. Chauhan, an officer of 1981 Batch who joined ICAS on 7.6.1983, had also not completed 17 years of regular service on the date of his promotion to the SAG on 25.5.1999 but the DPC held in April, 1999 considered his case as if he had completed 17 years on 1.1.1999. On perusal of the official record relating to DPC meeting held on 5.4.1999 we find that the contention of the applicants relating to Mr. P. Sudhir Kumar and Mr. A.S. Chauhan is confirmed. The applicants have further stated that their intention is not to have the promotion of Mr. P. Sudhir Kumar and Mr. A.S. Chauhan reviewed. Their prayer is that correct procedure has not been followed by the respondents in holding the DPC for vacancies in SAG for the year 1998-99 and that a review DPC should be held by following the correct

procedure. In this background when the contention of the applicants relating to Mr. P.Sudhir Kumar and Mr.A.S.Chauhan has been borne out from the records of the respondents if ultimately it is found in the instant case that correct procedure had not been followed in respect of various aspects of the matter, the objection relating to non-joinder of persons like Mr.P.Sudhir Kumar and Mr.A.S.Chauhan should not come in the way of adjudication of this case. As a matter of fact if at the end of it all it is concluded that a review DPC has to be held it will not affect Mr.P.Sudhir Kumar at all as he is an officer of 1980 Batch and had been considered for promotion in a DPC meeting held on 5.12.1997 and not in the DPC meeting held on 5.4.1999. However, the case of Mr.A.S.Chauhan would have to be reviewed. His interest in our view can be protected, in the event of the review DPC not recommending his case for promotion to SAG, by directing the respondents not to revert him without issuing a show cause notice. Thus, having regard to the above reasons in our view the non-joinder of persons like Mr.P.Sudhir Kumar and Mr.A.S.Chauhan should not make the present OA non-maintainable.

7. As per Rule 20(1)(v) of the ICAS (Group 'A') Recruitment Rules, 1977 read with afore-stated amendments, an appointment to SAG shall be made by selection on merit from amongst officers with 8 years regular service in the JAG (including service, if any, in the non-functional selection grade of JAG) or 17 years regular service in Group-A post including 4 years regular service in JAG. During the course of arguments applicants admitted that they would not be eligible for being considered for promotion to SAG on the basis of the first condition. However, they claim eligibility

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for consideration for promotion to SAG vacancies for 1998-99 on the basis of the second condition having completed 17 years regular service in Group-A posts of which at least 4 years regular service is in the JAG as on 1st January, 1999. Thus, the next issue for our consideration is whether the applicants are eligible for promotion to SAG for the vacancies arising during 1998-99. Shri Ramchandani, learned counsel stated that the applicants were not eligible for such consideration even for the posts for the year 1999-2000 for which their claims were considered on relaxation of the eligibility condition. Shri Ramchandani drew our attention to Rule 20(1)(i), (ii) and (iii) relating to appointments in the Junior Time Scale, Senior Time Scale, and JAG. He referred to the Note occurring after sub-rule (1) (iii) which stipulates that-

"For the purpose of clauses (ii) and (iii) above, the length of service shall reckon from the 1st of July following the year of Examination through which the member was recruited".

He contended that obviously this Note does not relate to appointment to SAG. The provision relating to appointment to SAG is contained in sub-clause (v) of Rule 20(1) ibid. Shri Ramchandani stated that the aforesaid Note under sub-rule (1) (iii) cannot be related to clause (v) of Rule 20(1) as well. According to him in the matter of appointment to SAG the actual date of appointment and not 1st of July following the year of examination has to be given consideration for computing 17 years of regular service in Group-A posts. He further referred to Notification dated 3.1.2000 (Annexure-R-6) whereby clause (v) of Rule 20(1) was amended by addition of the following Note-

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" For the purposes of clauses (ii), (iii), (iv) and (v) the length of service shall reckon from the 1st of January following the year of Examination through which the member was recruited".

He further referred to Explanatory Memorandum under the same Notification whereby, among others, addition to the above Note relating to computing length of service from 1st of January following the year of examination was given retrospective effect from 1.1.1996. However, the learned counsel referred to Corrigenda issued on 3.5.2000 (Annexure-R-7) to this Notification dated 3.1.2000 as well wherein it was clarified that the explanatory memorandum giving retrospective effect from 1.1.1996 related to the pay-grades only and not the length of service. He maintained that as the reckoning of the length of service from 1st of January was not given retrospective effect from 1.1.1996 it could not have been made applicable to the DPC held on 5.4.1999 for SAG vacancies for 1998-99. On the other hand applicants referred to Annexure-R-5 dated 19.7.2000 whereby the representations of the applicants were rejected, stating that the crucial date for determining eligibility would be 1st January and as he had joined ICAS on 1.9.1982 and was promoted to JAG from 31.7.1991 he had neither completed qualifying service of 17 years in Group-A nor 8 years of service in JAG as on 1.1.1999. The relevant paragraph (a) of respondents' memorandum dated 19.7.2000 is as follows:

"In order to become eligible for promotion to S.A.G., recruitment rules for ICAS prescribe 8 years of service in J.A.G. or 17 years service in Group 'A' of which at least 4 years should be in J.A.G. Instructions contained in Department of Personnel & Training's O.M.No 22011/3/98-Estt(D), dated 17.9.1998 further provide that crucial date for determining eligibility for holding a DPC would be 1st January. As you joined ICAS on 1-9-1982 and were promoted to J.A.G. w.e.f. 31-7-1991, you had neither completed qualifying service of 17 years in Group 'A' nor 8 years of service in J.A.G as on 1-1-1999. Hence you

could not have been considered for promotion to S.A.G. without relaxation of the recruitment rules".

(emphasis supplied)

The applicants have further stated that whereas vide Notification dated 3.1.2000 for purposes of clauses (ii),(iii), (iv) and (v) in sub-rule(1) of Rule 20 ibid length of service was given a reckoning from 1st of January following the year of Examination through which the member was recruited and it was given a retrospective effect from 1.1.1996 as per the Explanatory Memorandum, the Corrigenda were issued only on 3.5.2000. According to the applicants it means that the retrospective effect from 1.1.1996 to the reckoning of the length of service from 1st of January following the year of examination remained in force between 1.1.1996 and 3.5.2000 when the Corrigenda were issued. The DPC for vacancies in 1998-99 was held on 5.4.1999 when the provisions of Notification dated 3.1.2000 were very much in force and had not been revoked by the Corrigenda which was issued on 3.5.2000. We are in agreement with applicants here that amendment in ICAS Group-A Recruitment Rules,1977 brought out by Notification dated 3.1.2000 is applicable in the present matter. The DPC for the SAG took place before the Corrigenda was issued on 3.5.2000. Thus, reckoning of the length of service from the 1st January following the year of Examination through which the member was recruited has to be given retrospective effect from 1.1.1996.

8. In the present case applicants appeared in 1981 Examination and their length of service for the purposes of promotion in SAG has to be computed from 1st of January following the year of Examination i.e. from 1st January,1982. Thus, these applicants had completed

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17 years of regular service in Group-A as on 1.1.1999 making them eligible for consideration for promotion to SAG as per clause (v) of Rule 20(1) ibid.

9. We will now go on to the question of number of vacancies that existed for the year 1998-99. In their counter respondents have stated that UPSC held the DPC meeting on 5.4.1999 for the 3 vacancies in SAG reported to it for the year 1998-99. Three officers, namely, Smt. Archana Nigam, Shri Chandy Andrews and Shri A.S. Chauhan of 1981 batch of ICAS were considered by the DPC and they were promoted to SAG on 25.5.1999. From DPC file of the respondents they had conveyed to the UPSC that 6 vacancies in SAG existed / were anticipated during 1998-99. Of these, two posts of SAG level have been set aside against the proposed upgradation of SAG level posts of CCA. One officer, namely, Shri V.N. Kalia was to revert from IMF assignment in February, 1999. Thus, there were only 3 clear vacancies for the panel year 1998-99. One Shri Lalchhuma was being sent on deputation to the Government of Mizoram for a period of three years. With the vacancy of Shri Lalchhuma there were 4 clear cut vacancies for panel year 1998-99. Only 3 three officers of 1981 batch could be considered for promotion.

10. According to applicants as per DoPT OM 1998, No. 22011/1/98-Estt(D) dated April 20, 1998, 7 vacancies in the SAG were available for vacancy year 1998-99 as follows:

Vacancy	Date from which vacant	Reasons
1. Sh. M.J. Joseph	19.6.98	On deputation as IFA
2. Sh. S.Ambi	18.7.98	Expired
3. Sh.H.N.Nayer	7.8.98	On Deputation to IMF
4. Sh.V.Ramchandran	7.9.98	On deputation to IMF
5. Sh.T.K.Das	20.11.98	On Deputation as JS&FA
6. Sh.C.Lalchhuma	13.2.99	On Deputation to Mizoram
7. Sh.S.Joshi	17.2.99	On Deputation to IMF

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3 vacant posts in SAG were carried forward out of six reported vacancies to vacancy year 1999-2000. In their counter respondents have not specifically rebutted averments in regard to existence of six vacancies for year 1998-99. They have generally denied all the facts and averments of applicants save those specifically admitted. The respondents have not controverted in detail existence of six vacancies for year 1998-99 in their counter. The applicants stated that two posts at the level of SAG were created on recommendations of 5th Central Pay Commission (for short '5th CPC') with effect from 1.7.1999 by upgrading two posts of Controller of Accounts as per OM dated June 30, 1999 with reference to paragraph 48.41 of the report of 5th CPC. Respondents have also admitted in their additional reply that proposal of upgradation of 2 SAG posts did not materialise. Thus respondents' contention that they had to set off two SAG level posts for proposed upgradation of two SAG level posts to those of Principal CCA's rank is without any basis. In DPC file it is also stated that IMF assignments are normally extended periodically and assignments of Shri H.N.Nayer and Shri V.Ramachandran to IMF were also likely to be extended. From these facts it can be safely concluded that at least 7 vacancies in SAG for year 1998-99 were available. However, 3 of them were carried forward and only 3 vacancies were considered by DPC for panel year 1998-99. The applicants have contended that as per DoPT's circular No.22011/1/98 -Estt(C) dated April 20, 1998 relating to determination of regular vacancies to be reported to DPC, number of vacancies in respect of which a panel is to be prepared by DPC should be estimated actually by taking into account vacancies arising due to death, retirement, resignation, long term promotion and deputation and

creation of additional posts on a long term etc. It is also clarified in this circular that vacancies arisen in a particular vacancy year have to "be considered together by the DPC". In the instant case 3 vacancies were carried forward and considered within the same 1999 year. As discussed above, respondents have not given any reasonable explanation for carrying forward 3 vacancies. We have already found above that there were at least 7 vacancies for the vacancy year 1998-99, a panel for which should have been recommended by DPC in its meeting held on 5.4.1999. The inescapable conclusion, therefore, is that respondents had under reported vacancies for vacancy year 1998-99 and DPC had to formulate a panel for three vacancies only.

11. The related issue to the number of vacancies for which panel has to be recommended by the DPC is the zone of consideration i.e. number of eligible officers in feeder grades who have to be considered for filling up a specific number of vacancies in the year. As per DoPT's memorandum No.22011/ 1/90-Estt(D) dated 12th October, 1990, for 7 vacancies the zone of consideration has been restricted to 18 eligible officers. From the DPC record we find that for 3 vacancies for year 1998-99 only 3 officers, namely, Smt. Archana Nigam, Shri Chandy Andrews, Shri A.S. Chauhan were considered on the ground that only 3 officers of 1981 batch were eligible for consideration for the above 3 vacancies. As we have stated above that for 1998-99 panel for 7 vacancies should have been formulated, 18 eligible officers could have been considered by the DPC in terms of DoPT circular mentioned above and as we have already held that the present applicants were eligible having completed 17 years regular service in Group 'A' posts

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which includes 4 years regular service in JAG as on 1.1.1999, they should have been considered along with 3 candidates who were considered by the DPC on 5.4.1999.

12. The applicants have contended that DoPT instructions contained in O.M.22011/9/98-Estt-D dated 16.9.1998 prescribe consideration of only such confidential reports which become available during the year immediately preceding the vacancy year even if DPC is convened later than the prescribed schedule. The applicants have maintained that DPC held in April, 1999 was required to prepare panel for the existing and anticipated vacancies including those for the vacancy year 1999-2000 without waiting for the ACR for the year 1998-99. From the minutes of the DPC held on 5.4.1999 it is not clear as to ACRs for which years were considered by the DPC. The DPC has just stated that they had examined the character rolls of the three senior most eligible officers. DPC has not stated ACRs up to which year had been examined by them. Apart from the DoPT instructions referred to above and also in terms of the decision of the Hon'ble Supreme Court in the case of Union of India & others Vs. N.R.Banerjee & others, (1997) 9 SCC 287 for 1998-99 vacancies ACRs upto the year 1996-97 only could be examined by DPC.

13. Applicants Mr.M.Pran Konchady and Mr. U.C.Pant were posted as Controllers of Accounts against the vacant posts of Chief Controller of Accounts vide officer order no.A.22012(1)/97/MF.CGA/Gr.A/JAG/456 dated 20.4.1999. Applicant Sudhir Bhandari was posted as Controller of Accounts against the vacant post of Chief Controller of Accounts vide officer order no.A.22012(1)/97/MF.CGA/ Gr.A/651 dated 21.6.1999. Shri Bokshi was posted as Controller of Accounts vide order dated 29.12.1999. It is contended that although applicants

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discharged duties and responsibilities of the higher post of Chief Controller of Accounts including supervision of the work of Controllers of Accounts, they have been denied pay of the said post. The learned counsel of the respondents referred to the case of Mohd. Swaleh vs. Union of India & others, (1997) 6 SCC 200 stating that as applicants had not been formally appointed to the post of Chief Controller of Accounts, they are not entitled to the salary of that post under FR 49(i) though they discharged functions of the superior post. We find that applicants had been appointed to hold charge of the superior post by Department of Expenditure. It cannot be said that they had not been appointed by competent authority for purposes of FR 49(i). As a matter of fact there is hardly any difference between the earlier orders for posting the applicants whereby they held the current charge of post of Chief Controller of Accounts and the latter order dated 26.4.2000 when applicants were appointed on a regular basis. Both were issued by the same officer and the same department. The learned counsel of the respondents stated that the latter orders were issued on approval of Appointments Committee of the Cabinet. There is no such mention in the latter order dated 26.4.2000 that applicants had been appointed after approval of the ACC.

14. From the above discussion, it is clear that whereas 7 vacancies in SAG existed for vacancy year 1998-99 and applicants were eligible for consideration for promotion to SAG as on 1.1.1999 and whereas there was under reporting of vacancies to the DPC and all candidates falling within zone of consideration for 7

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vacancies were not considered, in our view there were several procedural lacunae pointed out above in conduct of DPC held on 5.4.1999.

15. In the result, the O.A. is allowed. The respondents are directed to hold a review DPC for 7 vacancies of the year 1998-99 including 3 carried forward vacancies and consider for promotion to SAG applicants among others who were eligible for appointment to SAG as on 1.1.1999. If applicants are found fit for empanelment for SAG for the panel year 1998-99 they shall be granted notional promotion in SAG from the date they are found fit, however, they shall be granted all consequential benefits from the date they have been holding the current charge of post of CCA. Before we may part, it is observed that, as already stated above, in the event of reversion of those already promoted on basis of the DPC held on 5.4.1999, they shall be put to a show cause notice prior to taking decision for their reversion. No costs.

(Shanker Raju)
Member (J)

(V.K.Majotra)
Member (Admnv)

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Affested

Brijveer
19/2/2011

COURT OFFICER

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