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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 1033/89

Date of decision: 04.03.92

Mrs. Asha Nayar

...Applicant

Vs.

Union of India through the
Secretary, Ministry of Home
Affairs & Others

...Respondents

For the Applicant

...Shri M. Chandrasekhar
Sr. Counsel

For the Respondents

...Shri M.L. Verma,
Counsel

COURT:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha,
Vice Chairman(J))

The applicant is aggrieved by her non-appointment to Junior Administrative Grade of the Delhi, Andaman and Nicobar Islands Civil Service (DANICS, for short). OA 1140 of 1989 filed by Shri P.C. Mishra and OA 1202 of 1989 filed by Shri M.N. Methur also relate to the same issue. As the facts of each case are different, it is not proposed to deal with these cases in a common judgment, though all the three applications were heard together.

2. At the outset, we may briefly mention the relevant rules. Initially, rules were made called the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Civil Service Rules,

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1965. They were repealed by the Delhi and Andaman and Nicobar Islands Civil Service Rules, 1971 (1971 Rules, for short). The 1971 Rules have been amended further by the Delhi and Andaman and Nicobar Islands Civil Services (Amendment) Rules, 1988 (1988 Rules, for short). Schedule to the 1971 Rules was substituted by another Schedule by the 1983 Rules which was further amended by the Delhi and Andaman and Nicobar Islands Civil Service (Amendment Rules, 1989) (1989 Rules, for short). The issue arising for consideration relates to the interpretation of the 1971 Rules as amended by the 1988 Rules and the 1989 Rules.

3. The 1971 Rules follow a familiar pattern. There is provision for constitution of the service (DANICS), its authorised permanent strength, Methods of recruitment, Direct recruitment, recruitment by selection, initial constitution and appointment to selection grade, among others. The amendments made by the 1988 Rules and 1989 Rules, so far as they are material in the present context, may be summed up as follows in the form of a comparative chart and the changes made have been underlined.

1971 Rules

Definitions

Rule 2(d). The expression "Member of the Service" has been defined to mean a person appointed in a substantive capacity to either Grade of the service and includes a person appointed on probation to Grade II of the service.

1988 Rules

Rule 2(d). The expression "Member of the Service" means a person appointed in a substantive capacity to any of the grade of the service, and includes a person appointed on probation to Grade II of the service.

Rule 3. Constitution of Service
Service and its Classification

(i) On and from the date of commencement of these rules there shall be constituted a central service to be known as the Delhi and Andaman and Nicobar Islands Civil Service.

(ii) The service shall have two grades, namely,

- (1) Grade I (Selection Grade); and
- (2) Grade II

(iii) The posts in Grade I shall be Central Civil Group 'A' posts and those in Grade II shall be Central Civil Group 'B' posts.

Rule 3. Constitution of
Service and its Classification

2. The service shall have the following three grades, namely,

- (i) Junior Administrative Grade;
- (ii) Grade I (Selection Grade); and
- (iii) Grade II

3. The posts in Junior Administrative Grade and Grade I shall be Central Civil Service Group 'A' and those in Grade II shall be Central Civil Service Group 'B' posts.

Part II Authorised permanent
strength of the service and the
strength of the service

Rule 4(i) The authorised permanent strength of the service and the posts included therein shall be as specified in Schedule I.

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(ii) The strength of the post in Junior Administrative Grade shall be as specified in Schedule I.

Part VI. Initial constitution of
service and initial appointment
of persons to the service.

Rule 17. The service shall include persons who immediately before the commencement of these Rules were members of the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Civil Service but who are not allocated to the cadre of Himachal Pradesh Civil Service under sub-section (4) of Section 40 of the State of Himachal Pradesh Act, 1970.

Rule VI. Initial constitution
of service and initial
appointment of persons to the
service.

same as in 1971 Rules

Rule 18. Appointments.

All appointments to the Service shall be made to Grade I or Grade II of the Service and not against any specific post included in the Service.

Rule 18. Appointments.

All appointments to the Service shall be made to the Junior Administrative Grade, Grade I or Grade II of the Service and not against any specific post included in the Service.

Rule 30. Pay and allowances

(1) The scale of pay attached to the service shall be as follows:-

(i) Grade I (Selection Grade) Rs.1200-50-1600.

(ii) Grade II (time scale) Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200.

Rule 30. Pay and allowances

The scale of pay attached to the service shall be as follows:-

(i) Junior Administrative Grade.

Rs.3700-125-4700-150-5000;

(ii) Grade I (Selection Grade)

Rs.3000-100-3500-125-4500.

(iii) Grade II

Rs.2000-60-2300-EB-75-3200-100-3500.

Rule 31. Appointment to Selection Grade

1) Appointments of members of the Service to the Selection Grade shall be made in consultation with the Commission (Union Public Service Commission) on the basis of seniority subject to fitness. Persons appointed to the service under Rule 17 who were appointed to the Selection Grade of the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Civil Service shall be deemed to have been appointed to the Selection Grade of Delhi and Andaman and Nicobar Islands Civil Service.

Rule 31. Appointment to Junior Administrative Grade and Selection Grade

(1) Appointments of members of Service to the Junior Administrative Grade shall be made by promotion on selection basis on the recommendation of the Selection Committee. The composition of the Selection Committee shall be as under:-

(i) The Chairman or a Member of the UPSC - Chairman

Members

(ii) An officer of the Ministry of Home Affairs not below the rank of Joint Secretary to the Govt of India;

(iii) The Chief Secretary, Delhi Administration; and

(iv) The Chief Secretary of the Andaman and Nicobar Administration or an officer of the Min. of Home Affairs not below the rank of Joint Secretary.

2. An officer with a minimum of five years of regular service in Grade I shall be eligible for being considered for promotion to Jr. Administrative Grade.

Schedule I

(1971 Rules and 1988 Rules)

The authorised permanent strength of the service and the nature of the posts included in it are as follows:-

(Not reproduced)

Schedule I

(1989 Rules)

The authorised permanent strength of the service and the nature of the posts included in it are as follows:-

Sanctioned strength

| | |
|---|-----|
| 1. Specific posts under Delhi Administration. | 250 |
| 2. Specific posts under Andaman and Nicobar Islands Administration. | 15 |
| 3. Deputation, leave and training reserve | 87 |

Total = 352

Reserve

| | |
|--------------------------------------|----|
| i) Deputation reserve 12½% of 265 | 33 |
| ii) Leave reserve 10% of 265 | 27 |
| iii) Training reserve 10% of 265 | 27 |

Total = 87

Posts in the Junior Administrative Grade

'A' posts under Delhi Administration.

| | |
|---|---|
| 1. Joint Director of Social Welfare | 2 |
| 2. | |
| 3. | |
| 4. Joint Registrar of Cooperative Societies | 2 |
| 5. | |
| xxx xxx xxxx xxx | |
| 12. Joint Director of Agriculture and Marketing | 1 |
| xxx xxx xxx xxx | |
| 17. Deputy Commissioner of Sales Tax | 2 |
| xxx xxx xxx xx | |
| 21. Additional District Magistrate | 2 |

Total = 40

{ 'B' Posts under Delhi and Nicobar
Administration

{ 1 to 4 4

Total of 'A' & 'B' = 44.

4. It will be seen from the above that the main change brought about by the 1988 Rules is to provide for the Junior Administrative Grade in the scale of pay of Rs.3700-5000 and to make promotion to the said Grade on selection basis on the recommendation of a selection committee presided over by the Chairman or Member of the Union Public Service Commission. An officer with a minimum of five years of regular service in Grade I shall be eligible for being considered for promotion to the Junior Administrative posts
Grade. There are 40(forty) in the Junior Administrative Grade.

5. The applicant has stated that seniormost members in Grade I(Selection Grade) who were already occupying the posts included in the Junior Administrative Grade with effect from 1986, like her, were automatically entitled to placement in the Junior Administrative Grade. It was not a case of creation of separate posts but was one of upgradation and the incumbents must, therefore, be deemed to have gone with the posts.

6. The applicant was directly recruited to Delhi, Himachal, Andaman and Nicobar Islands Civil Services on 22nd January, 1971 under the 1965 Rules. Subsequently, the Himachal Service was separated in view of the State-Hood

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being granted to that State on 25.1.1971. The 1965 Rules were replaced by the 1971 Rules. According to Rule 37(2) of the 1971 Rules, all appointments made under the 1965 Rules shall be deemed to have been made under the 1971 Rules. She was confirmed in the service (DANICS) with effect from 22.1.1973. She was promoted to Grade I (Selection Grade) of the service with effect from 9.3.1979. She has held the following posts:-

- (a) Assistant Commissioner of Sales Tax - from September 1976 to September 1977.
- (b) Joint Registrar - from 7.7.1983 to 15.7.1985.
- (c) Deputy Commissioner of Sales Tax - from July 1985 to November, 1987.
- (d) Joint Registrar, Cooperative Societies - since November, 1987.

7. The applicant has contended that as she had been already occupying posts included in the Junior Administrative Grade with effect from the year 1986 she was automatically entitled to placement in the said grade. The amendments made in 1988 to the 1971 Rules are only prospective and till the amendment Rules of 1988 came into force, all the posts shown in Schedule I of the amended rules stood upgraded with effect from 1986, the date of creation of Junior Administrative Grade, without any provision for promotion. After the upgradation of the posts, the seniormost officers in Grade I (Selection Grade) became entitled to the benefit of upgradation of their posts. The amendment made to Rule 31 being prospective, they have no application to placement in Junior Administrative Grade to be made prior to the said amendments.

8. The applicant has stated that among the 30 posts included in the Junior Administrative Grade with effect from 1986, are the posts of Deputy Commissioner of Sales Tax (Sl.No.17) and Joint Registrar of Cooperative Societies (Sl.No.4). The applicant held the post of Deputy Commissioner of Sales Tax from July, 1985 to November, 1987 and thereafter from November, 1987 till date she has been working as a Joint Registrar of Cooperative Societies. Therefore, from the date of introduction of the Junior Administrative Grade comprising of 30 posts, she held, one or the other, of the said 30 posts. In fact, prior to her posting as Deputy Commissioner of Sales Tax in July, 1985, she held the post of Joint Registrar of Cooperative Societies from July, 1983 to July, 1985. Having held the posts included in the Junior Administrative Grade continuously right from the date of creation of the said Grade till the amendments to the 1971 Rules were made in November, 1988, she was entitled to continue in the Junior Administrative Grade with all consequential benefits.

9. Respondent No.1 (Ministry of Home Affairs) issued an Office Memorandum dated 10.3.1989 laying down the procedure to be followed by the Departmental Promotion Committee. The applicant has challenged its validity and applicability to her case. She apprehends that by applying the procedure contained in the said OM, she is sought to be

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removed from the post of Joint Registrar, Cooperative Societies, a post which has now been upgraded in the cadre of Junior Administrative Officer's Grade. She alleges that this amounts to reduction in rank because she will be reverted to a lower rank and grade.

10. The respondents have stated in their counter-affidavit that the presumption of the applicant that since the post of Junior Administrative Grade was created with effect from 1.1.1986, she is automatically entitled for placement in the said grade is misleading. Under Rule 31 of the DANI Civil Service Rules, 1971, the procedure for appointment to JAG has been laid down which provides that appointments of members of the service to the JAG shall be made by promotion on selection basis on the recommendation of the Selection Committee, which is chaired either by Chairman or a Member of the UPSC. They have contended that the upgradation of the officer is not automatic. The case of the applicant along with other eligible officers was considered by the DPC held in UPSC in April and May, 1989. The DPC assessed the performance of the applicant after taking into consideration the relevant records and on the basis of her grading did not recommend her for appointment to JAG. The contention of the applicant that she is entitled to continue to hold the post of Joint Registrar of Cooperative Societies which has since been identified in the

JAG is not correct as Rule 18 of DANI Civil Service Rules, 1971 provides that appointments to the service are made to JAG, Grade-I or Grade-II of the service and not against any specific post included in the service. The applicant is a member of the service and she can be transferred to any of the posts except the posts which have been identified and included in JAG. The applicant has to make room for the officers of the service who have been recommended for appointment to JAG.

11. We have gone through the records of the case carefully and have considered the rival contentions. We have also considered the case law relied upon by both sides*.

12. The first question arising for consideration is whether upgradation of a post ~~per se~~ amounts to promotion to a higher post.

13. A Full Bench of the Kerala High Court in N.G. Prabhu Vs. Chief Justice, Kerala, 1973(2) SLR 251 has held that as a result of upgradation, persons continue to hold

* Decisions cited by the applicant:-

1973(3) SCG 1; AIR 1970 Pat 432; AIR 1976 SC 404; AIR 1972 Pat 247; 1987(3) SC 622; AIR 1983 SC 852; AIR 1983 SC 2068; AIR 1970 SC 77

Decisions cited by the respondents:-

AIR 1953 SC 10; 1989(9) ATC 633; AIR 1967 SC 1889; AIR 1986 SC 737; AIR 1990 SC 251.

the same posts but get a higher scale of pay and that it cannot be called a promotion. The following observations contained in Para 16 of the Judgment are pertinent:-

" In other words, if the upgradation relates to all the posts in a category naturally there is no sense in calling it a promotion of all the persons in that category. That is because there is no question of appointment from one post to another. Parties continue to hold the same posts but get a higher scale of pay. It may be that it is not all the posts in a particular category that are so upgraded but only a part of it. Normally, the benefit of such upgradation would go to the seniors in the category. They would automatically get a higher scale of pay. That is because though their posts continue in the same category, a higher scale of pay is fixed for those posts. It is appropriate then to say that the seniors have been nominated to the higher grade which has been so created by upgradation. The phenomenon does not differ from the case where all the posts are upgraded, and it appears to us that those who get the higher grade cannot be said to have been 'promoted' because here again there is no question of appointment from one post to another. They continue to hold the same post, but because of seniority in the same post they are given a higher scale of pay".

14. The Allahabad Bench of the Tribunal in its judgment ~ (V.K. Sirothia Vs. Union of India) ~ dated 1.10.1986 in OA 384 of 1986 has held in the case of upgradation of Railway Guards as follows:-

" The restructuring of posts was done to provide relief in terms of promotional avenues. No additional posts were created. Some posts out of existing total were placed in higher grade to provide these avenues to the staff who were stagnating. The placement of these posts cannot be termed as creation of additional posts. There were definite number of posts and the total remained the same. The only difference was that some of these were in a higher grade. It was deliberate exercise of redistribution with the primary object of betterment of chance of promotion and removal of stagnation".

" Upgradation of cadre by redistribution of posts will lose its primary objective if it is taken on generation of additional posts in the upgraded posts which it rightly is not. There has to be rationality in the implementation of directions and instructions. The criterion has to be formulated keeping the aims and safeguards in view. The keynote thought behind the exercise should not be lost sight of. It is to improve prospects, remove stagnation and provide avenues. The very purpose is defeated if the end result is anything else".

15. In a case where 300 posts of Assistant Divisional Medical Officers in the Central Railway were upgraded to those of District Medical Officers, the Jabalpur Bench of this Tribunal in Ashok Kumar Shrivastava Vs. Union of India, 1987(4) ATC 385 has observed that upgradation of ADMOs to DMOs involves neither a selection nor a promotion. It is simply nomination or placing of some seniors to the upgraded posts with better pay scale, on the basis of seniority subject to suitability. In the circumstances of this case placing of these few seniors to their upgraded posts with better pay scale does not amount to any fresh appointment by promotion and, moreover, these persons, so nominated to the higher grade, do not leave behind vacant their earlier posts.

16. A full Bench of the Patna High Court in Madan Mohan Prasad and others Vs. State of Bihar, AIR 1970 Pat. 432 has upheld the upgrading of the posts of Deputy Registrar, Patna High Court and the Secretary, Bihar Legislative Assembly and the appointment of the incumbents of those posts. This was also upheld by the Supreme Court in State of Bihar Vs. Madan Mohan, AIR 1976 SC 404.

17. In Bishan Sarup Gupta Vs. Union of India, 1973 SCC (I&S) 1 at 14, which dealt with the seniority of

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Income Tax Officers, a Constitution Bench of the Supreme Court upheld the upgrading to Class I of 100 temporary posts of Income Tax Officers, Class II. The Supreme Court observed that "upgrading of a post involves the transfer of a post from the lower grade to the higher grade and the promotion of one of the incumbents of that post to the upgraded post".

18. In view of the above, we are of the opinion that the applicant who has been holding the posts which have been included in the Junior Administrative Grade by the 1988 Rules must be deemed to have been appointed to the upgraded posts without requiring any fresh process of selection to be undergone by her.

19. The matter may also be viewed from another angle. The 1988 amendments providing for promotion to the Junior Administrative Grade from Grade I (Selection Grade) being prospective, could only govern vacancies arising after the coming into force of the 1988 Rules.

In Y.V. Rangiah Vs. J. Greenivasa Rao, AIR 1983 SC 852, the Supreme Court held that "the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules". To the same effect is the decision of the Supreme Court in P. Ganeshwar Rao Vs. State of U.P., AIR 1988 SC 2063.

20. Yet another aspect of the matter is that the vested rights and legitimate expectations of the applicant could not be taken away by retrospective amendment of the Rules and by providing for a fresh selection to the upgraded post in the Junior Administrative Grade by adopting new criteria.

21. In P.D. Aggarwal Vs. State of U.P., 1987 SCC (L&S) 310, the Supreme Court has held that though the Government has power under proviso to Article 309 to make rules and to amend them giving retrospective effect, if the rules purport to take away the vested rights and are arbitrary and not reasonable, such retrospective amendments are subject to judicial scrutiny if they have infringed Articles 14 and 16 of the Constitution. The Supreme Court followed its earlier decision in T.R. Kapur Vs. State of Haryana, 1986 Supp. SCC 584 at 595, wherein it was observed as follows:-

" It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is, however, subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective amendment, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or vested rights. Therefore, unless it is specially provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotion cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessarily satisfy the tests of Articles 14 and 16 of the Constitution".

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22. In P. Mahendran Vs. State of Karnataka, 1990(12) ATC 727(SC), the Supreme Court has observed that "the

Rules which are prospective in nature cannot take away or impair the right of candidates holding Diploma in

Mechanical Engineering as on the date of making

appointment as well as on the scrutiny by the Commission (Karnataka Public Service) they were qualified for selection and appointment."

23. In the conspectus of the facts and circumstances,

we hold that the applicant and those similarly situated

who were holding posts which have been upgraded in the

Junior Administrative Grade should be deemed to have been

regularly appointed to the Junior Administrative Grade

with effect from 1.1.1986. We have been informed by the

learned counsel for the applicant at the time of final

hearing that there are enough vacancies to accommodate

the applicant and those similarly situated. The

respondents are also directed to create supernumerary

posts, in case need for the same arises. In this view

of the matter, we do not consider it necessary to strike

down the OM dated 10.3.1989 or to declare the panel

prepared under Rule 31 and the recommendations made by

the DPC held on 13/14.4.1989 in so far as they apply to

the persons other than the applicant and those similarly

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situated.

24. The respondents are directed to issue appropriate orders on the lines indicated above preferably within a period of three months from the date of communication of this order.

There will be no order as to costs.

B.N. Dhoudiyal
(B.N. DHOUDIYAL)
MEMBER (A)

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4/3/82
(P.K. KARTHA)
VICE CHAIRMAN (J)

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