

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**N E W D E L H I**

18

O.A. No. 731/88  
T.A. No.

199

**DATE OF DECISION** 1st July, 1991

<u>Shri V.K. Seth</u>	Petitioner
<u>In person</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India &amp; Ors.</u>	Respondent
<u>Shri P.H. Ramchandani,</u>	Advocate for the Respondent(s)

**CORAM**

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*

*Ad. 5.91*  
 (AMITAV BANERJI)  
 CHAIRMAN

19

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 731/88

DATE OF DECISION: 1st July, 1991

SHRI V.K. SETH

APPLICANT

VERSUS

UNION OF INDIA & ORS

RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

APPLICANT IN PERSON

FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI,  
SR. COUNSEL FOR RESPONDENTS

(JUDGEMENT OF THE BENCH DELIVERED BY  
HON'BLE MR. I.K. RASGOTRA, MEMBER(A))

Shri V.K. Seth, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 24.11.1986 promoting respondents Nos. 4, 6-10 to the Senior Administrative Grade (SAG for short) Level I of the Indian Postal Service Group 'A' to the exclusion of the applicant (Annexure-I). The relevant part of the said order is reproduced below:-

"The President is pleased to appoint the following officers of the Sr. Administrative Grade Level II of the Indian Postal Service, Group 'A' to officiate in the Senior Administrative Grade Level I of the service with immediate effect and until further orders:-

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S1. Name of the officer      Post held at present  
No. S/Shri

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1.....  
2.....  
3.....

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4.....  
5.....  
6.....  
7.....  
8.....

9. B. Parabrahman

PMG, Karnataka Circle, Bangalore.

10. G.S. Lobana

DDG(PM), Postal Directorate

11. I.D. Shukla,

PMG, M.W.Circle, Ambala

12. Smt.G.E.R.Banerji

DDG(P), Postal Directorate

13. H.Rajendra Prasad

PMG, AP Circle, Hyderabad

14. P.K. Bagchi

Addl.PMG Maharashtra

Circle, Bombay.

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Charge report of the officers may be sent to this office in due course.

Sd/-

(K.R. Rambhad)  
Director(Staff) "

He is also aggrieved by the order dated 9th October, 1987 (Annexure III) advising him among others that the matter has been duly considered. "The merger of SAG Level II and I on the recommendations of the IVth Pay Commission effected from 1.1.1986 was not intended to disturb the seniority claims of the officers who got promoted to SAG Level I between 1.1.1986 to 13.3.1987. Therefore, the question of restoration of their seniority in the SAG to the position that existed prior to the holding of DPC on January 1986 does not arise."

2. The facts of the case in brief are that the applicant was promoted to the SAG Level II (Rs.2250-2500) on 28.11.1981. He submits that the respondents intimated 15 vacancies to the UPSC (1984 1, 1985 7 & 1986 7) in December, 1985 in S.A.G. Level I. (Rs. 2500-2750) for filling up by promotion from SAG Level II. The DPC which met on 22.1.1986 recommended a panel of 22 names in contravention of the extant orders. The applicant, therefore, contends that the process of selection was vitiated as

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select list of 22 candidates instead of 15, affected the zone of consideration. He submits that he was graded as 'Very Good' by the DPC and was placed in the select list above respondents Nos. 4-10 who are junior to the applicant in service as also in SAG Level II. According to the extract of the seniority list of Level II filed by him the applicant is at serial No.31 while the respondent Nos. 4-10 are at Srl. Nos. 32, 33, 34, 35, 36, 37 & 38.

The applicant claims that he was placed at Srl. No.15 of the select list containing names of 22 officers recommended for placement in SAG Level I. According to the applicant the recommendations of the DPC were approved by the Minister for Communications and sent to the Department of Personnel for obtaining the approval of the Committee of the Cabinet (ACC for short). Instead of communicating the approval of the ACC, the Department of Personnel recommended the proceeding of the DPC for reconsideration. The case was accordingly referred back to the UPSC who reaffirmed their earlier recommendations. Ultimately the Department issued the impugned order dated 24.11.1986 placing only 14 SAG Level II officers in Level I and disturbed the inter-se-seniority of the officers obtaining in SAG Level II. In this process three officers were overlooked for promotion from the SAG Level II to SAG Level I, (including the applicant, Shri V.K. Seth, Srl. No.31). S/Shri A.K. Sen, Srl. No.17, V.S. Vardhan at Srl.No.23 of the seniority list. While respondents Nos. 4-10 who are all junior to him were promoted to SAG Level I, his name was omitted from the promotion list illegally and arbitrarily. In the meantime, the respondents in pursuance of the Government resolution and notification of the same date, viz.. 13.3.1987 merged SAG Level II with SAG Level I retrospectively w.e.f.1.1.1986

as recommended by the 4th Central Pay Commission. Since SAG Level II was abolished and merged with Level I, w.e.f. 1.1.1986, the order dated 24.11.1986, promoting officers from SAG Level II to SAG Level I with immediate effect has become infructuous. The applicant, therefore claims that his seniority as obtaining in Level II should remain undisturbed consequent to the merger of the Level II with Level I w.e.f. 1.1.1986 as the order dated 24.11.1986 has been rendered as non-est.

By way of relief the applicant has prayed that the Tribunal after perusing the records of the DPC and the ACC should quash the impugned order dated 24.11.1986 (Annexure I) and 9.11.1987 (Annexure III) as being illegal and violative of the fundamental rights of the applicant. He further prays that the respondents be directed to place the applicant in the post of SAG Level I w.e.f. the date from which his immediate junior respondent No.4 is placed and that he be assigned seniority in the SAG in accordance with the seniority as was obtaining in level II prior to 1.1.1986. He also prays for the consequential benefits. The applicant also relies on the decision of the Tribunal in the case of **Shri N.P. Damania v. Union of India OA-1191/86.**

3. The facts of the case as given above are not disputed by the respondents in their written statement. They however, submit that the DPC recommended a panel of 22 names against 15 vacancies because 7 officers falling in the zone of consideration were on deputation and were not available for posting in the department. They maintain that it was strictly in accordance with the instructions of the Department of Personnel that the select list of 22 candidates was prepared to fill up the 15 vacancies.

2

The respondents admit that "there appears to be some force that the panel be restricted to 15 or the field extended" (Para VI(9) of the W/S). The respondents also admit that the applicant's name was included in the select panel prepared by the DPC. They however urge that the DPC is a recommendatory body whose recommendations are subject to approval by the appointing authority. They submit that the appointing authority did not agree with the recommendations of the DPC in respect of the applicant, as after going through the record of the applicant the appointing authority did not find him suitable for promotion to level I of the SAG. They further submit that in such cases of disagreement with the recommendations of the DPC there is a set procedure to be followed and they affirm that the said procedure has been followed in this case. Regarding the order of 24.11.1986 having been rendered infructuous consequent to the merger of SAG Level II with SAG Level I and the replacement of the merged Level II & I by a single scale of pay of Rs. 5900-6700, the respondents submit that the matter was examined by the Government of India and it was decided that "since the officers who had been approved for promotion to Level I by the appointing authority before the notification for merger of Level I and Level II was issued, had already joined Level I of the service, the proceedings of the DPC as approved by the appointing authority would remain valid even though the Pay Commission had recommended merger of Level I and II retrospectively."

The respondents further submit that the Union of India (respondent No.I) has already filed SLP in the Supreme Court against the decision of the Tribunal in **N.P. Damania Vs. UOI (supra)** and that the Hon'ble Supreme Court has also stayed the operation of the said decision.

4. The applicant has filed a rejoinder.

24

5. The Tribunal had granted interim relief to the applicant vide its order dated 3.1.1991 passed in MP No.2946/90, directing the respondents that:-

"If and when selection for the post in the grade of Rs. 7,300-7600/- is held, the applicant shall also be considered by the appropriate DPC/Selection Committee for such promotion, if he is otherwise eligible as detailed above, but his result shall not be announced until the O.A. is finally disposed of or any further directions in this regard are given by the Tribunal, whichever is earlier."

6. We have heard the applicant in person and gone through the written arguments submitted by him. He has drawn our attention to the decision of the Madras Bench of the Tribunal in **OA 727/87 in the case of M.G. Jayaraman Vs. UOI decided on 22.6.1990** and the decision of the Guwahati Bench in the case of **Shri Shreekanth panda Vs. UOI in OA-46/1988** decided on 11.9.1990 in support of his case.

We have also heard the learned counsel for the respondents Shri P.H. Ramchandani and perused the records carefully. Admittedly, the DPC met on 22.1.1986 while the impugned orders promoting 14 officers from SAG Level II to SAG Level I were issued on 24.11.1986. These orders were issued with immediate effect. Thus the vacancies even if they related to the period prior to 1.1.1986 have not been related back to the years when they arose. Instead the vacancies have been filled up only w.e.f. 24.11.1986. Obviously, therefore, the rules which governed the filling up of the vacancies for the period prior to 1.1.1986 would lose their validity when the revised rules were notified on 13.3.1987 to take effect from 1.1.1986 retrospectively. There is no doubt that the retrospective application of the orders issued in pursuance

24

of the Fourth Central Pay Commission's recommendations would effect the seniority of certain persons adversely, but this cannot be helped as the Revised Rules notified on 13.3.1987 came into force retrospectively w.e.f.1.1.1986.

In **Banwari Gope Vs. Emperor AIR 1943 PAT 18.20.**

**Fazal Ali, J.** observed:-

"The question as to how far a statute which repeals or alters the old law can be given retrospective operation has been discussed in numerous cases and I will state here very briefly some of the principles which may be taken to have been well settled in those cases. These are-

(1).....

(2) If there are words in the enactment which either expressly state or necessarily imply that the statute is to be given retrospective operation, then the Act should have retrospective operation even though the consequences may appear unjust and hard;

(3) a statute is not to be construed to have a greater retrospective operation than its language renders necessary, and

(4) as no person has a vested right in any course of procedure, alterations in procedure are to be retrospectively, unless there is some good reason against it."

Since the Government resolution and rules framed in pursuance of Article 309 of the Constitution of India expressed the intent of the Legislature, there is no way in which the myth of promotion from SAG Level II to SAG Level I can be kept alive by any amount of blood transfusion. The SAG Level II ceased to exist w.e.f. 1.1.1986. The language of the notification dated 13.3.1987

2

is "plainly retrospective" and "It must be so interpreted." (Maxwell Interpretation of Statutes 11th Edition page 205).

The loss of seniority in the case of respondents 4-10 cannot be helped in view of the express provisions in the notification dated 13.3.1987 merging SAG Level II with SAG Level I retrospectively w.e.f. 1.1.1986. The vacancies even if they related to the period prior to 1.1.1986 have been diverted of their attributes as they were filled only with effect from 24.11.1986 and consequently payment of arrears of pay and allowances etc. from the dates the vacancies arose have been allowed. In this view of the matter the DPC proceedings and approval thereof by the appointments committee as well as the orders dated 24.11.1986 cannot be considered as valid.

The respondents have admitted that the 15 vacancies were reported to the UPSC for filling up from SAG Level II to SAG Level I as against this a panel of 22 names was drawn to fill up the 15 vacancies. The department of Personnel has clarified in it OM No.22011/12/85-Estt(D) dated 10.12.1985 that while determining the vacancies in respect of which a panel is to be prepared by a DPC the vacancies to be taken into account should be "the clear vacancies arising in post/grade/service due to death, retirement, resignation regular long term promotion of incumbents of one post/grade to higher post/grade and vacancies arising from creation of additional posts on a long term basis and those arising out of deputation." It has been further clarified that all vacancies arising out of deputation for period of more than a year are to be taken into consideration. We, therefore, do not see anything illegal in advising the correct number of vacancies to DPC before it met to prepare select list.

27

The fact, however, remains that the vacancies in SAG Level II ceased to exist w.e.f. 1.1.1986 as the revised recruitment rules were made effective retrospectively w.e.f. 1.1.1986 and in accordance with the established law if the enactment or the statute is expressly or by intendment given retrospective operation, even in respect of substantive rights or pending actions, the courts have no other alternative than to give such operation to the statutes even though the consequences may appear to be unjust or hard.\* Accordingly the proceedings of the DPC held on 22.1.1986 and the orders of the respondents dated 24.11.1986 ceased to be operative with the operation of the revised recruitment rules retroactively w.e.f. 1.1.1986.

Accordingly the impugned order dated 24.11.1986 promoting certain officers from SAG Level II to SAG Level I to the exclusion of the applicant and order dated 9.10.1987 rejecting the representation of the applicant are set aside and quashed. The inter-se seniority of the officers including the applicant, in SAG Level II shall remain undisturbed on 1.1.1986 when SAG Level II was merged with SAG Level I.

We further direct that if the applicant has been found suitable for further promotion to the higher grade of Rs. 7300-7600 and placed on the panel but the result has not been announced in accordance with our interim order dated January 3, 1991, his result shall now be declared and in case he has been found suitable, he shall be entitled to all consequential benefits from the date his junior was promoted.

The OA is disposed of as above, with no order as to costs.

*Subhash*  
(I.K. Rasgotra)  
Member(A) 1/2/1991

*Amitav*  
1.2.91  
(Amitav Banerji)  
Chairman