

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 603
~~TAX No.~~

1986

7

DATE OF DECISION 27.2.87

Sh. A. K. P. Chaudhary Petitioner

Petitioner in person Advocate for the Petitioner(s)

Versus

Union of India Respondent


Sh. N. S. Mehta Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H. P. BAGCHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*


(H. P. BAGCHI)


(S. P. MUKERJI)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.603/86

DATE OF DECISION : 27.2.87

Shri. A. K. P. Chaudhary . . . Petitioner

Vs.

Union of India . . . Respondent

For Petitioner . . . Petitioner in person

For Respondent . . . Shri N.S.Mehta, Advocate

CORAM :

The Hon'ble Mr. S. P. Mukerji, Administrative Member

The Hon'ble Mr. H. P. Bagchi, Judicial Member

JUDGMENT

The petitioner is an Under Secretary in the Ministry of External Affairs has moved this Application under Section 19 of the Administrative Tribunals Act, 1935 on 1.8.86 praying that the Panel of IFS(B) Grade-I prepared in 1978 should be reviewed on the basis of the higher seniority which he has got over those who had been included in the panel and his order of allotment in the senior scale of the IFS should be revised accordingly. The facts of the case can be summarised as follows.

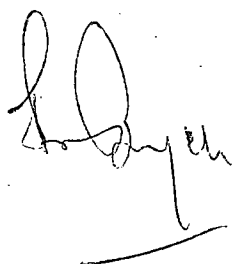
2. The applicant was in the zone of consideration in 1978 when the impugned select list was prepared. He was included at serial number 33 by the NPC which prepared a select list of 37 officers. He could not be promoted to Grade-I IFS(B) on the basis of the panel as 31 general candidates and one scheduled caste candidate were promoted and only one out of 6 vacancies reserved for scheduled caste and scheduled tribe candidates could be de-reserved for general candidates. Petitioner being at sl.no.33 and only 32 appointments including that of a scheduled caste having been made the petitioner's name had to be dropped from the promotion list. The NPC had recommended the petitioner for a reserve vacancy. Since no further reserve vacancy could be de-reserved, the petitioner could not be appointed from the 1978 list. However, the petitioner was promoted to Grade-I on the basis of a latter select list and got 1977 as year of allotment instead of 1975 which he would have got if he had been appointed on the basis of 1978 select list.

3. We have heard the arguments of the petitioner in person and learned counsel for the respondent and gone through the documents carefully. The Petitioner's main claim is that since the seniority list of Section Officers was quashed by the Supreme Court in G.S. Lamba and Others Vs. Union of India and Others (C.W.P. 13248-13257 of 1983) and in the Revised Seniority List he has been shown senior

L. D. Singh

to those who had been included in the 1978 Select List and placed above them, the petitioner has a claim to appointment of Gr-I on the basis of 1978 Select List. The respondents have argued that the Supreme Court in G.S. Lamba's case quashed the seniority list of 1979 and not the seniority list prepared prior to 1979 on the basis of which the DPC prepared the panel in 1978. We have gone through the petition filed in G.S. Lamba's case and find that the prayer in that case was that "a writ in the nature of certiorari calling forth to this Hon'ble Court the record of the case including in particular the lists of seniority published by the respondents on 2.7.1979 and 27.8.1979 for the purposing of quashing the same". Thus, it is clear that the Seniority List on the basis of which the DPC prepared the panel of 1978 was not the Seniority List which had been quashed by the Supreme Court and therefore the petitioner cannot claim a higher place in the panel^e of 1978 on the basis of the Revised Seniority list prepared after the 1979 Seniority List was quashed. Even the revised Seniority list prepared on the basis of the Supreme Courts Direction is under challenge before the Tribunal in OA 334/86. In any case, the Revised Seniority List is not relevant for the 1978 panel prepared by the DPC.

4. The Applicant's further contention is a Scheduled Caste candidate had been extraneously inducted in the promotion list as a result of which



he had been deprived of a vacancy to which he could have been appointed. Even if we accept the contention of the petitioner that a Scheduled Caste candidate was inducted extraneously, since the petitioner's position was 33 and only 31 general candidates were appointed and even if that Scheduled Caste candidate had not been appointed that vacancy would have gone to the 32 officer in the panel whereas the applicant was occupying 33 position. Thus, this contention does not give any advantage to the Applicants.

5. The Applicant's further contention is that the Respondents should not ^{have} consulted the Commissioners of Scheduled Castes and Scheduled Tribes for de-reservation of the 6 vacancies reserved for Scheduled Caste and Scheduled Tribe candidates but should have taken a decision on their own in consultation with the UPSC. Since the question on de-reservation was an administrative decision, we cannot question either the decision or the morality adopted by the Respondents in de-reservation of the reserve vacancies.

6. The Applicant contended during the course of the arguments that the panel drawn up by the NPC in 1978 had been manipulated to place people of average calibre above him and the fact that the panel followed the seniority list in toto indicated that the NPC did not apply its mind. In order to

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satisfy ourselves we called for the concerned file of the UPSC where the meeting of the DPC was arranged and we went through the proceedings of the DPC. The meeting of the DPC held in 1978 was chaired by late Shri Ashok Sen the then Member of the UPSC. There was no over-writing or any indication to show that there tampering with the panel. We compared the two Annexures of the proceedings. The first Annexure indicated the assessment made by the DPC and the second Annexure indicated the panel. All officers who were placed above Shri A.K.P. Chaudhary in the panel were graded as outstanding like the petitioner Shri Chaudhary. They were placed above the petitioner because of their higher seniority in accordance with the seniority list in existence in 1978. The Scheduled Caste Candidate Shri Mondel was at the bottom of the panel ^{and} ~~who~~ ^{he} was given the reserved post. Even if that post was not to be given to the Scheduled Caste Candidate, it would not have gone to the petitioner as there was one more officer Shri K.N. Arora above Mr. Chaudhary in the panel who was to be accommodated before the petitioner's turn would have materialised.

ⁱⁿ ^{days} ⁱⁿ 7. A few ^{had} After the arguments of the both parties ^{had} concluded, the petitioner filed three miscellaneous applications praying that the 1978 seniority list on the basis of which the impugned panel was prepared should also be revised on the lines of the 1979 seniority list which had been struck down by the Supreme Court. He further prayed that the C.R. dossiers of all the officers who were considered by the DPC for inclusion in the selection list should be called for and re-examined by the Tribunal

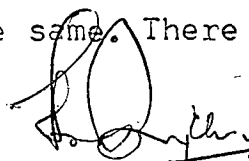
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to ascertain the authenticity of the assessment made by the DPC. In the third miscellaneous application, he challenged an order passed by the Ministry of External Affairs dated 2.1.87 terminating his consultation duty prior to his joining at new posting at Chittagong and calling upon him to proceed on leave. These applications were, at the first instance, dismissed on 24.2.87 for default as the petitioner was not present when the same had been listed for hearing. On his application for restoration, the three miscellaneous applications were heard by the Tribunal in a special sitting. Insofar as the revision of the 1978 seniority list is concerned, since this was not included in the main petition, ^{it} ~~that~~ would be transgressing the limits of the petition if this prayer of the applicant is taken up for consideration at this stage. The petitioner conceded that the Supreme Court had struck down the 1979 seniority list and 1978 seniority list ^{had} not been set aside. Once, on the basis of the revised 1979 seniority list, the 1978 seniority list is deemed to be automatically set aside as the applicant would like us to presume, the ^{not only the} sanctity of 1978 seniority list, but all the preceding seniority lists would be in question. Since a large number of officers who had been included in the earlier seniority lists would be affected, some of whom may not be in service now, it will not only be impracticable but also unjust and vexatious to unsettle the earlier seniority lists on the basis of which promotions have been made through the various meetings of the DPCs. As regards the second prayer of the applicant that we should re-examine the C.R. dossiers of all the

officers, we feel that this is neither necessary nor desirable. The applicant has not been able to establish any vindictiveness or mala fides on the part of the members of the DPC, which can be the only valid ground to question the assessment made by them. Nevertheless, we had called for the proceedings of the DPC from the UPSC in the open court and were perfectly satisfied that there was no manipulation in the preparation of the panel. The petitioner had been assessed as an outstanding officer, but he missed the promotion because of his low position in the panel. We are, therefore, not in a position to accept the petitioner's request in this regard. So far as the third prayer of the petitioner regarding ^{the respondents} termination of his consultation and asking him to go on leave, the petitioner conceded that he should seek redress from the superior authorities in the Ministry of External Affairs and it is too premature for the Tribunal to intervene in the matter. We do not find any element of contempt in the impugned order either because the petitioner has not been directed to leave his present station of posting from where he is prosecuting this application. For these reasons, we do not find merit in the three miscellaneous petitions and the same are rejected.

8. In view of the conspectus of the facts and the circumstances revealed before us, we are satisfied that the petition has no force and accordingly reject the same. There will be no order as to costs.

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(H.P. BAGCHI)
JUDICIAL MEMBER


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER