

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. DA- 297/87

Date of decision: 23.10.1992

Shri S. S. Saini

.... Applicant

Versus

Union of India through
Secy., Ministry of Home
Affairs and Others

.... Respondents

For the Applicant

.... Shri G.R. Matta, Counsel

For the Respondents

.... Shri N.S. Mehta, Counsel

CORAM:

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? *No*

JUDGMENT

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

This application has been filed by Shri S.S. Saini while he was working as Deputy Commissioner (Excise), Delhi Administration. He filed an amended application by which time, he had retired from Government service on attaining the age of superannuation. The reliefs sought by him are the following:-

(i) To set aside and quash the notification dated 12.11.1984 insofar as it relates to the appointment of the applicant to the Selection Grade

W.E.F. 20.9.1983;

(ii) to declare that he is entitled to be appointed to the Selection Grade of DANICS with effect from the date any person junior to him was so appointed in the Selection Grade with consequential benefits of fixation of pay and payment of arrears; and

(iii) to direct the respondents to appoint him to the Selection Grade of DANICS with effect from the correct date on the basis of his seniority and from the date any person junior to him was so appointed with consequential benefits of fixation of pay and payment of arrears.

2. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. The Central Government constituted a service called 'the Delhi & Andaman and Nicobar Islands Civil Service' (DANICS) under the provisions of the Delhi and Andaman and Nicobar Islands Service Rules, 1971 ('the Rules'). The DANICS has two grades, viz., (i) Grade I (Selection Grade) in the scale of Rs. 1200-1600 (pre-revised); and (ii) Grade II in the scale of Rs. 650-1200 (pre-revised). $66\frac{2}{3}$ per cent of the substantive vacancies which occur from time to time in the authorised permanent strength of the Service are to be filled up by direct recruitment through a competitive

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examination and the remaining vacancies by promotion by method of selection.

3. The applicant was eligible for promotion to DANICS. The Selection Committee met in August and October, 1973 and prepared two Select Lists - one of 19 officers for promotion on substantive basis and the other, of 95 officers for promotion on officiating basis. The applicant's name was included at serial No. 93 of the Select List made for promotion on officiating basis.

4. The applicant has stated that the above Select Lists were prepared on the basis of incorrect seniority list of persons holding the feeder posts/service. Writ petitions had been filed in the Delhi High Court against the aforesaid Select Lists. The respondents were, however, allowed to make promotions to the DANICS on the basis of the above Select Lists, subject to the outcome of the writ petitions. Accordingly, the applicant was promoted to Grade II of the DANICS some time in 1975 on officiating basis under Rule 25 (i) (b) of the Rules.

5. The applicant has stated that if the selection for DANICS was made on the basis of correct seniority, his name would have found a place in the Select List of 19 officers drawn in September, 1973 by the Selection Committee and he would have been promoted substantively in 1973. He had been continuously officiating in the DANICS since 1975

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without any break till he was appointed substantively in the Service vide notification dated 20.9.1983. He has contended that he was selected for substantive appointment against the substantive vacancies which arose in 1975.

6. The applicant has stated that respondent Nos. 3-6, who are junior to him, were promoted u.e.f. 3.5.1982 vide notification dated 1.7.1985. According to him, his promotion should be ante-dated with effect from the date any person junior to him was so promoted.

7. The respondents have stated in their counter-affidavit that the applicant's name was included in the officiating panel drawn by the Selection Committee in August, 1973 and was included in the officiating panel of 1974 (drawn in 1983), but his name was included in the substantive panel against the vacancies for the year 1975. This panel was, however, drawn in 1983. The respondents have contended that according to the instructions issued by the Government of India, Deptt. of Personnel & A.R., vide their O.M. dated 24.12.1980, where for reasons beyond control D.P.C. could not be held in any year(s), even though the vacancies arose during that year(s), the first D.P.C. that meets thereafter, should, inter alia, prepare a Select List for each of the years starting with the earlier year onwards and then prepare a consolidated Select List by placing the Select List of the earlier year above the one for the next
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year, and so on. This O.M. further provides that while promotions will be made in the order of Consolidated Select List, such promotions will be only prospective in effect, even in cases where the vacancy relates to an earlier year. The name of the applicant was included in the panel for substantive appointment to Grade II of DANICS against the vacancy for the year 1975 by the Selection Committee which met in November, 1983. Therefore, in accordance with the instructions contained in the aforesaid O.M. dated 24.12.1980, he could ~~not~~ be appointed substantively to the Service only w.e.f. 20.9.1983. Therefore, he could be promoted to the Selection Grade only after 20.9.1983 and ~~as~~ the inclusion of his name against 1975 vacancies is not relevant for promotion to the Selection Grade.

8. The respondents have also relied upon the O.M. dated 30.12.1976 issued by the Government of India, according to which, appointments on the recommendations of the Selection Committee should be made on regular basis only from the date of the preparation of the panel or the date on which the U.P.S.C. approves the same, whichever is later. In the instant case, the panel was prepared by the Selection Committee for promotion to Selection Grade on 27.6.1984 and the U.P.S.C. approved the same on 20.10.1986. Thus, the applicant could be promoted to the Selection Grade only from the date subsequent to the date on which the U.P.S.C. approved the panel in which the name of the applicant was included for promotion to the Selection

Grade, viz., 20.10.1986. As against this, he was promoted to the Selection Grade from the retrospective date on which he became a member of the Service, viz., 20.9.1983.

9. The respondents have further stated in their counter-affidavit that the Delhi Administration notified the seniority list of Grade I in 1977 in which the applicant figured at serial No.53. However, by a corrigendum issued in 1978, his seniority was revised and he was placed at serial No.11 of the seniority list. If the seniority list of the applicant had been correctly fixed before the meeting of the Selection Committee in August, 1973, he may have figured in the zone of consideration for the substantive vacancies. His name figured only in the zone of consideration for officiating vacancies. However, even if the correct placement had been given to him, he would not have been included in the substantive panel of 1973 because he was graded as 'Good'. There were a number of persons in the zone of consideration who obtained higher assessment.

10. The respondents have stated that respondent Nos. 3-6, who were given Selection Grade w.e.f. 3.5.1982, are direct recruit officers and are not similarly placed as the applicant. The respondents have stated that no promoted officer junior to the applicant has been given Selection Grade from the date earlier than the applicant.

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11. In our opinion, there is no merit in the contentions raised by the applicant. He became a member of the DANICS only on 20.9.1983 and would not be entitled to Selection Grade from a date earlier than that. The applicant was granted Selection Grade w.e.f. 20.9.1983. The respondents have also stated that his officiation in the duty posts of DANICS was taken into consideration for the purpose of eligibility criteria for appointment to Selection Grade of the Service.

12. In the facts and circumstances of the case, we see no merit in the present application and the same is dismissed. There will be no order as to costs.

B. N. Dhandiyal
(B.N. Dhandiyal) 28/10/92
Administrative Member

B. K. Kartha
(P.K. Kartha) 23/10/92
Vice-Chairman (Judl.)