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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1216/90

New Delhi, this 6th day of January, 1995

Hon'ble Shri Justice S.C. Mathur, Chairman  
Hon'ble Shri P.T.Thiruvengadam, Member(A)

Dr. S.S.Srivastava  
s/o late Mr. R.S.Srivastava  
R-66, Greater Kailash I  
New Delhi-110 048

Applicant

By applicant in person

VERSUS

1. Union of India, through  
The Secretary  
Dept. of Statistics  
Ministry of Planning  
Yojana Bhawan  
New Delhi-110 001

2. Chairman  
Union Public Service Commission  
Dholpur House, Shahjahan Road  
New Delhi-110 011

Respondents

By Shri P.H.Ramchandani, Senior Counsel

ORDER

The applicant belongs to Indian Statistical Service (ISS). He was recruited in Grade I (Rs.1800-2000) and joined service on 12.10.78. He was promoted to Selection Grade of Rs.2000-2250 on 6.11.80 and was further promoted to Senior Administrative Grade (SAG) in scale of Rs.5900-6700 in November, 1991.

2. A vacancy in SAG arose on 1.3.89 and it is the case of the applicant that he should have been promoted to SAG from this date. This OA has been filed praying for a direction with regard to this claim.

3. The applicant had been granted selection grade with effect from 1.1.86 by order dated 26.10.88. The applicant has sought further relief that the selection grade should have been given to him from 6.11.80 and not from 1.1.86.

4. The respondents have traced the background in their reply. It has been brought out that till 1986, ISS consisted of posts encadred in four grades, namely Grade IV, Grade III, Grade II and Grade I. Subsequent to adoption of the IV Pay Commission Pay Scales, Grade I and Grade II posts were combined and operated in Junior Administrative Grade (JAG) in the scale of Rs.3700-5000, Grade III post was operated in the scale of Rs.3000-4500 and Grade IV post was operated in the scale of Rs.2200-4000.

5. In addition, there were certain posts carrying statistical functions in the pre-revised scale of Rs.2000-2250 and above and operating in different Ministries/Departments of the Government of India. These posts were not included in the ISS and the appointments thereto were being regulated by the relevant recruitment rules, for each such post. The applicant held one such post on deputation basis. In December, 1986 for the first time, posts were encadred in above Grade I <sup>Selection Grade</sup> (Rs.2000-2250 pre-revised), namely, one post each in SAG Level II (Rs.2250-2500 pre-revised) and SAG Level I (Rs.2500-2750 pre-revised) and in addition 13 posts in selection grade (Rs.2000-2250) encadred.

6. In August, 1987 orders were issued for the operation of non-functional selection grade (NFSG) posts to the extent of 15% of senior duty posts. The officers appointed to the JAG were eligible for the NFSG on satisfying certain conditions. A situation thus arose in which the ISS had 13 posts formally encadred in the functional selection grade (FSG) while it was entitled to 37 NFSG posts with effect from 1.1.86. It was decided that functional and non-functional posts in the same selection grade can not co-exist and action was initiated to have the functional selection grade posts either upgraded to SAG level or down graded to JAG level post on relevant consideration. This exercise resulted in upgradation of 8 functional level grade posts to SAG and down gradation of the remaining 5 functional selection grade posts to JAG. Officers who were already in the functional selection grade were allowed to continue to hold their grade till promoted or superannuated.

7. On 1.3.89, a vacancy in the SAG arose, by which time two separate grades of SAG-I and SAG-II which were existing in the pre-revised scale had got merged into a single SAG revised scale of Rs.5900-6700. The earlier rules for filling up the posts of SAG level II and SAG Level I posts became irrelevant and new recruitment rules for filling SAG posts were formulated. Pending formal amendment to the ISS Rules it was decided that

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all vacancies in the recruitment rules shall be filled by promotion from amongst JAG officers with 8 years regular service in the grade including service if any in the selection grade.

8. In reply, it has also been brought out that the applicant was working against the FSG post with effect from 6.11.80 on deputation basis. Till such time the FSG posts were encadred in December, 1986, the question of regularising the applicant in selection grade did not arise. After encadrement of the FSG posts in ISS, orders were issued on 26.11.87 appointing the applicant in selection grade effective from 27.12.86. Subsequently the position with regard to selection grade got changed. With the sanction of large number of NFSG posts, concept of FSG had to be given up. However, with the availability of NFSG posts from 1.1.86 itself, the applicant was given the benefit and regularised in selection grade with effect from 1.1.86 by a further order dated 20.10.88. Thus, it is the case of the respondents that the applicant has no cause for being given selection grade from a date earlier to 1.1.86. We are satisfied with the stand of the respondents in view of the fact that the earlier functioning of the applicant in selection grade was only on deputation and not on a regular basis. Accordingly the claim by the applicant for regularisation in selection grade with effect from 6.11.80 has to be disallowed.

9. The applicant argued his case in person and in support of his case for promotion to SAG from 1.3.89 advanced the following grounds:

(i) DPC for filling up the posts was held on 8.1.90 and the delay in constituting the DPC should not result in denying him promotion from 1.3.89;

(ii) Wrong recruitment rules were followed by the DPC;

(iii) DPC was not constituted as per rules; and

(iv) The eligibility list considered by the DPC was not the correct one.

10. With regard to the delay in holding the DPC, the applicant argued that the occurrence of the vacancy in SAG was on 1.3.89 and it was the inaction on the part of the respondents in not constituting the DPC in time, which resulted in the benefit being delayed. But it is a settled position that unless a person is posted against a post and discharges the responsibilities of the post, benefits of the higher post can not be claimed. Mere occurrence of the vacancy does not entitle a person to get posted against the relevant post unless a proper order is issued.

11. The applicant strongly contended that wrong recruitment rules had been followed. It was argued that the recruitment rules for promotion to SAG should provide for evaluation of selection grade officers in the first instance in preference to SAG officers.

12. The applicant referred to the earlier rules with regard to filling up of SAG II posts, which rules provide for consideration of selection grade officers.

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13. We have already referred to the reply filed by the respondents bringing out the background. At the time of filling up the vacancy in SAG, which vacancy arose on 1.3.89, functional selection grade had ceased to exist. Non functional selection posts are considered as part of JAG and the rules framed for filling up SAG post thus provided for consideration of JAG officers only. The respondents have averred that action for filling up vacancy of SAG, occurred in 1989 was taken in accordance with the revised ISS Rules, which were being formally amended. We can not fault the action of the respondents in revising the ISS Rules, in terms of the change in position with regard to various categories of posts in ISS.

14. The third ground was with regard to the composition of the DPC. The applicant referred to the orders of the respondent-department dated 21.1.89 by which the DPC had to consist of Chairman/Member, UPSC, Secretary, Department of Statistics and Director General, CSO/Ex-Officio General Secretary, Department of Statistics. It is argued that in the relevant DPC only the UPSC representative and the Secretary of the Department of Statistics were present and thus the DPC did not have its full composition. The stand of the respondents is that the third member of the DPC, namely Director General, CSO was Dr. S.N. Ray at the relevant point of time. Dr. S.N. Ray was himself a candidate to be considered by the DPC. Accordingly, Dr. Ray had to stand out. No rules were shown to us that a depleted DPC particularly in the circumstances like this, should be invalidated. As the third member was not available,

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the functioning of the DPC, with <sup>the</sup> available two members can not be held to be illegal.

15. As regards the officers considered by the DPC, the applicant raised objection that Dr. Ray and M.C. Sardana should not have been included in the zone of consideration and if these officers had been excluded he would have been senior most in the field, with the consequential advantage. In support of his argument, he referred to the list of appointments to the selection grade issued by the respondents on 26.11.87 and 26.10.88. These notifications have already been mentioned in the earlier paragraphs. The respondent is correct in pointing out that Dr. Ray and M.C. Sardana have not been included in these notifications. The respondents have explained the position by stating that these officers had been occupying positions senior to the selection grade even prior to 1.1.86 and a conscious decision was taken not to include them in the selection grade list. The reply further adds that inclusion or otherwise in the selection grade list had become irrelevant by the time vacancy for SAG arose in 1989, since these selection grade posts had become non-operable in 1989. Also, Dr. Ray and Sardana being senior to the applicant was never in doubt.

16. It was then argued by the applicant that in the draft seniority list made on 8.5.89 (Annexure I to the OA) Dr. Ray and Sardana had been shown in SAG. This seniority list was the one which was considered for arriving at the field of eligibility for the DPC held in January, 1990. The case of the respondents is that the list made out on 8.5.89 is the list of officers in JAG and the covering letter clearly brings this out. Dr.

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Ray and Sardana were shown against SAG since at that time they were working in the SAG on deputation basis. These two officers had not been regularised in SAG and were holding higher posts by virtue of their deputation.

17. The learned counsel for the respondents mentioned at the time of argument that the benefit of vacancy which arose in 1989 was ultimately extended to Dr. Ray who was the senior most person in the relevant field of eligibility. We do not find any infirmity in the action taken by the respondents in including Dr. Ray and Sardana in the zone of consideration.

18. In the circumstances, the OA is dismissed. There is no order as to costs.

P. J. T. S

(P.T. Thiruvengadam)  
Member(A)

S. C. Mathur

(S.C. Mathur)  
Chairman

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