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Central Administrative Tribunal

Principal Bench

CA-1745/90

New Delhi, this day of ~~January~~ <sup>February</sup> ~~1st~~ <sup>1st</sup>, 1996.

Hon'ble Shri A.V. Haridasan, Vice-Chairman(J)  
Hon'ble Shri R.K. Ahooja, Member (A)

L.M. Lakra  
S/o Late Sh. A.M. Lakra  
231/24, Chelmsford Road  
New Delhi; 110055. .. Applicant

(Advocate: Shri B.B. Ravel)

versus

Union of India: Through

1. Secy. Min. of Commerce,  
Udyog Bhawan, New Delhi.110001.
2. Secy. Deptt. of Personnel  
and Training, North Block  
New Delhi.
3. Chief Controller of Imports  
and Exports, Udyog Bhawan,  
New Delhi; .. Respondents

(By Advocate: Sh. M.K. Gupta)

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

The applicant who was a Dy. Chief Controller of Imports and Exports, Min. of Commerce and belongs to the Central Trade Service (CTS) is aggrieved that he was not given promotion to   grade-II of the service from an earlier date when the previous DPC was held.

2. The case of the applicant in<sup>a</sup>/nutshell is that after being initially recruited as Controller of Imports and Exports he was inducted in CTS in its initial constitution in 1979. The service <sup>carries</sup> three grades, namely, Asstt. Chief Controller (Gr.III), Dy. Chief Controller (Gr.II) and Joint Chief Controller (Gr.I). Officers with five years service in Gr.III were considered for promotion to Gr.II. The applicant's claim is that in 1983 there were 10 regular vacancies in Gr.II when the DPC was held on 21.12.1987 ~~but~~ the panel was prepared for only five vacancies including one for 1986 after considering 15 officers. The recommendation in respect of the applicant ~~who~~ was at no.9 as well as the recommendation <sup>one</sup> in respect of Shri Sagna Lal who was at serial No.2 were placed in sealed cover due to pendency of vigilance cases. The applicant claims that though he was fully exonerated on 1.1.1988 ~~but~~ he was not given promotion but Shri Sagna Lal who was exonerated much later in October, 1988 was not only given promotion but was promoted with retrospective effect from 21.12.87, the date of the meeting of the DPC. The applicant was eventually promoted on the basis of DPC held on 17.10.88 ~~but~~ was <sup>ranked</sup> below many of his juniors.

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3. The applicant thus claims promotion from an earlier date on the ground that firstly the number of vacancies for 1987 in the DPC should have been 10 instead of five as there were five anticipated vacancies on account of promotion from Gr.II officers to Gr.I. <sup>Further</sup> ~~he~~ should in any case have been given promotion earlier than Shri Sagna Lal who was exonerated later than him from the Departmental Enquiry.

4. We have heard the ld. counsel ~~on both sides~~ on both sides and also have gone through the records of the Department as regards the DPC of 1987 and 1988. The ld. counsel for the applicant emphasised that promotion from Gr.II officers to Gr.I had already been made at the time of holding of 1987 DPC though <sup>an</sup> on ad hoc basis <sup>also</sup> and proposals had been submitted for holding a regular DPC for promotion to Gr.I after obtaining necessary relaxation regarding qualifying service in respect of Gr.II officers. The counsel alleged that non-linking of the two DPC cases and not taking into account the anticipated vacancies due to promotion from Gr.II to Gr.I was either on account of malafide or due to negligence for either of which ~~the~~ applicant should not be made to suffer.

We have seen the relevant files No.5/4/87-Admn(G) of the Office of Chief Controller of Imports and Exports which show <sup>( )</sup> that the proposal for the DPC was noted

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from the office of Chief Controller vide letter No.5/4/87-Admn(G) dt. 23.11.1987 addressed to the Ministry of Commerce. The DPC was held on 3.2.88 resulting in recommendations and promotion of six officers on 10.2.88 vide Ministry letter of the same date. Since the DPC for promotion from Gr.III to Gr.II had taken place on 21.12.87 and the DPC for promotion from Gr.II to Gr.I took place only on 3.2.88, the additional vacancies occurring for promotion from Gr.II to Gr.I could not be taken into account on 21.12.87 as they could not be regarded as clear vacancies. We are therefore not persuaded that the applicant had a right to be considered for five more vacancies or even six additional vacancies when his name came up for consideration in the DPC held on 21.12.87.

5. Another factor which has to be kept in mind is that 15 officers were considered against the five vacancies for 1987. If there had been five more vacancies, then the number of officers to be considered would have been correspondingly increased by another 15. Thus the applicant could not have automatically claimed promotion in the grading which he obtained.

6. On the second point, the ld. counsel for the applicant based his arguments on the fact that Shri Sagan Lal had been given notional promotion from an earlier date, namely, dt. 21.7.87 though he had been exonerated only in October, 1988. He argued that the retrospective effect of promotion

of Shri Sagan Lal indicated that there was an additional vacancy available on 21.12.87 and since the applicant had been exonerated on 1.1.88, that is, nearly 10 months before Shri Sagan Lal, it was the applicant who should have been adjusted against that vacancy. A perusal of the record shows that this argument has no bottom. <sup>After</sup> ~~After~~ minutes of DPC held on 21.12.87 in the UPSC show that five persons were considered against <sup>the</sup> 1986 vacancy in which Shri Sagan Lal case was shown as placed in sealed cover. For four vacancies of 1987, 13 persons were considered in which Shri Sagan Lal was shown at serial No.4 and Shri LM Lakara at serial No.10, the assessment and recommendation in respect of both being placed in sealed cover. The sealed covers were opened after the vigilance cases of both these officers were decided. The findings in case of Shri LM Lakara was as follows:

"Having examined the character roll of Shri LM Lakara (ST), the DPC assessed him as Good. On the basis of this assessment, the Committee could not include him in the panel for 1987 for want of vacancies"

The findings in case of Shri Sagan Lal was as follows:

"Having examined the character roll of Shri Sagan Lal (SC), the DPC assessed him as Good in respect of 1986 vacancies. On this basis the Committee could not include him in the panel.

"Shri Sagan Lal (SC) has been assessed as 'Very Good' for the vacancies reported for the year 1987. On the basis of this assessment, the Committee recommend that his name may be included in the panel after serial No.1(a) below Shri RP Dhaundiyal (ST) against the 1987 vacancies."

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7. It is thus to be seen that the applicant Shri Lakra had not been recommended at all by the DPC, while on the other hand Shri Sagan Lal was not only recommended but was placed at serial no.2 that is between Shri R.P. Dhaundiyal and Shri S.P.Chibber. Accordingly, the Ministry issued orders of his notional promotion w.e.f.the date Shri Chibber, the person below him had been promoted i.e. w.e.f. 21.12.1987. He was however not allowed any back wages for the period prior to the date that he actually started working as Dy. Chief Controller. The applicant therefore cannot link his case with that of Shri Sagan Lal who not only was at a higher position senioritywise but was also entitled for promotion in terms of the recommendations of the DPC.

8. We have also seen the records of the DPC in respect of the promotion of the applicant held on 17.10.88. This also shows that the applicant had been placed at serial No.17 of those recommended for promotion, even though in the order of seniority he was at serial no.5 or in other words he was superseded by 12 persons. This was because he received a lower grading relevant to the officers who superseded him. Thus if there had been additional vacancies in the DPC held on 21.12.87 in all probability he would still not have made the grade for promotion.

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9. In the light of the findings given above,  
we find no force in the case of the applicant.  
Accordingly, the application (OA No.1745/90) is  
dismissed. No order as to costs.

*R. K. Andoja*  
(R.K.ANDOJA)  
Member(A)

*A. V. Haridasan*  
(A.V.HARIDASAN)  
Vice-Chairman(J)

SCS