

(1) CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1930/1992

New Delhi, this 4th day of June, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)  
Hon'ble Shri S.P. Biswas, Member(A)

(2)

Shri Inder Kumar Nayar  
s/o Shri R.N. Nayar  
N-564/S-9, R.K. Puram  
New Delhi - 110 022

.. Applicant

(By applicant in person)

versus

Union of India, through

1. Secretary  
Department of Expenditure  
New Delhi
2. Controller General of Accounts  
Department of Expenditure  
Lok Nayak Bhavan, New Delhi
3. Shri Mohinder Singh  
Asstt. Controller General of Accounts  
Lok Nayak Bhavan, New Delhi
4. Shri J.P. Srivastva  
DCA(IB), DACR Building, New Delhi
5. Shri S.S. Iyer  
DCA, CBEC, Bombay-20 .. Respondents

(Through Shri P.H. Ramchandani, Senior Counsel)

ORDER(oral)

Hon'ble Dr. Jose P. Verghese

The applicant is aggrieved by the orders of supersession passed in favour of two of his juniors vide order dated 16.10.90 at page 22 and order dated 7.11.90 at page 30 of the paper-book. By these, admittedly juniors to the applicant have been promoted to the Senior Time Scale (STS for short) of ICAS in the pay scale of Rs.3000-4500 on provisional basis under proviso to Rule 20(1)(ii) of ICAS (Group A) Recruitment Rules of 1977. It was stated in those orders that the promotion was without prejudice to the claim of their seniors.

2. The applicant has made representation in time but no reply has been given to the said representation till today.

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3. In the short counter reply, it was stated that the applicant could not be appointed and his two juniors were appointed since they were found to be on higher merit. This shows that the Rules, subject to which promotions are made, were interpreted to prescribe promotion of officers on the basis of selection. However, as per Rule 20(1)(ii) of the said R/Rules reproduced below, it is obvious that the method of promotion has been specifically mentioned:

"(ii) Appointment to the posts in the Senior Time Scale shall be made by promotion of officers in the Junior Time Scale, in the order of seniority subject to the rejection of the unfit who have put in 4 years regular service in the Junior Time Scale.

Provided that Pay & Accounts Officers, Group B may, in consultation with the Commission, be allowed to officiate, in the senior time scale till such time as officers of the Junior Time Scale are available for promotion on a regular basis to senior time scale."

4. The above said proviso does not prescribe the method of promotion - whether it is by way of selection or by way of seniority.

5. Learned counsel for the respondents submitted that all the promotions to the Junior Time Scale (JTS for short) are by way of promotion from amongst Group B officers as well by direct recruitment on the basis of selection, while promotion to the post of STS is from among JTS on the basis of seniority. According to him, under the Rules, Group B officers are to be promoted straightaway to STS because they have qualified themselves to be included in the cadre of STS under the above proviso, and that, even though the method of promotion by way of selection is silent on the proviso, since promotions have been made under these rules from Group B directly to STS, such promotions shall be deemed to have been made on selection procedure for the reason that Group B officers going to JTS will have to subject themselves to selection before they are to be promoted to STS. Therefore, it was submitted that the word 'selection' should be read into the proviso under sub-rule (ii).

6. We are unable to accept the contention raised on behalf of the respondents for the reason, the proviso which is a part of sub-rule (ii) clearly states that promotion to the STS is to be made in the order of seniority subject to rejection of unfit. Moreover, the impugned orders now complained against, namely promotion of juniors superceding the applicant, incorporated therein a rider that the said order will be subject to the claim of officers senior to them. This rider also indicates that the respondents have themselves, while passing the orders, interpreted the proviso as to be a promotion on the basis of seniority.

7. Surely, this proviso has very specific purpose under the entire scheme of the rules to provide promotion of Group B officers to go upto STS and this is ordinarily done at the fag end of their service. This facility is given under the rules only as a temporary measure and it is stated that such promotions are made in the STS till the time officers in JTS are available for promotion on a regular basis. Thus the purpose of the proviso being to consider promotion of group B officers at the fag end of their service straight to STS, is the one under the rules and not to be treated as de-horse of the rules.

8. In view of these findings, we are of the view that the applicant is entitled to promotion and the same has been denied to him by misinterpretation of the proviso relating to method of selection, which cannot be sustained in the circumstances of the case. Thus the denial of promotion to the applicant is by way of wrong interpretation of the rule and we intend to set right the same by appropriate direction in the manner given herein below:

- i) Respondents shall pass appropriate order to consider the applicant for promotion to STS from the date his juniors were given promotion, if he is found fit otherwise in accordance with the rules;
- ii) In case of such findings where the applicant is found fit for promotion on the date his juniors were promoted that shall also be subject to consultation with the UPSC and the respondents shall forward the papers for the said purpose as has been done in the case of his juniors before passing such an order. In the event the applicant is found fit, appropriate orders shall be passed promoting him to STS and he shall be given all consequential benefits of pay scale, applicable to the promotee post, pay fixation, arrears of pay, and

revision of pension etc. on the said basis alongwith other consequential benefits as admissible under the rules.

(b)

9. With the above said directions, the OA is disposed of. It is made clear that these directions shall be complied with within a period of three months from the date of receipt of a copy of this order by the respondents. There shall be no order as to costs.



(S.P. Biswas)  
Member(A)



(Dr. Jose P. Verghese)  
Vice-Chairman(J)

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