

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 2100 of 1993
O.A. No. 2091 of 1993 &
O.A. No. 2093 of 1993

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New Delhi, this the 7th day of August, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. NAIK, MEMBER (A)

P.C. Misra,
S/o Shri Madhusudan Misra,
DANI Civil Service Officer
Dy. Secy. (Urban Improvement)
Govt. of N.C.T. of Delhi,
R/o C7/53, Safdarjung Development Area,
New Delhi-16 ... Applicant

(In person)

Versus

1. Union of India through
Secretary to Government of India
Ministry of Home Affairs
UT Section
North Block, Central Secretariat
New Delhi.
2. Chief Secretary
Govt. of N.C.T. of Delhi,
5, Sham Nath Marg,
Delhi-54 ... Respondents

(By Advocate: Shri N.S. Mehta)

ORDER

JUSTICE V.S. AGGARWAL

Delhi, Andaman and Nicobar Islands Civil Service, hereinafter referred to as 'the Service', is governed by the Delhi and Andaman and Nicobar Islands Civil Service Rules, 1971, hereinafter referred to as 'the Rules'. Initially the Service consisted of two grades, viz., Grade I (Selection Grade) and Grade II. By Memorandum dated November 26, 1987, the Government

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of India decided that with effect from January 1, 1986, the pay structure of the Service would be as under:

- | | | | |
|------|---|--------------|-------------------------|
| i) | Entry Grade | Rs.2000-3500 | Existing |
| ii) | Selection Grade
(After 8 years)
(20% of APS) | Rs.3000-4500 | Existing |
| iii) | Junior Administrative
Grade (After 12 years)
(With at least 4
years in Selection
Grade) | Rs.3700-5000 | New Scale
introduced |
- (20% of APS - Subject
to identification of
posts)

2. In the said memorandum, it was stated that necessary amendments in the Rules are being carried out. The said amendments were introduced by 'Delhi and Andaman & Nicobar Islands Civil Service (Amendment) Rules, 1988, hereinafter referred to as 'the 1988 Amendment', notified vide notification dated November 22, 1988. Some of the amendments introduced in the Rules by the 1988 Amendment were :-

(1) Sub-rule (2) of rule 3 was substituted by the following provision:

"(2) The Service shall have the following three grades, namely:-

- (i) Junior Administrative Grade;
- (ii) Grade I (Selection Grade); and
- (iii) Grade II."

(2) Rule 18 was substituted by the following provision:

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"18. All appointments to the Service shall be made to the Junior Administrative Grade, Grade I or Grade II of the service and not against any specific posts included in the service."

(3) Rule 30 was substituted as under :

"30. The scales of pay attached to the service shall be as follows :

(i) Junior Administrative Grade
Rs.3700-125-4700-150-5000;

(ii) Grade I (Selection Grade)
Rs.3000-100-3500-125-4500;

(iii) Grade II
Rs.2000-60-2300-EB-75-3200-100-3500."

(4) In Rule 31 relating to appointments to Junior Administrative Grade and to Selection Grade sub-Rules (2) and (3) were introduced as under:

"(2) An Officer with a minimum of five years of regular service in Grade I shall be eligible for being considered for promotion to Junior Administrative Grade.

NOTE: However, for vacancies occurring upto 31.12.1991, an officer with at least four years regular service in Grade I shall also be eligible for being considered for appointment to Junior Administrative Grade provided he has got a minimum 12 years of combined regular service in Grade I and Grade II. Provided that any service rendered in Grade II which was taken into account for promotion grade I by a duly constituted D.P.C. will be deemed to be regular service for the purpose of reckoning qualifying years of service.

Provided further that service rendered in an equivalent post in a State Civil Service or in Grade II of the Delhi and Himachal Pradesh Civil Service or Delhi, Himachal Pradesh and Andaman and Nicobar Islands Civil shall count towards the 12 years period:

Provided further that where a Junior person is considered for such appointment, all persons senior to him shall also be considered for promotion to Junior Administrative Grade provided they have put in at least four years regular service in Grade I.

(3) The crucial date for determining the eligibility of officers for promotion to Junior Administrative Grade shall be 31st December of the year in which the vacancy has occurred.

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NOTE: For promotion to the Junior Administrative Grade year-wise panel will be prepared from the year 1986, i.e. w.e.f. the year in which the Junior Administrative Grade has been created and the crucial date will be 31st December of the year to which the panel pertains."

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3. Schedule I to the Rules was revised and under Delhi Administration 29 posts were specified as falling in the Junior Administrative Grade. By notification dated April 7, 1989, the Rules were further amended by Delhi and Andamans & Nicobar Civil Service (Amendment) Rules, 1989 and Schedule I was substituted and as a result the number of posts specified as falling in the Junior Administrative Grade was raised to 40.

4. The applicant had joined the service in 1974. He was promoted to selection grade of the service from 16. 7.1984. He was appointed to the post of Joint Director (Agriculture and Marketing) with effect from 4.2.1988. The said post is specified as falling in the Junior Administrative Grade in Scheduled I substituted by the amendment of 1988. It is stated that he was considered for appointment to the Junior Administrative Grade but was not selected and his juniors were appointed to the said Grade with effect from 17.7.1989. Feeling aggrieved by his non-selection for the Junior Administrative Grade, he had filed OA No.1006/1989 and OA No.40/1989 before this Tribunal. On 4.3.1992, this Tribunal had allowed

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the applications. It was held that the applicant should be deemed to have been regularly appointed to the Junior Administrative Grade with effect from 1.1.1986

5. The respondents had preferred an appeal. The Supreme Court had allowed the said Civil Appeal Nos.4414-15 of 1993 holding:-

"Neither of the respondents fulfilled the criterion for eligibility mentioned in the memorandum because both of them did not have four years service in Selection Grade on January 1, 1986. They came to satisfy the said requirement of eligibility only after January 1, 1986. Since they could not satisfy the conditions of eligibility upto January 1, 1986, they could not be deemed to have been regularly appointed to the Junior Administrative Grade with effect from January 1, 1986, the date when the Junior Administrative Grade was introduced and the Selection Grade post specified as falling in the Junior Administrative Grade in Schedule I are said to have been upgraded to the Junior Administrative Grade. They could be appointed to the Junior Administrative Grade only by way of promotion in accordance with the Rules, as amended by the 1988 Amendment. Their cases were duly considered for such promotion but they were not found suitable for appointment and were not selected. The respondents have not been able to show any infirmity in the said selection. Under sub-Rule (1) of Rule 31 appointment of members of the Service to the Junior Administrative Grade is required to be made by promotion on selection basis. Since the respondents were not found suitable for appointment to the Junior Administrative Grade they cannot claim appointment to the Junior Administrative Grade on the basis that officers junior to them have been appointed to the Junior Administrative Grade."

6. Thereafter, the applicant had preferred the present three Original Applications, namely OA

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No.2100/93, OA No.2091/1993 and OA No.2093/1993.

7. By this common order, all the three aforesaid Original Applications can conveniently be disposed of together.

8. In OA No.2100/93, he seeks a declaration that he should be deemed to be regularly appointed to the Junior Administrative Grade from 7.4.1989. According to him, the respondents had issued a Notification dated 13.3.1992 appointing 44 officers to Junior Administrative Grade, 34 officers for 1986 panel, 8 officers for 1987 panel and 2 officers for 1988 panel. The applicant was holding the ex cadre post of Joint Director (Agriculture and Marketing) with effect from 4.2.1988. He was holding the said post on 7.4.1989. The said post was upgraded to Junior Administrative Grade and included in Schedule I referred to above. Thus according to the applicant, he was entitled to be appointed to the Junior Administrative Grade.

9. In OA No.2091/1993, the applicant sought the relief that he should be considered in the 1988 panel for appointment to the Junior Administrative Grade from 31.5.1988. According to him, he fulfilled the eligibility conditions as per Rule 31 of DANICS (Amendment) Rules of 1988 for Junior Administrative Grade as on 16.7.1988 on completing 4 years of

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selection grade and had already 14 years of service in the cadre, but the respondents did not consider him for the 1988 panel while his juniors were so considered. Before the Supreme Court, the respondents had admitted that yearwise panels were prepared for making appointments to the Junior Administrative Grade. The applicant was not considered for the year 1986 and 1987 and was considered for the panel for the year 1989. He further states that the benchmark grade "Very Good" could not be made applicable to him because it was prescribed by the Office Memorandum No.F.22011/5/86 Estt.(D), Government of India, Department of Personnel and Training dated 10.3.1989.

10. The said application has been contested. The respondents plead that the applicant was considered for promotion to the Junior Administrative Grade by a selection committee which met in April - May 1989. He could not be appointed because he was not recommended on basis of his service record. The selection committee was required to give its recommendations for preparation of panels for the years 1986 and 1989. Later, it was decided to revise the date of appointment to Junior Administrative Grade with respect to officers recommended in the panel for the year 1986. Hence a revised notification was issued on 13.3.1992. It has been pleaded that there is no panel for the year 1988. The panels were prepared for the years 1986 and 1989. Furthermore, it

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has been pleaded:-

"The question of appointment of the applicant to the Junior Administrative Grade of DANICS has already been gone into by the Hon'ble CAT, Principal Bench and the Supreme Court of India. It has been held by the Supreme Court that the applicant is not entitled to any relief since he failed to make the Grade for appointment to JAG at the time of consideration of his name by the Selection Committee. As submitted in Para 1, the notification dt.13th March 1992 has been issued only pursuant to the decision to revise date of appointment of the officers already considered and recommended by the Selection Committee of April-May 1989. Since the applicant was not recommended by the Selection Committee of April-May 1989, there is no fresh cause of action warranting filing of fresh application. The applicant is trying to mislead the Hon'ble CAT, Principal Bench by trying to project that the notification dt.13th March 1992 was issued after convening some fresh meeting of the Selection Committee which unfortunately is not the case."

11. In OA No.2093/1993, the applicant seeks a direction to consider him for the 1986 panel without the benchmark and appoint him to the Junior Administrative Grade from 29.7.1986. The basic facts have already been stated above and require no repetition.

12. Even the said application has been contested.

13. All these Original Applications came up before this Tribunal on 29.7.1999. They were dismissed holding that they were barred by the

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principle of res judicata. The applicant challenged the said order by filing a Civil Writ Petition in the Delhi High Court. The Delhi High Court by an order passed on 14.3.2002 concluded that the principle of res judicata, keeping in view the reply that had been filed, will not be attracted and set aside the order passed by this Tribunal and remitted the matter to this Tribunal.

14. It is in this back-drop that the said question has been again re-agitated and comes up for reconsideration.

15. At the outset, the applicant, who appeared in person had agitated before us that at the relevant time i.e. on 7.4.1989, he should be deemed to have been regularly appointed to the Junior Administrative Grade because he was holding the post of Joint Director (Agriculture and Marketing) from 4.2.1988.

16. We have already given above, the brief resume of the relevant facts. We have also referred to the findings of the Supreme Court. Earlier the applicant was claiming that he should be deemed to be regularly appointed from 1.1.1986. The said plea was rejected by the Supreme Court holding that he was not eligible as per the rules on the subject. He did not have the requisite number of years of service.

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17. It is true that it has already been agitated that the principle of res judicata will not apply and splitting of the claims is not permissible. We are conscious of the fact that Code of Civil Procedure does not apply to the proceedings before this Tribunal, but though the Central Administrative Tribunal will not be a court to which the Code of Civil Procedure applies still it has the trappings of a court. The basic principles which are based on equity, justice and good conscious in procedure cannot be ignored. When the applicant had earlier preferred the Original Applications which were allowed by this Tribunal and set aside by the Supreme Court, he could have claimed these reliefs but he did not do so and by splitting the claims, the provisions of Order II Rule 2 of the Code of Civil Procedure that whole of the claim should be mentioned was ignored. Therefore, the relief claimed in OA No.2100/93 must be held to be barred.

18. Otherwise also even if we go into the merits of the matter, the rules have already been interpreted by the Supreme Court. So far as deemed regular appointment is concerned, the Supreme Court concluded that only officers who fulfilled the conditions of eligibility as contained in the Office Memorandum of 31.12.1985 were to be appointed to the Junior Administrative Grade from 1.1.1986 and that the applicant did not fulfil the required qualifications.

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Therefore, if ultimately the applicant became eligible as per the required number of years of service, it will not improve his position because of the plain language of Rule 31 of the Rules referred to above.

19. Confronted with that position, it has been pointed out to us that the benchmark has only been prescribed in 1989. The applicant could not have been considered for the vacancies in the year 1988 as there was no benchmark prescribed at the relevant time. To this extent, the application must be held to be meritorious.

20. Admittedly, the benchmark was prescribed in 1989 because our attention has not been drawn to any other earlier order prescribing the benchmark. The instructions that were issued in 1989 necessarily would only operate prospectively. There is no legal sanction for giving the same a retrospective effect.

21. Before the Delhi High Court, in the counter that was filed, it had been stated:-

"It is further submitted that a Departmental Promotion Committee (DPC) was convened in April-May, 1989 for filling up 30 vacancies for the year 1986 and 14 vacancies for the year 1989. The DPC recommended names of 44 officers for appointment to JAG. Subsequently, the entire proceedings of the 1989 DPC were reviewed by a Review DPC convened in November, 1991, in order to rectify certain procedural shortcomings. This review DPC recommended appointment of 30

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officers to the JAG w.e.f. 01.01.1986 and 14 officers for the subsequent vacancies which arose between 6.6.1986 to 9.8.1986. Accordingly, the earlier list of 44 officers promoted to JAG was modified vide Ministry of Home Affairs Notification No.14016/11/89-UTS dated 13th March, 1992, a copy of which is attached as Annexure IV to the writ petition. Subsequently, the proceedings of the original DPC of April/May, 1989 and the Review DPC of November, 1991 were again reviewed by a Review DPC convened in July, 1996. The Petitioner was one of the officers considered by Review DPC in the meeting held in July 1996 with reference to the vacancies which had arisen during 1988 and 1989. The Review DPC did not, however, recommend the petitioner for promotion to JAG. In this process, some of the juniors of the petitioner who were assessed more meritorious than him were recommended by the Review DPC for promotion to JAG and were approved by the competent authority for promotion. Therefore, the contention of the petitioner that he was not considered for promotion to JAG against the vacancies which arose in 1988 is incorrect."

Perusal of the same clearly shows that it had been pointed that the review Departmental Promotion Committee was held for the vacancies from 1986 onwards. Even in the reply filed in this Tribunal, it has simply been pointed out that the applicant was considered by the review Departmental Promotion Committee that was held for the post upto April 1989.

22. In normal circumstances, the Departmental Promotion Committee should be held for the vacancies of each year. The Supreme Court in the case of Union of India and Ors. v. N.R.Banerjee and Ors., 1997 SCC (L& S) 1194 held that it is a mandatory requirement for preparation of panel every year unless the


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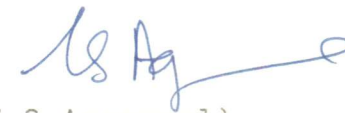
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appointing authority certifies about non-availability of the vacancies or eligible candidates. Similar view was expressed in the case of **Vinod Kumar Sangal v. Union of India and Ors.**, (1995) 4 SCC 246.

23. In the present cases, this is for the added reason that the benchmark was prescribed in the year 1989. We have already recorded above that it has to operate prospectively. It could not be made applicable for the year of 1988. Inadvertently if this mistake had crept in necessarily, the applicant has to be considered in accordance with the relevant rules and instructions that were available in the year 1988.

24. For these reasons, we dismiss OA No.2100/1993. However, we direct that the claim of the applicant should be considered for appointment to Junior Administrative Grade with respect to the vacancies available in the year 1988 in accordance with rules and instructions. The authorities would be competent to pass an appropriate order in the light of what has been stated above. This exercise should be completed within three months from today. No costs.


(S.K.Naik)
MEMBER (A)


(V.S.Aggarwal)
CHAIRMAN

/sns/