

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI*

O.A.No.2615/93

Tuesday this the 27th day of July, 1999

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. S.P. BISWAS, ADMINISTRATIVE MEMBER

G.N. Tripathi, S/o Pandit O.N.Tripathi,
resident of 17, Fire Brigade Lane,
Connaught Place, New Delhi.1. ...Applicant

(By Advocate Mr. G.D. Gupta)

vs.

1. Union of India, Secretary,
Ministry of Defence, South Block,
DHQ PO, New Delhi.110011.

2. Joint Secretary (Admn) & Chief Administratibe
Officer, Ministry of Defence,
CII Huutments, Delhousie Road,
DHQ PO, New Delhi.11.

3. Lt.Gen.M.M. Lakhera,
Adjutant General
Army HQ, New Delhi.11

4. Shri S.K.Mukhopadhy
Dy.M.S(Y) Army Headquarters,
New Delhi. Respondents

(By Advocate Mr. P.H. Ramchandani for R.1&2)

The application having been heard on 23.7.1999, the Tribunal on 27.7.1999 delivered the following:

O R D E R

HON'BLE MR. A. V. HARI DASAN. VICE CHAIRMAN

The applicant Shri G.N. Tripathi who was appointed as Assistant Civilian Staff Officer (ACSO for short) in the Armed Forces Headquarters Civil Services (AFHQ CS for short) in February, 1971 on the basis of Civil Service Examination held in 1969. The applicant was promoted as Civilian Staff Officer (CSO for short) in 1975 and empanelled for promotion to the grade of Sr.Civilian Staff Officer (SCSO for short) in September, 1981. He was sent on

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deputation to the Institute of Secretarial Training and Management, Department of Personnel & Administrative Reforms, Ministry of Home Affairs and was appointed in the selection grade in the Institute of Secretarial Training and Management in the scale Rs.1500-1800 with effect from 24th December, 1981, the date on which the vacancy occurred in his parent cadre. On the basis of a cadre review in the year 1986 the posts of (1) Secretary in the scale of Rs.2500-2750 (2) Sr.Administrative Grade (SAG for short) Level II in the scale Rs.2250-2500 and (9) Director in the Scale Rs.2000-2250 were created. The post in the grade of Director and SAG Level II were to be filled up in a phased manner ie Director 1 in 1986, three in 1987, three in 1988 and four in 1989. Two posts of Directors one in Adjutant Generals Branch, Army Headquarters and one in Directorate of Administration DGI HQ. created in 1986 and 1987 respectively were to be upgraded to SAG Level.II in 1986 and 1989 respectively and were to be operated at Directors level till the eligible officers become eligible. The applicant who was the seniormost SCSO had become eligible for promotion as Director in the year 1986. However, the Recruitment Rules were not framed though the posts were created in July, 1986 till 1987. After notification of the Recruitment Rules (Annexure.6) a combined DPC was held for filling up the posts of Director one of the year 1986 and three of the year 1987 and a panel of four ie., of the applicant and

three juniors was prepared. On the basis of the said panel the applicant and three of his juniors were promoted as Directors on 28.9.87 (Annexure.7). While according to the Government of India letter dated 11.7.86 (Annexure.3) the post of Director in AGS Branch was to be upgraded to the SAG Level II in 1988, the second respondent did not frame and notify the Recruitment Rules and make the appointment to SAG Level.II for a long time. However, a Departmental Promotion Committee was held on 21.9.93 which consisted of the Chairman of the UPSC, each member of the Army Headquarters and Naval Headquarters. Coming to know that the DPC recommended the name of Shri Hari Singh and Shri S.K.Mukhopadhyay (Respondent.4) for appointment to the post at Sr.Administrative Level Gr.II and that the approval of the A.C.C. for their appointment was pending, the applicant has filed this application praying that the composition of the DPC of 21.9.93 for the post of SAG Level.II in which the being illegal the panel applicant was superceded by his juniors be set aside and afresh DPC in accordance with the settled principles, norms of composition, formation etc. be directed to be constituted, that the applicant be deemed to have been selected in 1986 for the post of Director in the scale Rs.4500-150-5700 and subsequently in 1988 for SAG.level.Gr.II in the pay scale of Rs.5100-150-5700 by new DPC so constituted with retrospective effect and the respondents be

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directed to have two DPCs constituted separately to consider promotion to SAG Level.II for each vacancy which arose in 1988 and 1989 respectively.

2. It is alleged in the application that as the vacancy of Director was created in 1986 and the applicant was the only candidate who was eligible to be promoted having completed five years of service as SCSO the action on the part of the second respondent in not promoting the applicant in 1986 itself and not framing the Recruitment Rules in time and clubbing the vacancies of the years 1986 and 1987 were arbitrary and irrational resulting in great prejudice to the applicant in the matter of seniority. It is further alleged that as the post of Director upgraded in the year 1988 was not filled by notifying the Recruitment Rules in time and delaying it until 1993 the applicant had been made to compete with his juniors which has resulted in great prejudice to him. As the applicant was in all respect qualified to be appointed to SAG Level.II in the year 1988 and the post having been upgraded in 1988 he should have been considered and promoted to SAG Level.II in 1988 itself. The applicant has also alleged that the composition of the Departmental Promotion Committee which met on 21.9.93 was not according to the Rules as all the members required to be there were not present. The applicant has also alleged that the third respondent Lt.Gnl.M.M. Lekhera was friendly with the 4th respondent and therefore the proceedings of the DPC is vitiated.

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3. The respondents 1&2 in their reply statement have contended as follows:

There was no inordinate delay in framing the Recruitment Rules and making appointment to the post of Director, as contended by the applicant because when the post was created in July, 1986, Recruitment Rules for the grade of Director was notified on 10.4.87 through an amendment to AFHQ CS Rules, 1968 and the DPC was held on 10.8.87 to fill up the four vacancies, one of the year 1986 and three of the year 1987 treating these vacancies as of the year 1987 as the Recruitment Rules were framed only then. By holding the DPC for the four vacancies together the applicant has not suffered any detriment as he was placed No.1 in the select list thereby maintaining his seniority. The post of Director created in the year 1986 were not to be automatically upgraded in the year 1988 but the incumbent has to be appointed to the post at SAG Level.II by a positive act of selection. The applicant therefore, has no right to be deemed to have been appointed to SAG Level.II with effect from 1988 as contended by him as he has not completed two years of regular service as Director which is a precondition for promotion to SAG Level.II. The delay in finalisation of the Recruitment Rules for the post of SAG Level.II happened because there was a proposal to give the pay scale of Rs.5900-6700 to this grade and



because it was finally given up as the Department of Expenditure did not agree and this took some time for finalisation of Recruitment Rules. The Recruitment Rules have now been drafted and is pending notification. As there was delay in notification of the Recruitment Rules in consultation with the UPSC the two posts at SAG Level.II was decided to be filled up. A DPC was constituted in consultation with the UPSC, the composition of which was as follows:

The Chairman or a Member of the

UPSC	...Chairman
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Addl.Secretary, Ministry of Defence	... Member
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A representative each of the Army Headquarters, Air Headquartes and Naval Headquarters not below the status of a Lt.Gen and equivalent.	..Members
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At the meeting of the Departmental Promotion Committee the Additional Secretary to Ministry of Defence and the representative of Air Force Headquarters could not attend. However, as the coram was complete and the Chairman was present, the decision taken at the DPC by majority is as per rules and there is no basis in the contention of the applicant that the DPC was not properly constituted. The allegation that the third respondent was friendly with the 4th respondent and he has unduly favoured the 4th respondent is absolutely untrue and baseless. The applicant was considered alongwith the other eligible candidates and as Shri Hari Singh and Shri Mukhopadhyay who were immediate juniors of the

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applicant were graded higher in merit the Departmental Promotion Committee recommended their names for promotion to post at SAG Level.II against which the applicant cannot have a legitimate grievance. The respondents 1&2 contend that the application is devoid of merit.

4. The third respondent has filed an affidavit refuting the allegation that he was friendly with the 4th respondent.

5. The applicant has filed a rejoinder in which, he has reiterated the contentions put forth in the Original Application.

6. We have gone through the pleadings as also the documents produced by either side. The learned counsel of the respondents 1&2 made available for our perusal the proceedings of the DPC which met on 21.9.93.

7. Shri G.D.Gupta, learned counsel stated that he is not pressing the ground that the proceedings of the Departmental Promotion Committee is vitiated on account of malafides on the allegation that the third respondent was friendly with the 4th respondent. Even otherwise there is no specific allegation of malafides. The fact that the 4th respondent was posted as Director in the Military Secretary's Branch since September, 1987 would not be a ground to allege that he was a favourite of the third respondent. However, as this ground is not pressed, we are not entering into any further discussion on this point.

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8. The points raised by the learned counsel of the applicant are the following:

- (i) As the post of Director was created in the year 1986 and as the applicant had become eligible for appointment on that post, the action of the respondents in delaying the appointment and holding the DPC clubbing the vacancies of 1986 and 1987 against the instructions issued by the Department of Personnel in regard to holding of DPCs has resulted in suppression of the applicant's seniority.
- (ii) The applicant should have been assigned the vacancy of the year 1986 in the post of Director and if so for the post at SAG Level.II which became available in the year 1988 he alone could have been considered, /the action on the part of the respondents in delaying the DPC and considering the applicant alongwith his juniors was unreasonable and unsustainable in law.
- (iii) The composition of DPC being not in accordance with the rules, the deliberations and recommendations of the Departmental Promotion Committee has no legal validity.

9. We shall deal with these points one by one.

Point(i): The argument of the learned counsel for the applicant Shri G.D.Gupta that there has been inordinate delay in framing the Recruitment Rules for appointment to the post of Director which was created in the year 1986 and making appointment etc. appear to be not convincing at all. When the posts were created in ^{July} ~~1986~~ Recruitment Rules were framed in April, 1987 and shortly thereafter appointments were made constituting a Departmental Promotion Committee. The further argument of the learned counsel that the Departmental Promotion Committee went wrong in clubbing the vacancies of the years 1986 and 1987 and that ^{this} has resulted in detriment in service prospects of the applicant also has no force at all. Firstly, if there had been a delay in making appointment to the post of Director in 1986 and if the applicant apprehended that he should stand prejudiced the applicant should have taken recourse to legal remedies at that time. The applicant did not do so for more than a period of ~~8~~ years and has come forward with the claim only in the year 1994. Secondly there was no suppression of the applicant's seniority as contended by him. Noting that clubbing of vacancies of various years and enlarging the field of consideration there being has been instances where senior officials ~~superseded~~ by their juniors, the Government of India, Ministry of Home Affairs, Department of Personnel and Training issued a consolidated instruction giving guidelines in

regard to holding of DPCs, on 24.10.1980. It has been very clearly stated in the said guidelines that when a Departmental Promotion Committee meeting is held after a lapse of years separate panels should be prepared for vacancies of each year in the case of selection considering only those who would be eligible for the vacancies of each particular year and thereafter a combined select list should be prepared. In this case in the select list of persons recommended for promotion to the post of Director by the DPC of the year 1987 the applicant was at Sl.No.1 and the other persons were placed below him. His seniority therefore was not affected at all. The respondents 1&2 in their reply statement have contended that as the Recruitment Rules were framed only in April, 1987 all the four vacancies were treated to be vacancies of the year 1987 on the basis of a conscious decision taken. However, we need not go into the question whether this action was correct or not because in any case the applicant having been placed at Sl.No.1 in the combined select list was appointed and placed senior to others, it is suffice to mention that no detriment has been caused to the applicant in the matter of seniority.

Point (ii): Though one vacancy at the SAG Level.II has become available in 1988 and three vacancies in 1989, the posts were not filled for more than four years and a DPC met only in September, 1993 which considered the Directors who were eligible for appointment on the post at SAG Level.II, one of the year 1988 and the other of the year 1989. If the applicant was aggrieved

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by not holding the Departmental Promotion Committee meeting in time, he should have sought appropriate relief at the appropriate time. He did not take any action in that regard for 8 years. He cannot be heard to raise that contention at this distance of time. The contention of the applicant that he could have been appointed as Director in the year 1988 is untenable because it is admitted by the applicant and is also borne out from the Recruitment Rules as also the order by which the post at SAG Level.II was created that two years regular service as Director is essential for consideration for promotion to the post at SAG Level.II. The applicant having been appointed only on 28.9.87 as Director would not have completed two years period in 1988. Therefore, in 1988 no DPC could have been held for non availability of officers eligible to be elevated to SAG Level.II. The applicant became eligible for being considered for promotion to the post at SAG Level.II only on completion of two years period by which time Shri Hari Singh, Shri Mukhopadhyay and Shri H.C.Bhoumik had also become eligible for consideration, as they had also completed two years of regular service in the grade of Director. Because the applicant was entitled to be given the vacancy of the year 1986 he cannot claim to have completed 2 years of regular service in 88 as Director because he came to be appointed only in September, 1987 as Director. As the post at SAG

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Level.II is admittedly to be filled by selection from among Directors who had two years of regular service, Shri Hari Singh, Shri Mukhopadhyay and Shri H.C.Bhowmik also must be considered alongwith the applicant, whether the DPC was held in 1989 or thereafter. The grievance of the applicant is that Shri Hari Singh and Shri Mukhopadhyay (Respondent No.4) have been empanelled for appointment to SAG Level.II superceding him. The post being selection post it is not uncommon that juniors supercede the senior if they have better grading. Unless the applicant is able to establish that the proceedings of the DPC is vitiated for anyreason he cannot complain about the supersession by his two juniors. Therefore, there is no substance in this argument also.

Point (iii): The composition of the Departmental Promotion Committee for SAG Level.II as contended by the respondeents is as follows:

The Chairman or a Member of the UPSC ... Chairman

Additional Secretary, Ministry of Defence ... Member

A representative each of the Army Headquarters, Air Headquarters and Naval Headquarters not below the status of a Lieutenant General and equivalent. ... Members

It is a common case that in addition to the Chairman of the UPSC one representative of Armed Force Headquarters, one representative of Naval Headquarters attended the meeting of the DPC and that the Additional Secretary to Ministry of Defence and the representative of the Airforce Headquarters did not

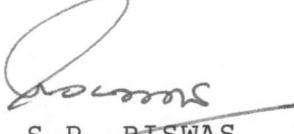
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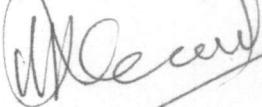
attend. However, as the Chairman of the UPSC who is the Chairman of the DPC was present with two Members the coram was sufficient and the absence of two Members therefore would not vitiate the deliberation of the DPC. We do not find any substance in this argument either.

10. In the light of what is stated above, we do not find any merit at all in this application and therefore, we dismiss the same leaving the parties to bear their costs.

Dated this the 27th day of July, 1999


S.P. BISWAS

ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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