

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.2091/93
O.A. No.2093/93
O.A. No.2100/93

Hon'ble Shri Justice V. Rajagopala Reddy, VC(J)
Hon'ble Shri R.K. Ahooja, Member(A)

New Delhi, this the 29th day of July, 1999

In the matter of:-

Shri P.C. Misra
S/o Shri Madhusudan Misra
DANI Civil Service Officer
Deputy Secretary(Urban Improvement)
Govt. of N.C.T. of Delhi
R/o C7/53, Safdarjung Dev. Area
New Delhi

.....Applicant

Vs.

1. Union of India through
Secretary to Govt. 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 - 110 054

.....Respondents

(By Advocate: Shri N.S. Mehta)

O R D E R

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

All the three OAs have been filed by the same applicant for substantially the same relief, i.e. promotion to the junior administrative grade of the Delhi, Andaman & Nicobar Islands Civil Service (in Short DANICS). The grounds taken in the three OAs are, however, different. All the three OAs are being disposed of by this common order taking into account all the three different grounds separately to be *agreed* *to be* *verified* by the applicant. The facts of the case may be briefly stated:-

2. The applicant joined the DANICS on 1.5.1974 and was granted selection grade of the service with effect from 16.7.1984. His name figures at S.No.36 of the seniority list of DANICS as published by the Ministry of Home Affairs on 1.1.1998. Ministry of Home Affairs notified on 22.11.1988 the DANI Civil Service Rules, 1988 whereby a junior administrative grade was created. This brought about three grades in the service, namely (i) junior administrative grade; (ii) Grade-I (selection grade); and (iii) Grade-II. A DPC was held in April 1989 to consider the Grade-I Officers of DANICS for promotion to junior administrative grade. The applicant, however, did not find a place in the list of officers promoted vide notification dated 17.5.1989 even though a number of his juniors were included. Aggrieved by his supersession, the applicant filed before this Tribunal two OAs No.1006/89 and 1140/89. It appears that the challenge to supersession was made on two grounds; firstly it was contended that he had been appointed to the post of Joint Director(Agriculture & Marketing) with effect from 4.2.1988 and the said post had come to be specified as falling in the junior administrative grade in schedule I to the Rules as substituted by the 1988 amendment; hence he should be deemed to have been appointed to the junior administrative grade as it was a case of upgradation and not of promotion. The second ground taken was that the amended rules providing that only those Grade-I officers who had four years service in the grade would be eligible for consideration for promotion was not applicable as his juniors were being considered. Accepting the

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contention of the applicant the OAs were allowed by the Tribunal by its order dated 4.3.1992. The respondents thereafter filed an appeal before the Supreme Court which was heard and allowed by an order dated 2.9.1993. The orders of the Tribunal were set aside and the OAs were dismissed.

3. In the above background the case of the applicant in the present three OAs is as follows:-

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4. The applicant submits that the Ministry of Home Affairs had issued a notification dated 13.3.1992 which showed that a number of officers had been appointed to junior administrative grade for the year 1986, 1987 and 1988. For the year 1988 two officers namely S/Shri C.K. Malhotra and Raghu Raman had been appointed though these officers happened to be junior to the applicant. The applicant submits that he had already completed four years in Grade-I of the service as per Rule 31 and he was eligible under the rules to be considered for the panel of 1988 as per rule 5 of the DANICS Rules, 1998 wherein the crucial date for the eligibility of officers for promotion to junior administrative grade shall be 31st December of the year in which vacancy has occurred. The second ground is that the minimum benchmark of "Very Good" was prescribed for promotion to posts in the scale of Rs.3700-5000 (the scale of pay of junior administrative post) by the Department of Personnel by O.M. No.F.22011/5/86-Estt(D) dated 10.3.1989. It was also specified that this instruction would come into

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force with effect from 1.8.1989. Hence this instruction could not apply to promotions made for the vacancies in the year 1988. For these reasons the applicant submits that he has not been properly considered for inclusion in the panel for the vacancies of the year 1998.

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5. In this O.A. the contention of the applicant is that one Shri R.S. Mathur was considered by the DPC for 1986 panel and was appointed to the junior administrative grade with effect from 1.1.1986. A number of other officers junior to the applicant were also appointed to the 1987 panel. He submits that the DANICS Rules were amended in 1988 providing that a senior would be considered for grant of junior administrative ~~post~~ if his juniors were considered provided he had four years service in Grade-I. The applicant submits that this requirement did not exist in the unamended rules at all. In 1986 the position was that under the next below rule he was entitled to be considered irrespective of the length of service in Grade-I. He also contends that even if some of his juniors came to be granted selection grade earlier to him, that did not change his inter-se seniority vis-a-vis them, as a member of DANICS had only one seniority throughout his service. On that basis, the applicant claims his consideration under the pre-1988 rules for the panels of 1986 and 1987.

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6. In this O.A. the applicant submits that his claim for promotion on the basis that he had been upgraded to the post of Joint Director(Agriculture & Marketing) was rejected by the Supreme Court on the *an*

ground that he had not completed four years service in Grade-I on 1.1.1986, the date from which the Tribunal had ordered that he should be deemed to be in the junior administrative service. However, as he continued to hold the post of Joint Director(Agriculture & Marketing) even thereafter, the applicant contends that on completion of four years in Grade-I in 1988 he became automatically entitled in terms of Supreme Court's decision in SLP Nos.14261-62 of 1992 for placement in the junior administrative grade.

7. We have heard the applicant in person and Shri N.S. Mehta, the learned counsel for the respondents.

8. The first point we have to examine is whether the present OAs are barred by res-judicata in view of the earlier decisions of the Tribunal in O.A. No.1008/89 and O.A. No.1140/89 and the decision of the Supreme Court in Civil Appeal No.4416/93 whereby the orders of the Tribunal were set aside and the OAs filed by the applicant came to be dismissed. The applicant has argued that firstly the points raised by him in the present OAs namely that he has not been considered in accordance with the relevant rules for the 1988 panel and the amended rules in regard to minimum four years in Grade-I were wrongly applied for the 1986 and 1987 panels and that he became entitled to junior administrative grade while working in an upgraded post on completion of four years in Grade-I were not at issue either before the Tribunal or before the Supreme Court in the earlier cases of 1989. His second contention is that in the earlier OAs his grievance was against the respondents orders dated 7.5.1989. Since then another notification had been issued on 13.3.1992 on the basis

of a review DPC, which gave him a fresh cause of action. On the other hand, Shri Mehta contended that there has been no review DPC and that the order dated 13.3.1991 was merely in the nature of a corrigendum regarding the date of promotion of the officers who had superceded the applicant in the notification dated 7.5.1989.

9. We have given careful consideration to this question. For res-judicata to operate, it is necessary that the former decision must be one where the same matter was directly and substantially in issue. Here the issue raised by the applicant is the same as in OA Nos.1006/93 and 1140/93 namely promotion to the junior administrative grade. However, the applicant contends that the grounds taken up by him now are different. Explanation IV to Section 11 of the Civil Procedure Code states that, "any matter which might and ought to have been made a ground of defence or attack in such a former suit shall be deemed to have been a matter directly or substantially in issue in such suit." Therefore we have to see whether the grounds taken by the applicant could also be taken by him in 1989 in his earlier OAs. The answer to that question has to be in the affirmative. We find no new circumstance or a new development which would indicate that these grounds were not available to the applicant in 1989 itself. Thus he could have challenged his supersession in 1989 also on the ground that the bench-mark of "Very Good" was not applicable to the vacancies available prior to 1989, that the next below rule before the 1988 amendment had a different

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connotation in regard to minimum qualifying service and that inter-se seniority did not change even if there was supersession in Grade-I. The applicant, however did not challenge the 1989 order of supersession on any of these grounds even though those were available to him. Clearly thus he is now estopped from raising the same grounds in fresh OAs.

10. It has further to be seen that the applicant has based his challenge on the notification dated 13.3.1993 and his contention is that this is the outcome of a review DPC which has given him a fresh cause of action. The respondents have contended that there has been no review DPC and the orders are entirely on the basis of the DPC of April, 1989. In other words, apart from the date of promotion of the officers mentioned in the 1992 notification, there is no change in so far as the applicant is concerned in regard to his supersession. The DPC held in April-May, 1989 had shown promotions against the vacancies of 1988 or 1989. Later it was decided that the promotion should be shown on the basis of availability of posts. Hence the notification of 1992. The applicant was shown to be superceded by the same juniors for the 1988 and 1989 panels. Therefore, a technical modification of the earlier notification cannot be taken as affording an entirely new cause of action since the allegation of supersession remains by the same persons, which is similar in 1989 and 1992 notifications.

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11. In view of the above discussion, we hold that all the three OAs are barred by res-judicata. On that view the three OAs are liable to be dismissed. It is accordingly so ordered.

(R.K. AHOJA)
MEMBER (A)

(V. RAJAGOPALA REDDY)
VICE-CHAIRMAN (J)

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Final judgement on 04.09.93

per
by
C.C.C.M