Central Administrative Tribunal
Principal Bench

New Delhi, dated this the 2nd AUGUST 1999

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. P.C. KANNAN, MEMBER (J)

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O.A. No. 31 of 1993

Shri R.N. Ghosh,
S/o late Shri P.N. Ghosh,
R/o E-981, Chittaranjan Park,
New Delhi-110019. ... Applicant

(By Advocate: Shri G.D. Gupta)

Versus

1. Union of India through
the Secretary
Ministry of Commerce,
Dept. of Supply,
Udyog Bhawan,
New Delhi.

2. Director General,
Supplies and Disposals,
Dept. of Supply,
Jeewan Tara Building,
Parliament Street,
New Delhi. ... Respondents

(By Advocate: Shri N.S. Mehta)

O.A. No. 419 of 1993

Shri B.L. Sharma,
S/o Shri Ram Lal,
R/o D-I/21, Satya Marg,
Chanakyapuri,
New Delhi. ... Applicant

(By Advocates: Shri R.Doraiswamy
with Shri Sant Singh)

Versus

1. Union of India through
the Secretary
Ministry of Commerce,
Dept. of Supply, Udyog Bhawan,
New Delhi-110011.

2. Director General,
Supplies & Disposals,
Jeewan Tara Building,
5, Sansad Marg,
New Delhi-110001. ... Respondents

(By Advocate: Shri N.S. Mehta)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

As these two O.As involve common points of law and fact they are being disposed of by this common order.

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O.A. No. 31 of 1993

2. Applicant seeks a declaration that

(i) the post of Addl. Director General in DGS & D stood revised from 5900-6700 to Rs.7300-7600 w.e.f. 18.4.91 and the post of Dy. DG stood revised from Rs.4500-5700 to Rs.5900-6700.

(ii) applicant is entitled to be appointed as ADS w.e.f. 13.5.91 i.e. the date he was appointed to the said post in the scale of Rs.7300-7600 with all consequential benefits.

(iii) applicant is entitled to the scale of Rs.5900-6700 even in the post of DDG w.e.f. 18.4.91 with all consequential benefits.

3. Consequent to a vacancy in the post of ADG in DGS&D arising in the year 1991-92, a DPC was hedl on 20.3.91 presided over by a Member, UPSC. Copy of the DPC's minutes have been annexed with respondents enclosure dated 7.9.98. The DPC recommended applicant's name for officiating promotion as ADG. The aforesaid minutes, clearly discribe the post of ADG being in scale of Rs.5900-6700.

4. Soon thereafter respondents issued orders dated 21.1.91 and dated 18.4.91 and dated 18.4.91 (Ann. B) upgrading the post of ADG frm the pay scale of Rs.5900-6700 to Rs.7300-7600, and the post of DDG from Rs.4500-5700 to Rs.5900-6700 and sanctioning certain additional posts in DGS&D including 5 additional temporary posts of DDG.

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5. DP&T by Memo dated 13.5.91 (Annexed with the respondents' enclosure dated 7.9.98) informed Supply Dept. that ACC had approved the prosal to promote applicant as ADG in DGS&D (pay scale Rs.5900-6700 unrevised) (Rs.7300-7600 revised) from the date he took over charge.

6. Applicant now claims that he should be paid in the scale of Rs.7300-7600 w.e.f. 13.5.91, athough the notification dated 16.5.91 (Ann. A) makes clear that applicant has been appointed as ADG in the pay scale of Rs.5900-6700 w.e.f. 13.5.91, as recommended by U.P.S.C.

7. How the revised scale of Rs.7300-7600 came to be incorporated in DP&T's Memo dated 13.5.91 has been made clear in Shri K.P. Verma's D.O. letter dated 23.8.91 addressed to the Establishment Officer, DP&T (annexure with respondents' enclosure dated 7.9.98) wherein it has been stated that inclusion of the revised

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scale in the O.M. dated 13.5.91 was on account of an error which had crept into the proposal submitted by Supply Dept. vide its I.D. Note of dated 22.3.91 in which the unrevised scale of Rs.5900-6700 as well as the revised scale of Rs.7300-7600 was mentioned though inadvertance, in regard to the post of ADG. The letter clarifies that when the I.D. Note dated 22.3.91 was sent the grade of ADG was 5900-6700 and the DPC's minutes also contain U.P.SC's recommendation for applicant's appointment as ADG in grade of Rs.5900-6700. The letter further states that in the cadre review proposals of Indian Supply Service which was being dealt with separately there was a stipulation for upgradation of post of ADG from Rs.5900-6700 to Rs.7300-7600. Orders of Government for implementation of the cadre review was issued on 18.4.91, but upgradation of the post of ADG from Rs.5900-6700 to Rs.7300-7600 as a part of the cadre review were on grounds of additional responsibilities. As such an element of selection was involved in appointment to the revised scale.

8. We have heard applicant's counsel Shri G.D. Gupta and respondents' counsel Shri N.S.Mehta in this O.A.

9. Shri Gupta has vehemently argued that

the contents of Shri K.P.Verma's D.O. letter are misleading and in actual fact there was no question of additional responsibilities involving any selection process before granting applicant the scale of Rs.7300-7600 consequent to his appointment as ADG. In this connection he has filed copy of an office Note dated 24.1.91 submitted by Shri M.V. Kesavan, Director (E) along with M.A. No. 1627/98.

10. We have considered the matter carefully.

11. As pointed out above Supply Dept. under whom applicant was working at the relevant time has appointed apploicant as ADG in the scale of Rs.5900-6700, vide their Notification dated 16.5.91, but he bases his claim on DP&T's O.M. dated 13.5.91 and respondents' orders dated 21.1.91 and 18.4.91.

12. In so far as the orders dated 21.1.91 and 18.4.91 are concerned, respondents have pointed out, and we are unable to disagree with them, that they are only orders concerning financial sanction for the creation/ upgradation of posts (including that of ADG in the scale of Rs.7300-7600) and that scale can be claimed only after posts have been created upon

finalisation of the Recruitment Rules etc. The issue of the orders dated 21.1.91 and 18.4.91 therefore did not make applicant automatically eligible for pay in the scale of Rs.7300-7600 as ADG. Applicant has not denied in his pleadings that before promotion as ADG, he was posted as Dy. D.G. in the scale of Rs.4500-5700. The U.P.S.C. also recommended him for promotion as ADG in the scale of Rs.5900-6700. To grant applicant the scale of Rs.7300-7600 as claimed by him would in effect be promoting him from Selection Grade (Rs.4500-5700) to Higher Administrative Grade (Rs.7300-7600) without even going through the Senior Administrative Grade (Rs.5900-6700) which would be violative of Central Staffing Scheme, applicable to organised services such as the Indian Supply Service.

13. Applicant cannot also rely on DP&T's O.M. dated 16.5.91 to claim the pay scale of Rs.7300-7600 in view of the contents of Shri K.P.Verma's D.O. letter date 23.8.91, which in our view represent the correct statement of facts leading upto the mention of the revised scale of Rs.7300-7600 in that order.

14. In this connection we would also refer to the CAT, P.B. order dated 31.1.94 in O.A. No. 563/94, M.T. Kanse Vs. UOI & Ors. In that

case applicant who was working as ADG in DGS&D was aggrieved by the non-grant to him of the pay scale of Rs.7300-7600 before he retired on superannuation on 31.7.93. He belonged to the Indian Inspection Service, which is also an organised service like the Indian Supply Service administered by the Supply Dept. under the Commerce Ministry. The Tribunal by its order dated 31.1.91 rejected applicant's claim for automatic adjustment in the pay scale of Rs.7300-7600 consequent to the upgradation of the post of ADG in that scale w.e.f. May, 1991 and applicant's promotion as ADG w.e.f. 14.2.90. Shri Gupta has urged that the said order dated 31.1.94 is distinguishable from the present case, because in that case there was a finding that the post of ADG involved increased responsibilities, but in the present case there was no increase in responsibilities as is made out from Shri Madhavram's Note dated 24.1.91 annexed with M.A. No. 2470/98.

15. In our view the ratio of the order in Kanse's case (Supra) is fully applicable in the present case, namely that promotion to the scale of Rs.7300-7600 is not automatic and does not automatically flow from the orders dated 21.1.91 and 18.4.91. Further it requires to be mentioned that applicant was eventually granted the scale

of Rs. 7300-7600 w.e.f. Supply Dept. Notification dated 2.12.94, a copy of which is on record.

16. This O.A. is, therefore, dismissed.

O.A. No. 419 of 1993

17. Applicant claims the scale of Rs.7300-7600 w.e.f. 21.1.91 or atleast w.e.f. 18.4.91 consequent to his appointment as ADG in DGS&D w.e.f. 21.1.91 with consequential benefits.

18. The reasons which have been led us to reject applicant's claim in O.A. No. 31'93 are, in our view, equally applicable in the present case also. However, we note that in its order dated 31.1.94 in Kanse's case (Supra) respondents had been directed to consider his case for appointment as ADG in the scale of Rs.7300-7600 w.e.f. 1.4.93, until his retirement on superannuation on 31.7.93, pending finalisation of the Recruitment Rules. Applicant's counsel Shri Doraiswamy pressed us that atleast a similar direction be issued in the present case which would have the effect of enhancing the present applicant's pension as he retired on 30.6.93. While such a direction could have been issued on

31.1.94 when the Recruitment Rules for promotion to the grade of ADG in the pay scale of Rs.7300-7600 had still not been finalised, it is not possible to give such a direction at this stage, when the Recruitment Rules have been finalised and pursuant to those finalised Recruitment Rules applicant in O.A. No. 31/93 discussed above, has been granted the scale of Rs.7300-7600 in the grade of ADG w.e.f. 2.12.94.

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19. Under the circumstances, this O.A. is also dismissed.

20. In the result both O.A. No. 31/93 and O.A. No. 419/93 are dismissed. No costs.

21. Let copies of the order be placed in both O.A. case records.

(P.C. Kannan)
Member (J)

(S.R. Adige)
Vice Chairman (A)

/GK/