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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH : CUTTACK

Original Application No. 3 of 1986

Date of decision: 27th March, 1990

Sanatan Sahu ... Applicant

versus

The Union of India and Others ... Respondents

Counsel for the applicant .. M/s. Sanjiv Mohanty,
B.K.Pal & Ashok Mohanty

Counsel for the respondents .. Mr. Ganeswar Rath,
Senior Standing Counsel
(Central)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

CORAM: The Hon'ble Mr.P.S.Habib Mohamed, Member (Administrative)

The Hon'ble Mr. N.Sengupta, Member (Judicial)

JUDGMENT

Hon'ble Shri P.S.Habib Mohamed, Member (Administrative):- Shri Sanatan Sahu, Field Publicity Officer, Directorate of Field Publicity, Government of India, Cuttack has filed this application under section 19 of the Administrative Tribunals Act, 1985 challenging the promotion of Respondents Nos. 2 to 67 to the grade of Junior Scale (Grade-II) of the Central

Information Service vide order dated 7th June, 1985 (Aadesh

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No.66/85-CIS) Notification No.A-32013/3/84-CIS
(Ministry of Information & Broadcasting) and has prayed
for the issue of directions quashing the promotions made
of the Respondents Nos. 2 to 67 to the above service and for
promoting the applicant to the junior scale (Grade-II) with
effect from 26.4.85.

2. He was recruited initially to grade IV on 29.6.70
on the basis of a competitive Examination, conducted by
the Union Public Service Commission in the year 1969
in accordance with the Rule 6(a)(ii) of the Central Information
Service Rules 1959. He was thereafter promoted to Grade III
of the Central Information Services on the basis of selection
on the recommendation of the D.P.C. under Rule 6(b)(ii)
of the Rules. The D.P.C. in considering his promotion from
Grade III to Grade II of the Central Information Service
placed the applicant at Sl.No.131 but since there were only
102 vacancies at the time the applicant could not be
promoted to Grade-II in the year 1981. The Civil list of
C.I.S., Group B, Grade III officers published in March, 1984
shows the applicant at the 39th position.

3. The relevant recruitment Rules state as
follows:-

i.e. G.S.R.217(C.I.S.) dated 16th February, 1959
read with subsequent amendments.

"(C) Grade-II

(i) Pay : Rs .700-40-900-EB-40-1100-50-1300

(1) 50% of the permanent vacancies in this grade
shall be filled through an open competitive
Examination to be held by the Commission in
the manner prescribed in Schedule VIII.

Provided that direct recruitment to Grade-II
shall remain suspended from the 1st January,
1974 to 31st December, 1980.

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Provided further that persons regularly appointed to this grade by promotion during the period from the 1st January, 1974 to 31st December, 1980 shall be ~~enable~~ senior to the first direct recruit to this grade appointed to this grade after the 31st December, 1980.

(2) 50% of the permanent vacancies shall be filled by substantive appointment of temporary Grade-II Officers in the order of their seniority subject to the rejection of the Unit unfit

(3) Temporary vacancies in Grade II shall be filled by selection from amongst officers holding duty posts in Grade-III.

4. Though the applicant has stated in the application that the selections to the junior scale Grade-II from Grade-III of the Central Information Service is on the basis of seniority-cum-fitness there is an indication in the reply filed by the Respondent no.1 that promotion to junior scale Grade-II was made during the year 1981 by selection which is stated to be on the basis of seniority-cum-merit though during the arguments of the case the counsel for the respondent no.1 stated that selection only meant merit and seniority was the subordinate consideration.

5. There is dispute in the case regarding the availability of the vacancies for the years 1982-85. In the reply of the Respondent no.1 it is stated that when the officials ~~were~~ ^{were} promoted from Grade-III to Grade-II on ad hoc basis, the applicant was not eligible to be considered ~~for~~ ^{for} promotion prior to 1981. Subsequent to 1981 there were no vacancies and therefore the case of the applicant was not considered ^{except in} ~~in~~ 1985.

6. Replies have been filed by the Respondents Nos. 8, 19, 23, 28, 40, 42, 44, 51 and 62. They do not raise any important ground except that their selections have been in accordance with the law, but the applicant has only a right to be

considered for promotion, but he has no vested right for promotion, through Respondent No.44 ^{has} also raised the question that year-wise preparation of panels for promotion is not required under the Rules. They were not represented by counsel.

7. The Counsel for the applicant ^{has} relied on the judgment of the Tribunal ~~at~~ Cuttack Bench in K.C. Pattnaik-Vs-State of Orissa, ATR 1987(2)CAT 401 in support of his contention that there is to be proper consideration of the case for promotion in accordance with recruitment Rules, and the Executive instructions of the Government for consideration of cases, year by year as per DPAR-OM-2011-3-76 ESST(D) dated 14.12.1980. He drew attention to the letter of the Ministry that it is not enough if vacancies are bunched for various years, and there should be a certificate by the Department that there are no vacancies and even if there are no vacancies, the certificate has to be given for each year. If in any one year, the D.P.C. has not been able to meet, the consideration of cases will be for vacancies year-wise.

8. He also relied on the judgment of the Tribunal in Radhaballav Tripathy-Vs-Union of India and others in A.T.R. 1987 (1)CAT 274 in support of his contention that the applicant had been deprived of promotion on the basis of ~~the~~ merit-cum-seniority, when the Respondent no.1 in its reply had referred to seniority-cum-~~seniority~~^{merit} and not merit-cum-seniority. He also relied on the decision of the Supreme Court in the State of Mysore-Vs-Syed Mohammed and others in A.I.R. 1968 SC 1130 in support of his contention that since promotions were to be made, ~~if~~ even it means

selection such selection should be on the basis of seniority-cum-merit i.e. seniority subject to fitness to discharge the duties of the post.

9. The Respondents on the other hand have stated that while the applicant was considered for promotion to Grade II by the D.P.C. in 1981, his name was not recommended for promotion for want of vacancies. He was again considered by the DPC in April, 1985 but the DPC did not recommend his name for promotion to the next higher grade. It is stated in Respondent No.1's reply vide para-9 of the reply that promotion to Junior Scale Grade-II old scale of Rs. 700-1300/- was made during the year 1981 by selection i.e. seniority-cum-merit on the basis of the recommendation of the DPC.

10. During the arguments of the case the learned Counsel for the Respondent No.1 departed from the brief vide the reply and stated that the promotion was to be on the basis of selection in which merit was the paramount consideration and seniority was the subsidiary factor. He relied for this purpose on the decision of the Supreme Court in A.I.R. 73 S.C. 930 paragraph 19 where it has been held by their Lordships of the Supreme Court that selection means that the man selected must be of merit whereas promotion being by seniority merit takes the second place but when it is selection, merit takes the first place and it is implicitly in such selection that the man must not be just average.

11. After perusal of the documents and hearing of arguments we find that even if the promotion is by selection, it must be in accordance with the Rules. There

is also a doubt whether the principles of selection applied in all ~~their region~~^{its rigour}, in the case of the appointments to Grade-II. There has been no consideration of the applicant for promotion in accordance with the Rules.

12. So far as the vacancies position is concerned, the notes of the Department in file No.320/13/2/80-CIS clearly reveals that due to large scale appointments of ~~others~~^{Others} to Grade I posts on ad hoc basis, pending amendment of the Rules & Regularisation in consultation with UPSC, vacancies could not be physically located, during 1982-1985.

"In response to a proposal sent by this Ministry, a meeting of the Departmental Promotion Committee to consider promotions of Grade-III officers of the CIS to Grade-II of the service was held on 23-25.6.81. This Ministry had notified to the UPSC vide their letter at P.56/c that 104 vacancies are anticipated during the course of the year ending December, 1981. Accordingly the DPC (Minutes placed below at PP.94-110/C) approved a panel of 104 officers for promotion from Grade-III to Grade-II. Orders have, therefore, to be issued in of clear vacancies. However, a problem has arisen, as 105 of the existing regular Grade-II officers who are at the moment occupying Grade-I posts on an ad-hoc basis, are not eligible for promotion to Grade-I of the CIS on a regular basis as they have not completed the required five years' service in Grade-I. Though, separately, a reference is being made to the UPSC to relax the length of service required for promotion to Grade-I of CIS from five years to three years, 46 officers will be eligible for promotion to the Grade I on a regular basis only in 1981.

Technically, therefore, the existing vacancies in Grade-II which have arisen out of ad-hoc promotions of the incumbents to Grade-I, cannot be treated as clear vacancies. At the same time, ad-hoc promotions to Grade-I of the CIS have been made against clear vacancies and in the normal course no reversions are likely to take place.

It is, therefore, not possible for the Ministry to issue orders of appointment

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on a regular basis to Grade-II of these 104 officers here by the DPC held in June this year. It is proposed therefore, to issue orders placing these 104 officers who have been cleared by the DPC to officiate in Grade-II of the CIS without placing them on probation. As and when the regular incumbents of Grade-II posts are promoted on a regular basis against Grade-I posts, we shall be able to regularise officers in Grade-II from time to time. As it will not be possible or desirable to hold up orders in respect of the DPC for promotion from Grade-III to Grade-II of CIS, it is, therefore, proposed that we may issue orders giving officiating promotions to these persons. As Grade-II posts are included in Group 'A', we may obtain MIB's approval to the promotion of these officers, as recommended by UPSC at P.94/C and PP.95-96/C to Grade-II of the CIS. It may be added here that as Grade-II and Grade-III posts are interchangeable, the promotion of these officers will not involve any changes in their postings.

Submitted for approval."

Subsequently approval of the appropriate authorities was taken on above proposal.

13. We find that in the Recruitment Rules in respect of the posts in the information Service (Grade-II) there is statutory stipulation that the filling up temporary vacancies and also ~~be~~ ^{The} filling up permanent vacancies must be done in a particular manner. This will certainly apply in consideration of cases and should have been done at least for cases considered by DPC in ^{April} 1985, in the proceedings, based on which the impugned order dated 7th June, 1985 (Aadesh No.66/85-CIS) Notification No.A-32013/3/84-CIS (Ministry of Information & Broadcasting) in has issued. Normally Recruitment Rules there is no provision for filling up of temporary vacancies. In what context the post will be deemed to be temporary and in what context it will not be temporary has not been defined in the statutory rules. There is ^{The} minimum period of

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service in the various posts prescribed for promotion. For example, under Rule 6(a) it is stated that for Grade-II 3 years continued approved service in Grade-III is necessary but it is not the case of Respondent No.1 or others that the applicant had not fulfilled this condition for consideration to appointment in Grade-II. In fact, it is clearly shown from the reply of Respondent (1) that while his case was considered for promotion to Grade-II by the D.P.C. in 1981, his name was not recommended for promotion for want of vacancies. Though at one stage the learned counsel for the Respondent No.1, stated that he did not fulfil 3 years service by the time of the D.P.C. met in 1981, it is not borne out by fact, as the reply of the Respondent (1) shows that his name was not recommended for want of vacancies. In any case there is the further provision that even as per the Recruitment Rules 6(a) relaxation of the period of experience is possible -

"Provided that where an officer in a particular grade is considered for promotion, all officers senior to him in that grade shall also be considered for such promotion notwithstanding that they may not fulfil the requirements as to the minimum period of service prescribed above."

However, It is clear that the applicant fulfilled the requirements of the Rules in 1981 & in 1985.

14. However, for adjudication of the issues involved and with reference to the prayers made in the application, we confine ourselves to the vacancy position in Grade-II in 1985 and the consideration of the cases for promotion to the Grade-II in April, 1985, vide the proceedings of the D.P.C. The applicant had challenged promotions of the respondents 2 to 67 to the Grade of

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Junior scale Grade-II of the Central Information Service vide the impugned order dated the 7th June, 1985 (Aadesh No.66/85-CIS), Notification No.A-32013/3/84-CIS (Ministry of Information & Broadcasting) and has prayed for issue of directions quashing the promotions made of the respondents nos. 2 to 67 to the above service and for promoting the applicant to the junior scale Grade-II with effect from 26.4.85. Therefore, in terms of the prayer, while a background of the position till 1985 might be useful, the vacancy position prior to the consideration of the cases by the DPC in April, 1985 would not be very relevant. There are enough indications to show that the vacancies have not correctly been computed even for the year 1985 when the D.P.C. sat to consider the cases. The relevant notings in the connected file show that even after the correspondence with UPSC earlier, during the meeting of the D.P.C. itself an indication was given by the departmental authority that the vacancy position could be considered flexible as some officers were on deputation and on ~~the~~ other duties else-where. However, after the receipt of the proceeding of the DPC at Government level, there appears to be a going back on the vacancy position as recorded in the course of the DPC proceeding at the meeting, and ~~the~~ lesser number of vacancies was arrived at. In fact, the proceeding of the DPC of April, 1985 does not show that the vacancies were separately calculated as temporary or vacancies as permanent and promotions recommended as required under the present Rules. The proceeding proceeds on the assumption that the promotions were to be considered from Grade-III

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to Grade-II and not strictly considered in accordance with the Rules which state that permanent vacancy shall be filled by substantive appointment of temporary Grade-II officers in the order of their seniority subject to the rejection of the unfit and temporary vacancy in the Grade-II shall be filled by selection from amongst officers holding duty posts in Grade-III. But what has happened is that the DPC has recommended one list of officers fit for appointments (officiating) to Grade-II from the rank of Grade-III officers. Hence, it is clear that the basic level from which promotions were recommended were appointees and post holders in Grade-III.

15. As mentioned earlier, the vacancies position was not ascertained clearly and there has been different positions which were taken up at different times. Even more serious is the criterion for recommending promotions to Grade-II and a perusal of the files clearly shows as to how different positions were taken in the reply filed by the respondent no.1 and during arguments by the learned counsel for Respondent No.1. The notings in the file at various points show that the duty posts in Grade-III and in Grade-II on many occasions were inter-changeable and if that were so, it is difficult to understand how an emphasis on selection with reference to merit, seniority being a subsidiary factor, should have been the prime consideration. It is noticed that the DPC in 1985 had given its recommendations on the basis of classifications, like outstanding, very good and good which is usually resorted to in the case of "selection". It is difficult to

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reconcile the position taken in the files at various times that duty posts in Grade-III and in Grade-II are inter-changeable and this dichotomy in thinking has led to the contrary stand~~s~~ as taken in the written reply that the basis of promotion to Grade-II is seniority-cum-merit while during the arguments the emphasis was sought to be placed on merit. Therefore, this dichotomy of thinking, not only with reference to the qualification for promotion and criterion for promotion and the different stand~~s~~ taken at various points of time about the availability of vacancies would show that the case of the applicant was not properly considered by the D.P.C. with reference to his merit and A.C.R. which was made available to us and also in accordance with his seniority which is undisputed as it is a matter of record vide the Civil list of C.I.S. Group B, Grade III Officers published in March, 1984 which shows the applicant at the 39th position. The judgment of the Tribunal in Radhaballav Tripathy Vs. Union of India and others in A.T.R. 1987(1) CAT 274 would lend support to the view that the case of the applicant was not properly considered by the DPC in accordance with the Rules or with the vacancy position or visualised clearly with reference to his ACR for the various years and the vacancy position. Though there is a reference in the files to the seniority list of Group B Grade-III officers being under challenge in the Courts, this has no particular application in the case of the applicant.

16. In the circumstances the applicant has established a case that his case was not considered by the D.P.C. in accordance with the Rules or in accordance with the vacancy

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position. While therefore we do not see any material to quash the appointments of the respondents nos.2 to 67 vide the order of 7th June, 1985, the case of the applicant should be considered afresh for his promotion and his position determined for which purpose, a review D.P.C. should be constituted. His date of promotion can be determined with reference to that of Respondents nos. 2 to 67 as notified in the Notification No.A-32013/3/84-CIS of the Ministry of Information & Broadcasting in Aadesh No.66/85-CIS dated 7.6.1985 (impugned order). On the basis of his promotion after the Review DPC's recommendations service benefits to the applicant should also be given. He should also get the arrears of pay for the relevant period based on his promotion.

17. The Review DPC should be convened immediately and the matter settled. These orders will be complied with, within a period of two months from the date of receipt of a copy of this order. The Respondent No.1 is directed accordingly.

18. The application is allowed as above but there will be no order as to costs.

N. Sengupta
(N. Sengupta) 27.3.90
Member (Judicial)

P.S. Habeeb Mohamed
(P.S. Habeeb Mohamed)
Member (Administrative)

