

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

23

Original Application No. 238 of 1988

Date of Decision: 4. 5. 1994

Abhijit Gupta

Applicant (s)

Versus

Union of India & Others Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the No. Central Administrative Tribunals or not?

4.5.94
VICE-CHAIRMAN

MEMBER (ADMINISTRATIVE)

04 MAY 94.

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Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s. J. Das
B.S. Tripathy
B.K. Sahoo
S. Mallik
Advocates

For the respondents

Mr. Akhaya Mishra
Standing Counsel
(Central)

C O R A M:

THE HONOURABLE MR. K.P. ACHARYA, VICE - CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

JUDGMENT

MR. H. RAJENDRA PRASAD, MEMBER (ADMN) The applicant, Shri Abhijit Gupta, was selected by the Union Public Service Commission for appointment to the Military Lands & Cantonments Service, (since renamed Indian Defence Estates Service), Group 'B' on the basis of a combined competitive examination conducted in 1968. He was appointed Cantonment Executive Officer in January, 1969, confirmed in May, 1973, and was subsequently promoted to the Junior Time-scale in Group 'A' of the same service. His seniority was reckoned as from January, 1973.

He was in due course promoted to Senior Time-scale of Group 'A' of the Service.

in which he was confirmed with effect from 23.8.82,

Fig. 1.

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his name duly figuring at Serial 13 in a list of 23 officers of the service. The list (No.102/150/ADM/I&C dated 09.1.84) issued by Respondent No.2, has been annexed to the application as Annexure-1.

2. During July, 1987, a contemplated (revised) consolidated seniority list was issued by the same respondent, which in effect envisaged, interalia, the altering of the seniority of the applicant to his disadvantage since it was proposed to relegate him from serial number 13 of the earlier list to number 15 of the revised contemplated list. This document forms Annexure-2 to the application. Representations were, however, invited from affected officers against the contemplated revision if they had a grievance with regard to the proposed alterations of seniority.

3. In November, 1987, the proposed revision, which had been circulated previously, was confirmed unchanged as final, - reportedly after taking into consideration the objections/suggestions received from aggrieved officers in response to the earlier circular. This is Annexure 3 to the application.

4. In February, 1988, Respondent No.2 released a list of officers of Senior Time Scale of IDES, Group 'A',, who had been selected for promotion to the Junior Administrative Grade in the same service. (Annexure-4). The name of the applicant did not figure in the list.

5. Aggrieved by this selection-cum-promotion the applicant seeks :

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26

- a) the quashing of the orders No.102/187/ADM/I&C dated 24th February, 1988 issued by the D.G., Defence Estates (Annexure-4), promoting 20 officers of Senior Time-Scale of IMES, Group 'A' to the Junior Administrative Grade of the same service;
- b) a direction pronouncing the applicant promoted to the said Junior Administrative Grade of the service from the date his immediate junior(s) was/were so promoted; and
- c) restoration in his favour all service/monetary benefits as a consequence of (a) and (b) above.

* * * * *

6. The grievances and pleadings of the applicant revolve around the following issues:

- i) His position was abruptly and arbitrarily reduced to his immense disadvantage with the issue of consolidated revised seniority list (Annexure-3)
- ii) Many of his colleagues who were junior as per the original list were placed above him and also selected for promotion to J.A.G.
- iii) Two officers whose names did not even figure in the original seniority were inducted into the revised seniority list and were then conferred promotion.
- iv) He has a brilliant service-and-performance record which was ignored.
- v) His juniors with less impressive records were preferred for promotion.
- vi) Even his seniors so selected for promotion had tainted service records compared to his own.
- vii) The procedures of the relevant DDC were questionable and in violation of rules. The calculation of vacancies to be filled up in JAG was defective resulting in undue enlargement of the zone of consideration and field of selection.

7. In their counter-affidavit, the respondents state that :-

- a) The inclusion of Shri G.S. Sohal and S.P. Nijhawan in the revised seniority list was in compliance with a Court verdict

15/1/1998

27

which was binding on them as well as on the applicant himself.

- b) In complying with the said judgment the promotions to IEDS, Group B and Junior/Senior Time Scales ordered earlier until then have had to be inescapably treated as adhoc and that this course of action was inevitable under the circumstances;
- c) The applicant was not by any means superseded prior to the said judgment;
- d) Although the judgment of Allahabad High Court was solely in respect of S/Shri G.S. Sohal, the same benefit had to be extended to S/Shri S.P.Nijhawan, K.C.Katoch and N.S. Mundier as well, since these three officers were similarly circumstanced as Shri Sohal.
- e) As many as 17 posts have had to be upgraded to the Jr.Administrative Grade as a result of the cadre-review carried out in 1987 as envisaged in the recommendations of the IV Pay Commission.
- f) A DPC was held in February, 88, in order to fill up the upgraded posts. The applicant was quite in the zone of consideration and that his case was duly considered.
- g) There was no arbitrariness in the conduct of the DPC which was held absolutely within the four corners of rules issued by the Government of India from time to time.
- h) The DPC which met in February, 1988, was functioning against the background of IDES (Group-A) Rules, 1985, framed under Article 309 of the Constitution. The earlier Military Lands and Cantonment (Group A) Rules, 1981, on which the applicant mainly relies, had been duly superseded by the new rules
- i) The DPC was convened in accordance with rules on the subject. The field of promotion was determined in accordance with the Ministry of Home Affairs, Govt.of India Memo No.22011/3/76-Estt. (D)-I dated 24.12.80 and Appendix 29(ii) Civil Services Regulations Vol.III. The Review DPCs were conducted in accordance with the instructions contained in page 558 of the Civil Service Regulations, read with Ministry of Home Affairs, Govt.of India, Department of Personnel & Administration Reforms Memo No.22011/3/80-Estt. (D)-I dated 26.3.80.

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28

In the end the respondents state that the only reason why the applicant ^a filed to get selected to the J.A.G. of IDES Group 'A' was because his service record did not quite measure upto the exacting standards and requirements of such selection, and the only reason why other officers, - some his juniors, - got selected was that their service-records measured upto such requirements.

8. For facility of analysis the long - and often (needlessly) repetitive-arguments of the applicant and the counter-arguments of the respondents can be conveniently grouped under the following three heads :

- A. Seniority
- B. ACRs/Service Records
- C. D.P.C.

It is proposed to also deal with the issues in the same order.

SENIORITY

The events upto the issue of the revised consolidated seniority list of officers in July, 1987, are not in dispute. Thus, it is an admitted fact that the applicant was senior to S/Shri D.K.Reddy, Ved Prakash, Balsharan Singh, Aditya Kumar, N.B. Ray, O.P. Mishra and K.N.Kumar, as per the orders of confirmation in STS of Group A issued by Respondent No. 2 vide No.102/150/ADM/I&C dated 9th January, 1984. S/Shri D.K. Reddy, Ved Prakash, Balsharan Singh, Aditya Kumar, N.B.Ray, O.P.Mishra, and K.N.Kumar, were shown as junior to the applicant even in the consolidated Revised Seniority List of Officers

T. S. Jadhav

29

issued on 19th November, 1987. The lone difference between the two lists was the insertion of the names of S/Shri G.S.Sohal and S.P.Nijhawan at Nos. 12 and 14 in the latter list. This, it is explained, was on account of a judgment delivered on 27th April, 1984, in CWP No.1867 of 1977, by the Hon'ble High Court of Allahabad, allowing the prayer of Shri G.S.Sohal for counting his army service for the purpose of computing his seniority in the IDES. It was this judgment which necessitated the recasting of the already determined seniority of officers contained in Annexure-1. It was thus that the two Ex-ECOs, S/Shri G.S.Sohal and S.P.Nijhawan found place at Nos. 12 and 14 of the revised list. It is, incidentally, submitted by the respondents that the unavoidable alteration of the applicant's seniority from Sl.No.13 to No. 15 did not, however, adversely affect his confirmation in STS in any manner. It is also pointed out that the applicant was quite fully a party to the Civil Writ Petition in Allahabad High Court which resulted in the aforesaid judgment and which eventually led to the issue of the revised seniority list. The applicant says that he was not noticed in the said Writ Petition, and, therefore, the alteration of seniority, (as an outcome of the judgment) is plainly illegal. We are unable to accept this argument because it is difficult to believe that the applicant was not noticed at all in the case before the High Court. Even assuming that this was indeed so, it was expected of the applicant to have approached the said Court in time instead of sleeping over his rights, or grievance, if any.



for so long a period.

9. The applicant relies almost totally on the original seniority list (Annexure-1) and chooses almost equally totally to gloss over or disregard the circumstances that led to the issue of Annexure-2, wherein, incidentally, the reasons and the need for revising or reviewing the seniority had been spelt out in detail. Similarly, he chooses to overlook almost completely Annexure-3, while projecting his original seniority. According to the applicant, Annexure-1 would alone constitutes a valid seniority list, to the exclusion of all subsequent developments, including for instance, a court verdict which has had a direct impact on the facts of the present case. Consequently, he argues that any one not figuring in the original seniority list did not ipso facto belong to feeder cadre. This argument is fallacious on account of the fact that it ignores a Court judgment delivered after the issue of Annexure-1, and also incorrectly regards two of his compatriot service officers as outsiders.

10. Another inference which the applicant makes is that since Shri Twanluia and A.P.Singh, who are placed at Sl.No.1 and 9, respectively, in Annexure-3, were brought down to 17 and 18 in the select list on promotion to JAG (Annexure-4) it automatically follows that these two officers had the "worst" grading in the CRs when compared to others in the list, including his own.

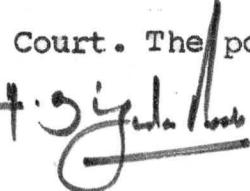
Alternately, he argues that his grading were of the same level as those of the two officers, and that he should,

T. S. J. A. L.

therefore, have been preferred for promotion wholly on account of his original seniority. This argument is partly based on presumption and partly on conjecture as far as the CR gradings - his own or theirs - are concerned. It also ignores the fact that certain special provisions have been made by the Government for protecting the interests of SC/ST officers in matters of promotion. Explaining that the two officers, S/Shri Twanluia and A.P.Singh, are SC/ST officers, the respondents explain the position as under :

* As per Govt. of India, Min.of Home Affairs O.M.No.1/9/69/Extt. (SCT) dated 26.3.1970, on promotion upto the pre-revised scale of 1500-2000 and 2000-2250 in a selection post if a SC/ST officers figures in the feeder list upto the number of vacancies available and if he is fit for promotion, he has to be promoted irrespective of the grading of his juniors i.e. if there are 17 vacancies and there are 2 officers belonging to SC/ST, as in the instance case, and they are found fit for promotion and are graded only as good and if rest of the officers are graded as very good including a few juniors below them, then in that case the SC/ST officers will be listed below XX of all officers graded as very good and outstanding but will take the last two places in the XX select list. This exactly what has been done in the instance case."

11. In the light of the facts revealed or discussed above, it cannot be held that any injustice has been meted out to the applicant, firstly, in the matter of determining the original seniority, or secondly, in fixing the revised seniority in the light of altered circumstances and requirements arising from the judgment of Allahabad High Court. The position as contained in No.102/191/Admn/ DE



22

dated 19.11.1987, issued by the Director General, Defence Estates has, therefore, to be accepted on balance as unobjectionable.

13. CCRs/SERVICE RECORDS:

The applicant claims or asserts at various times that:

- i) his gradings have been outstanding throughout;
- ii) the CRs of his colleagues selected for promotion to JAG were flawed or blemished;
- iii) the CRs of two of his colleagues were no better than his;
- iv) none of the officers selected had better CRs than his;
- v) the CRs of some of his colleagues so selected had adverse entries whereas his own CRs were clean;
- vi) no adverse entries were ever communicated to him in respect of his CRs; and, finally
- vii) an incomplete CR for 1981-82 was misutilised by the authorities against him.

14. Now, these claims and assertions are extraordinary, to say the least. CCRs are confidential documents as their very name implies. Normally no officer has any opportunity of either seeing, or learning of, what has been recorded in them. This is true of an officer's own records as those of others. This being the well-established, long-standing fact of administrative practice, we are unable to understand as to why, and on what basis, the applicant makes such a variety of claims. Authoritative claims about his ACRs and those of others. Evidently under the circumstances claims such as these have been regarded as based on conjectures, and not substantiated or supported by facts. We have, therefore, no choice but to reject the

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claims made by the applicant on the strength of the imagined excellence of his CRs, or, parallelly, the reportedly tarnished CRs of colleagues. As regards the applicant's contention that his record was brilliant inasmuch as no adverse entries had ever been communicated to him any time, the argument is slightly tendentious because mere absence of a communicated adverse entry would not necessarily or automatically ensure or imply brilliant service record or consistently excellent performance.

15. The applicant has raised objections about the manner of functioning of the DPC/Review DPC which recommended the names of officers for promotion to Junior Administrative Grade from Sr. Time Scale. These objections have already been briefly mentioned at para-6 (VII) above. These are elaborated as under :

- i) The rules regulating the Field of Promotion have not been properly followed.
- ii) The guidelines relating to the procedures and selection for promotions, specially with regard to making a relative assessment of candidates, have been violated.
- iii) The Review DPC which met on 29.4.87 was contrary to the instructions of the Ministry of Home Affairs, Deptt. of Personnel and Administrative Reforms OM No.22011/6/75-Estt. (D) dated 30.12.76 read together with OM of the same number dated 11.1.77.
- iv) The guide-lines to be followed by the DPCs as laid down in the Ministry of Home Affairs instructions issued in 1966 have been violated.
- v) The mandatory requirement that definite criteria for appointments to selectional posts or grades shall be drawn by the DPC has been transgressed.
- vi) Vacancies have been irregularly bunched resulting in an enlargement of the field of consideration.

Signature

34

16. These points have been countered by the respondents as under:

- i) The applicant is relying on M.L.& C Service (Group A) Rules-1981, whereas those ~~st d~~ long replaced by IDES (Group-A) Rules-1985. The latter set of rules became operative from 22nd November, 1985, viz., much before the relevant DPC/Review DPC met in this case. Thus, the DPC that was held in 1987 was convened under the latest applicable rules.
- ii) The instructions contained in Government of India, Ministry of Home Affairs MEMO No.22011/3/76-Estt. (D) dated 24.12.80, and appendix 29 Volume-III of Civil Service Regulations, have been scrupulously followed for determining the Field of Promotion.
- iii) The Review DPC in this case faithfully followed the instructions contained in Volume-III of Civil Service Regulations (page-558) read with Government of India Ministry of Home Affairs, Deptt. of Personnel and Administrative Reforms Memo No.22011/3/80 Estt. (D)-1 dated 26.3.80
- iv) There was nothing objectionable if the DPC met on two successive, or even different or later, dates, if the same is found inescapable or unavoidable due to administrative reasons. In this particular case the DPC had to meet more than once on different dates because of the pre-occupation of a member from UPSC who was on the Committee.
- v) According to rules the DPC, while making a comparative assessment of officers' grades them under three distinct categories, viz., outstanding, very-good and good. Officers found to be unfit are separately assessed as such. No reasons need be recorded in the DPC minutes. Grading are based entirely on the ACRs of the officer(s) concerned for preceding the year of convening the DPC five years
- vi) On account of cadre-review carried out in 1987, 17 new posts were upgraded to J.A.G. from the Sr. Time Scale of Group-A. The DPC, therefore, took due note of this requirement and proceeded to make the selections, taking care to follow the method laid down in Ministry of Home Affairs OM dated 24.12.80

[Handwritten signature/initials over the list]

already referred to. If the DPCs could not be held earlier, it was wholly on account of the pendency of court cases.

vii) The DPC was acting strictly within the four corners of rules and instructions issued by the Government from time to time and the selections were made entirely on merit, and in accordance with the rules on the subject.

17. At the request of the learned counsel for the applicant, a further hearing was permitted in this case to enable him to make certain additional submissions. In course of resumed hearing the learned counsel stated that:

- a) he does not press his application against S/Shri G.S.Sohal(R-12) and S.P.Nijhawan(R-14)
- b) he is, however, persistent in his submission that R-4 to 11, 13, and 15 to 23, have been irregularly promoted to Junior Administrative Grade, although they are admittedly junior to the applicant in the feeder cadre
- c) According to the I.D.E.S. (Group-A) Rules, the criterion for promotion to the post of Junior Administrative Grade shall be only the order of seniority of officers subject to rejection of the unfit. This, the learned counsel submitted, clearly indicated that seniority alone, and no other consideration, was the sole yardstick for promotion to the J.A.G. Thus, he contended that promotion to JAG is wholly non-selectional and, ipso facto, the question of merit cannot arise for such promotions. In support of his contention the learned counsel cited three cases disposed of by the Hon'ble Supreme Court and Delhi High Court.
- d) It was also mentioned by the learned counsel that he does not any longer wish to press his earlier submission concerning his, or others', ACRS

In advancing the argument as at sub para b) and c) above, **Shri J. Das**, ^{the} learned counsel, relied on the following provision of I.D.E.S. (Group-A) Rules, 1985, - concerning which he was, according to him, unaware, until the said rules were filed by the Respondents, as annexure-R/3

T. S. Jadhav

36

to their counter. The following is the provision referred to:

(5) "The selection of officers for promotion shall be made by selection on merit (except in the cases of promotion to the posts in Group A Senior Scale and Junior Administrative Grade (Selection Grade) which shall be in the order of seniority subject to rejection of unfit) on the recommendations of the Departmental Promotion Committee constituted in accordance with the composition given in the Schedule IV."

A mere casual reading of this rules might give the impression that the selection of officers to Junior Administrative Grade shall be in the order of seniority subject to the rejection of unfit. This is correct, but only partly. A closer reading will reveal that what is evidently meant and referred to is the Selection Grade of J.A.G. and not the initial J.A.G. The concept of seniority subject to rejection of unfit is applicable only to officers being considered for promotion to Group A Senior Time Scale and Junior Administrative Grade (Selection Grade). The same is not applicable to promotions to Junior Administrative Grade which shall have to be made by selection-on-merit. Thus, the later additional argument ^{too} advanced on behalf of the applicant becomes untenable. We do not, therefore, wish to discuss in any detail the applicability of the three cases cited by the applicant's learned counsel since these cases were cited on ^{the} assumption that the grade in question (JAG) was non-selectional, and did not, therefore require merit being taken into account. No other new, valid or

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T. S. J. —

37

acceptable grounds were urged in support of the applicant's case.

In the light of the facts and circumstances stated above, we have to hold that : -

- i) the revision of the seniority decided upon by the concerned authorities in this case was necessary and justifiable;
- ii) the induction of Respondents No.12 and 14 in the revised seniority-list was justified - a point conceded by the applicant himself;
- iii) the procedures adopted by the DPC were quite in order;
- iv) the action of the respondents in :
- (a) safeguarding the interests of the SC/ST officers and (b) determining the number of vacancies, was also unobjectionable;
- v) The recommendations eventually made by the DPC were based on instructions and accepted guidelines.

The impugned order No.102/187/ADM/L&C dated 24th February, 1988 issued by the Government of India, Ministry of Defence, Directorate General Defence Estates, New Delhi is, therefore, upheld. There is no material or valid ground which would merit our intercession on the applicant's behalf.

The application is disallowed. No costs.

Lucas B.M.
VICE-CHAIRMAN 4.5.94.

4.5.94.
MEMBER (ADMINISTRATIVE)

04 MAY 94

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 4.5 1994/ B.K.Sahoo