

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.21/2001.

Thursday this the 30th day of January 2003.

CORAM:

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

K. Swaminathan,
Joint Assistant Director,
Intelligence Bureau, Kozhikode,
residing at 5/2093, 'Dhanya',
Kottaram Road, Calicut-673 006. Applicant

(By Advocate Shri M.R.Rajendran Nair)

V. 2.

1. Union of India, represented by Secretary to Government of India, Ministry of Home Affairs, New Delhi-110011.

2. Union Public Service Commission, represented by its Secretary, Dolapur Home, Shajahan Road, New Delhi-110011.

3. The Assistant Director, Intelligence Bureau, Ministry of Home Affairs, New Delhi-110011. Respondents

(By Advocate Shri C.Rajendran, SCGSC)

ORDER B

HON'BLE MR.G.RAMAKRISHNAN- ADMINISTRATIVE MEMBER

The applicant aggrieved by A-6 memorandum dated 24.12.99 by which the applicant's representation dated 27.10.98 rejecting his request for anti-dating his promotion with reference to his juniors in the grade of Deputy Central Intelligence Officer (DCIO for short), filed this O.A. seeking the following the reliefs.

- "i) To quash Annexure A6.
- ii) Declare the applicant that was entitled to be promoted as Joint Assistant Director in preference to his juniors and direct the respondents to grant him promotion at least from the date of promotion of his juniors with all consequential benefits.

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- iii) Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- iv) Grant the cost of this Original Application."

2. According to the averments of the applicant in the O.A., he commenced service in July 1966 as Assistant Central Intelligence Officer(ACIO for short). He was promoted as DCIO in the year 1984. In the seniority list of DCIO published in the year 1996 the applicant was ranked 00665. According to the applicant, overlooking his seniority several of his juniors were promoted during 1993, 1994 and 1996 as Joint Assistant Director (JAD for short). He claimed that he was eligible to be promoted with effect from 1993 itself and without considering his claim for promotion his juniors S/Shri K.G.Nair, Harish Chandra Singh, A.O.Devasi, Algar Das, K.J.Pailly, Kunwar Singh Gogarh, R.N.Roy and Elsy Poll were given promotion. He claimed that his service records were blemishless and he had not earned any adverse remarks. Self appraisal was sought and obtained by the applicant till June 1992. The applicant approached this Tribunal in O.A.1132/96, which was filed on 14.10.1996 seeking a declaration that he was entitled to be considered for promotion as Joint Assistant Director (Executive) in the Intelligence Bureau (I.B. for short) in accordance with Annexure A-11 guidelines and to direct the respondents to consider him for promotion as Joint Assistant Director (Executive) in the IB in accordance with Annexure A-11 guidelines with effect from 1993-94. Annexure A-11 guidelines referred to in O.A.1132/96 was A-1 in the present O.A. On the basis of the submissions made by the respondents in O.A.1132/96, to the effect that the applicant had been considered by the DPC and on the basis of the recommendations of the DPC, he had been promoted to the post of Joint Assistant Director (Executive), the application was dismissed as not pressed

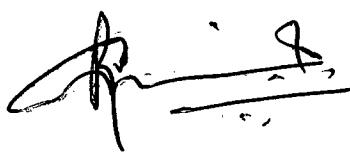


reserving the liberty of the applicant to approach the 1st respondent in case any of his grievance subsisted, by A-2 order dated 11.3.1997. The applicant submitted A-3 representation dated 19.7.1997 to the first respondent praying for fixation of seniority as if he was promoted in 1993 January itself. He received A-4 reply dated 17.3.1999 rejecting his request. Thereafter he submitted a further representation A-5 dated 14.9.1999 in which he requested that he may be given promotion w.e.f. March 1994 along with those who were juniors to him. He received a Memorandum dated 22.10.1999. He further submitted a representation dated 27.10.1999 reiterating his claim. He received A-6 reply dated 24.12.1999 in which he was informed that promotion from the rank of DCIO to JAD (Executive) was selection as per the provisions of the recruitment Rules for the post of Junior Assistant Director and the applicant was considered for promotion by the DPC convened in the year 1993, 1994 and 1995 by the UPSC and his name was not covered in the 1993, 1994 and 1995 DPC panels within the vacancies then available on the basis of grading (good) assigned to him by the DPC. But his juniors who were assigned higher grading were empanelled and promoted accordingly. Claiming that even going by the grading, the applicant should have been promoted in preference to his juniors, he filed this O.A. seeking the above reliefs.

3. The respondents filed reply statement resisting the claim of the applicant. It was submitted that as per the Recruitment Rules, for the post of Joint Director (Executive) (hereinafter referred to as (JAD/Exe)) the eligibility period for promotion to the DCIO is 8 years' regular service in the rank of DCIO and the



criteria for promotion is 'selection'. It was submitted that the applicant fulfilled the eligibility conditions for promotion as JAD in February 1992. He came in the promotion zone in 1993 and therefore, he was considered for promotion to JAD/Exe. against 20 vacancies among 52 (44 in Normal Zone + 8 in Extended Zone) others, by the DPC held in the UPSC in 1993. The applicant figured as S1.No.30 in the DPC Minutes. His juniors figured above him in the DPC Panel and had accordingly been promoted. The applicant was left out for want of vacancies. He was again considered by the 1994 and 1995 DPCs. Again he was not empanelled by these 2 DPCs for the same reasons. It was further submitted that the applicant filed O.A.1132/96 before this Tribunal and during the pendency of the said O.A. he was covered for promotion to the rank of JAD/Exe by the 1996 DPC. The fact was conveyed to the Hon'ble Tribunal and accordingly this Tribunal passed A-2 order, dismissing the O.A. as not pressed, reserving the liberty of the applicant to approach the Home Secretary, Union of India, in case any of his grievances subsisted. It was submitted that the applicant was considered for promotion in the rank of DCIO (a group 'B' post then) to JAD(Group A) by the DPCs from 1993-1994 till 1995-1996. However, he was not recommended by the successive DPCs. Thus, he was successively superseded by his juniors, who figured much above him in the DPC panel. It was submitted that the promotion was considered on selection basis and supersession were natural. It was possible that juniors may get promotion superseding their seniors due to higher/better grading after assessing their Service Records by the UPSC, DPC. The respondents referred to the Government of India, DOPT O.M.No.F.22011/5/86-Estt(D) dated



10.4.1989 in support of their submissions. There was nothing arbitrary and unreasonable in not granting promotion to the applicant from the rank of DCIO to the rank of JAD retrospectively with reference to his juniors, when the applicant himself failed to make it to the select list on the basis of his service records, in comparison to his juniors under the "Selection DPC". The Recruitment rules for the post of JAD/Exe was in existence since 1986 (Annexure R-1(A)). The applicant had been informed of the reasons for his non-promotion in the communication dated 24.12.99. There was no violation or breach of Government Directions or Guidelines in this O.A. and this O.A. was liable to be dismissed.

4. Heard the learned counsel for the parties. The main ground on which the learned counsel for the applicant pressed the claim of the applicant was that, in the order which was communicated to the applicant no reasons for not recommending the applicant for promotion had been found. According to him on the basis of the available facts and materials on service records no reasonable person would have come to conclude that the applicant was inferior to his juniors who were promoted earlier. According to him the first respondent was duty bound to consider the applicant's representation on merits and pass a speaking order and the same having not been done, the applicant was entitled for the reliefs.

5. Another ground advanced by the learned counsel for the applicant was that, admittedly the applicant had been graded as 'good' and as per A-1 for induction to a post like Joint



Assistant Director the benchmark was 'good' and hence the applicant should not have been superseded.

6. As we felt that for proper adjudication of this O.A. it was necessary to see the DPC proceedings and the Confidential Reports, we directed the respondents to produce the same. Today when the O.A. was taken up for hearing learned counsel for the respondents produced the DPC proceedings for the year 1993-1994, 1994-1995, 1995-1996 and 1996-1997 and the Confidential Reports in large bundles.

7. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and also perused the documents brought on record. We also perused the DPC proceedings for the year 1993-1994, 1994-1995, 1995-1996 and 1996-1997. From these proceedings we find that the applicant has been considered for promotion to the post of JAD during all these years. The DPC consisted of a Member of the UPSC with other Members as per Annexure R-1(A)--Recruitment Rules. The reliance placed by the applicant in OM dated 10.3.89 for his claim that when he was graded as 'good', he should not have been superseded. We find that it is without any basis. As per para 2.3.1 of A-1 O.M. the procedure to be adopted by the DPC in framing the panels had been indicated. We feel it worthwhile to reproduce the same. The para 2.3.1 of Annexure A-1 O.M. dated 10.3.1989 reads as under:

"2.3.1 The list of candidates considered by the DPC and the overall grading assigned to each candidates, would form the basis for preparation of the panel for promotion by the DPC. The following principles should be observed in the preparation of the panel.

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(i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts a bench mark grade would be determined for each category of posts for which promotions are to be made by selection method. For all Group 'C', Group 'B' and Group 'A' posts upto (and excluding) the level of Rs.3700-5000 excepting promotions for induction to Group 'A' posts or Services from lower groups, the bench mark would be 'Good'. All officers whose overall grading is equal to or better than the bench mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their inter-se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench mark of 'good'.

Wherever promotions are made for induction to Group 'A' post or Services from lower groups, the bench mark would continue to be 'good'. However, officers graded as 'outstanding' would rank en bloc senior to those who are graded as 'Very Good' and officers graded as 'Very Good' would rank en bloc senior to those who are graded as 'Good' and placed in the select panel accordingly upto the number of in the vacancies, officers with same grading maintaining their inter-se seniority in the feeder post."

8. Respondents' case is that JAD/Exe post is a Group 'A' post and for induction to Group A post those who are ranked as outstanding supersede those who are graded as 'Very good' and those who are ranked as Very Good supersede those who are graded as 'Good' as per the guidelines. We find from para 2.3.1 produced above that this is so. The applicant has no case that the post of JAD/Exe is not a Group 'A' post. As long as the JAD/Exe is a Group 'A' post and there is no dispute that DCIO is a Group 'B' post, the contention of the applicant that he having been graded as 'Good' should have been selected in preference to his juniors, is not based on the guidelines. As such this ground is only to be rejected and we do so.

9. On a perusal of the DPC proceedings we find that the applicant has been graded as per his performance as reflected in the Confidential Reports. We have perused the Confidential



Reports of the applicant as well as of some of his juniors viz., S/Shri K.Gopalakrishnan Nair, Harish Chandra Singh, A.O.Devasi, Algar Das, K.J.Pailly and Promod Kumar Sinha. On the basis of this check by us, we do not find any substance in the ground raised by the applicant that, on the basis of the available facts and materials placed in service records, no reasonable person would have come to conclude that the applicant was inferior to his juniors. We found that the performance of the applicant as reflected in the Confidential Reports justified the grading given to him by the DPC vis-a-vis the grading given by the DPC to the juniors mentioned above. In this view of the matter we reject this ground.

10. We also find that the DPC has been headed by a Member of the UPSC and in the 3 DPCs three different Members of the UPSC were heading the DPC and, when different persons constituted the DPC had graded the applicant and the others and all their grading were consistent with each other, we do not find any reason to believe that the same is in any way arbitrary in nature.

11. In the light of the forgoing, we hold that the applicant is not entitled for the reliefs sought for and the reply given to the applicant by A-6 Memorandum dated 24.12.99 cannot be faulted.

12. Accordingly, we dismiss this O.A. leaving the parties to bear their respective costs.

Dated the 30th January, 2003.


K.V. SACHIDANANDAN
JUDICIAL MEMBER


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER