

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 235/2003

Wednesday, this the 7th day of December, 2005.

CORAM:

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

R.T.L.D'Souza,
DANICS Officer,
Additional Secretary
(Legal) & Vigilance Officer,
Secretariat,
Kavaratti, Lakshadweep. - - - - - Applicant

By Advocate Mr M/s K Ramakumar & Associates

vs

1. Government of NCT of Delhi
through its Chief Secretary,
Delhi Secretariat, Player Building,
Indraprastha Estate,
New Delhi-110 002.
2. Union of India represented by
Secretary to Govt. of India,
Ministry of Home Affairs,
North Block, Secretariat,
New Delhi-110 001.
3. Lt. Governor,
Government of NCT of Delhi,
Raj Nivas, Delhi.
4. Union Public Service Commission
through the Chairman,
UPSC, Dholpur House,
Shahjahan Road,
New Delhi-110 001.
5. The Administrator,
Union Territory of Lakshadweep,
Secretariat,
Kavaratti, Lakshadweep-682 555. - - - - - Respondents

By Advocate Mr TPM Ibrahimkhan, SCGSC (for R.1 to 4)

By Advocate Mr S.Radhakrishnan (for R.5)



O R D E R

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Shri R.T.L.D'zousa, DANIC Officer, Additional Secretary, Legal & Vigilance Officer, Secretariat, Kavaratti, Lakshadweep has moved this Original Application for proper fixation of his seniority.

2. The applicant was initially appointed by the Government of NCT of Delhi(R-1) as a direct recruit Grade-I(Executive) of Delhi Administration Subordinate Service(DASS for short) Rules, 1967 on 21.10.78. Questions of seniority are to be decided by the DASS Rules & Delhi Administration Seniority Rules, 1965, (DA Seniority Rules for short). The DASS is a feeder cadre to the Delhi Andaman Nicobar Islands Civil Service(DANICS for short later rechristened as DANILS after the inclusion of Lakshadweep). The seniority in DASS would decide those officers for promotion to the DANICS. According to the Rule 6(1) of the DASS rules, every fourth vacancy in Grade I (Executive) of DASS was to be filled by direct recruitment. Such recruitment to the DASS was done from the surplus or left over candidates of IAS and Allied Services Examinations held in 1975 , 76 and 1978 by the UPSC. Eight appointments were made during 1975 to 1978 as per the rules. This mode of recruitment from the surplus or left over candidates of IAS and Allied Services Examinations was questioned in the Hon'ble Delhi High Court. During the hearing, it was reported that more than 20 further vacancies were to be filled by direct recruitment in the immediate future. In the judgment delivered on 29.1.1979 (A-6), the Hon'ble High Court issued directions to the respondents 1) to make all future recruitments to the service in accordance with law and 2) a further direction that on the next recruitment, the seniority to the existing direct recruits to the service and the appointees pursuant to the next recruitment would be redetermined, after giving a reasonable opportunity to the

persons affected of being heard, on a basis that might appear to the Administrator to be reasonable, keeping in view the fact that the existing direct entrants had been recruited otherwise than in the manner provided by law. Nothing was said specifically in the order about the inter se seniority of the recruits already in position vis-a-vis the promotees. According to the applicant, the respondents had admitted in their reply affidavit(A-5) that there were thirty two direct recruitment posts in the Grade-I Executive Class. A perusal of the above document however, does not reveal any such admission on the part of the respondents relating to the existence of 32 direct recruitment posts. Based on such existence of 32 direct recruitment posts, the applicant contends that there were $32 \times 4 = 128$ posts in that grade, which is reinforced, according to him, vide A-1 statement which is a tentative seniority list of DASS cadre as on 4.7.1980 containing the list of 123 officers. It should be noted that this list, however, has listed an admixture of DANICS officers including those retired and those expired etc, the total list having 256 names. The judgment dated 29.1.79 not being appealed against, has become final. On 4.12.80, the DASS rules 1967 were amended, doing away with direct recruitment and future vacancies to be made only through promotion. The relevance of this move crystallised the seniority position of the applicant along with those identically recruited through direct recruitment as per his claims. Vide A-9 order, the R-1 passed an order, purportedly consequent to the decision of the judgment of the Hon'ble High Court referred to above, allowing, inter-alia, the applicant to complete the two years probation on 20.10.80. The applicant filed, along with other direct recruits of 1978, a Writ Petition on 5th September, 1983 for a declaration that they should also be considered in the 1983 DPC and not be dislodged from the position held by them in the



Grade-II of DANICS. This was transferred to the C.A.T. The respondents made statements containing three parts before the C.A.T first that a tentative seniority list of Grade-I Executive was issued on 25.10.83 (A12 of this O.A). Thereafter, a notification was issued on 12.7.85 for the purpose of determination of seniority of the members of the subordinate service. Again, a revised seniority list was issued on a tentative basis on 16.2.89, giving freedom to the applicants to air their view points for consideration by the authorities concerned before finalising the same. It is pertinent to note that no reference has been made by the applicant about any of the latter two documents with particular reference to the fact whether such seniority lists were published, whether he made any representation in time and whether the seniority list has been finalised. The second part of the statement referred to an assurance from the respondent relating to non-disturbance from the present positions. The last part of the statement on the relief pertaining to the confirmation, was that confirmation of the applicants would be done in accordance with the latest instructions issued by the Government. The C.A.T closed the O.A, accepting the above statement with three components. Vide A-18 order delivered on 15.5.89.

3. The process of confirmation thereafter took a tortuous route including alleged destruction of files, reference to the legislature committee and reference to the Law Department etc. Vide A-14 document dated 5.9.2000, a confirmation order was issued, inter-alia, confirming the applicant as on 21.10.80. With the confirmation order in hand and future direct recruitments permanently done away with, the applicant claims that the seniority of direct recruits like him who were five in number could easily be fitted in the seniority list, himself occupying the (5 X 4) 20th position. He sent two representations in this regard making a detailed plea vide A-15



After his detailed representation, he received a reply dated 13.5.2002 (A-1 impugned order) which he describes as non-speaking order, reportedly ignoring the judgment and directions of the High Court of Delhi. He filed a statutory appeal on 7.6.2002 to the Lt. Governor, New Delhi (R-3). He received A-2 order which again is impugned. Challenging the above two orders, he has come to this Tribunal for enforcing his claims for reliefs.

4. The reliefs claimed by him are the following:

- a) to quash A-1 and A-2 impugned orders.
- b) to declare his position in the seniority list at the 20th place.
- c) to direct the R-2 and R-4 to constitute a composite Review DPC to consider his case for all due promotions which he might have lost.

5. He rests his case on the following grounds:

A. The impugned orders are non-speaking with particular reference to the silence on various statements and admissions made by the respondents in the case before the High Court.

B. The applicant is entitled to his position of seniority based upon the rules in existence at the time of recruitment, which provides for 25% direct recruitment. The fact that subsequent amendment to the rule had done away with direct recruitment altogether in preference to 100% promotion cannot take away his right of fixation of seniority as per the provisions of the pre-amendment rules.

C. In the tentative seniority list circulated on 25.10.83, he was given a seniority position of 95 whereas presently he has been placed at 491st place vide the impugned order A-1.



D. The respondents deliberately destroyed the records and misusing their own wrong doings have passed an order much to the prejudice of the interests of the applicant.

E. Having admitted before the Delhi High Court that there only 32 direct recruitment posts which would lead to a cadre strength of $32 \times 4 = 128$, conferring 491st rank to the applicant is inconsistent with the previous admissions.

F. The impugned orders are in total disagreement with the advice rendered by the Law Department.

G. The non-speaking order is a violation of the Government of India orders (not produced in the O.A) that reply to a representation should be self contained and should cover all the points raised and indicate grounds for rejection.

6. Respondents have challenged the application on the following grounds:

i) The directions given in R-2 document dated 12.5.83 appointing the applicant as Deputy Superintendent in Central Jail, Tihar is in due compliance of the orders of the Delhi High Court.

ii) The objections raised by the applicant relating to the tentative seniority list (A-12) are not tenable as he could have objected to the same at the relevant time. By not doing so he has forfeited his right to object to the same after a lapse of 20 years.

iii) All the files are in the custody of the respondents contrary to the fears of the applicant that they have been destroyed.



- iv) Neither the advice of the Law Department nor the directions of the Chief Minister as such can form the basis for conferring the relief claimed.
- v) The confirmation was made duly in the light of the applicable Government orders.
- vi) The appeal was duly considered with proper application of mind and the orders passed thereon.

7. The points to be considered are:

- i) Whether the applicant had an opportunity to object to the seniority lists published so far and whether he had utilized the same.
- ii) Whether the impugned order A-1 was passed on his representation, in the light of the instructions of the Government of India and the rules on the subject.
- iii) Whether the impugned order A-2 was passed on his appeal, in the light of the instructions of the Government of India and the rules on the subject.
- iv) What is the basis for seniority fixation and was there any violation in his case?

8. On the question of whether the applicant had an opportunity to object to the seniority lists published so far and whether he had utilized the same, it is seen that the applicant has produced A-12 document which is a true copy of the tentative seniority list as on 4.7.80 of Grade-I (Executive) of DASS circulated on 25.10.83. The covering letter thereto directs the recipients to bring the same to the notice of all officials concerned working in the respective departments and to obtain their signatures in token of noting the contents. Any objection to the contents by any officer in the list



was supposed to be filed within a fortnight of the date of issue of the letter (25.10.83). The applicant is placed in the 95th position. The respondents contend that any objection to the above list should have been filed within the prescribed time. The applicant, however, states in his rejoinder that he along with other direct recruits of 1978 had filed a Writ Petition prior to the date of issue of the tentative seniority list. As already mentioned, this Writ Petition was transferred to the Principal Bench of the C.A.T. As a fall out of the orders of the C.A.T., orders were passed by the respondents on 5.9.2000 for the confirmation and regularisation. Hence, objecting to the seniority list before the date of 5.9.2000 would have been premature. The above explanation defies logic. The applicant tries to justify his silence through retrospective wisdom. Obviously, he has not filed any objection within the due date and thus forfeited his right of objection for any purpose at this distance of time. No reference to any other seniority list is made in the body of the Original Application. However, a reference to the A-18 document which is the order passed by the Principal Bench of the C.A.T. On 15.5.89 shows that subsequent to the tentative seniority list (referred to above as A-12) a notification was issued on 12.7.85 determining the seniority of officers concerned. This seniority list was quashed by the Tribunal and subsequently the respondents issued another seniority list on 16.2.89. The submission of the respondents was noted in the C.A.T's order that the applicants could object to the above mentioned seniority list which will be considered for finalising the seniority list. For reasons best known to himself, the applicant has not mentioned anything about his response to the above developments in this O.A. If he has not filed any objection within the due date he has forfeited his right of objection for any purpose at this distance of time. Had he elaborated his stand in respect of



all these lists and produced the same along with the O.A, it would have facilitated the adjudication to a great extent. Therefore, we find that he did not avail himself of the opportunity of his response to any of the seniority lists.

9. On the question of whether the impugned order A-1 was passed on his representation, in the light of the instructions of the Government of India and the rules on the subject, the above mentioned order merely makes a reference to the representations of the applicant without further specifying which ones are meant as such. According to the latter, one of the representations was made on 5.4.2002 (A-15). This representation makes a reference to fourteen earlier representations between 8.9.2000 to 14.3.2002. In the representation he has made the following points:

- i) He was confirmed with effect from 21.10.80 and the Home Ministry had directed the Government of NCT of Delhi to revise his seniority based on confirmation.
- ii) In view of the affidavit filed by the Government of NCT Delhi and the orders of the Delhi High Court which have become final due to non-filing of any appeal, his seniority should be fixed in terms of the DASS Rules 1967 and the Delhi Administration Seniority Rules of 1965. This position has been confirmed by the legal opinion of the Law Department of Government of Delhi given on 13.5.97.
- iii) Rule 7 of the Delhi Administration Seniority Rules provides for reserving every 4th vacancy for direct recruitment which were made with effect from 10.2.67, the date of promulgation of DASS Rules 1967. This would entitle him to be placed at the 20th position.



iv) His request was that he be placed on the 20th position reserved for the direct recruit quota maintained from 1967 and the revised seniority list be sent to the Home Ministry for convening the DPC. An important point to be seen is that he has not referred to any seniority list nor questioned the applicability or otherwise. It is seen that the impugned order makes hardly any reference to any of these points and merely hands out a seniority position of 491 as his due position in the integrated seniority list. Again, no reference is made about such seniority list in which his position is 491. Hence we find that the representation of the applicant has not been dealt with in a proper way, the points raised in the application has not been squarely met and the impugned order is not a speaking one.

10. On the question of whether the impugned order A-2 was passed on his appeal, in the light of the instructions of the Government of India and the rules on the subject, the applicant has not made a copy of his appeal petition available. It is not possible to analyse the contents therein. All the same the contents of the impugned order is still cryptic and is not a speaking order. Hence we find that the impugned order A-1 is also a non-speaking order.

11. On the question of what is the basis for seniority fixation and whether there was any violation in his case, this question is jointly covered by two rules, the DASS rules and (A7) and DA Seniority Rules 1965 (A-8) as already mentioned. The DASS Rules envisage for the purpose of adjudication of this application certain important Rules, Rule 4 on authorised strength of the service, Rule 5 on initial appointment of service,



Rule 6 on method of recruitment and Rule 26 on seniority. The D.A Seniority Rules contain Rule 7 dealing with relative seniority of direct recruits and promotees. The authorised strength of Grade-I Ministerial was 54 and Executive 72 making a total of 126 as per the DASS Rules. It appears that this was increased subsequently to 82 and 122 respectively making a total of 205. It is not known whether there has been any further change in the number subsequently. According to A-24, which is the legal opinion rendered by the Law Department, there was a merger of these two Grade-I services. The total number of the two merged services appears important as the applicant is given the position of 491, when the total strength as per available documents is only 205. Even the tentative seniority list produced as per A-12 document has about 256 members, though it contains many names of officers who had retired or expired. The most important Rule in the DASS Rule is the Recruitment Rules which envisages that 25% of the **vacancies** (emphasis added) should be filled in by direct recruitment. Obviously, the reference is not to 25% of the posts. Apparently, the service was initially constituted as per the Rule mentioned above and the difference between the strength of the service and the availability of incumbents in the initial constitution constituted the vacancies which were to be filled as per Rule 6. Rule 26 of the DASS Rules envisage that the inter-se seniority of the members of the service appointed to any grade substantively or any temporary capacity shall be determined in accordance with the principles laid down in the DA (Seniority) Rules, 1965. The latter Rule 7 envisages that the relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the percentage of vacancies reserved for direct



recruitment and promotion respectively in the recruitment rules. This is the provision relied upon by the applicant. The legal opinion made available by the Law Department A-24 traces the history of amendments to this rule dealing with seniority. According to that the first amendment to Rule 26 was made in 1980 laying down a different method for determination of seniority. This was struck down by the Delhi High Court. The second amendment was made by substituting Rule 26 with a new version on 12.7.85 where the emphasis was on to their date of appointment with due regard to the position in the merit list. Though this amendment was also struck down by the CAT Principal Bench, the same was restored by the Hon'ble Supreme Court on 30.8.88. This was again amended in 1989 which provided that the date of appointment was the basis for deciding seniority. The Law Department was of the opinion that the subsequent amendments to the rule 26 cannot affect the applicant in this O.A retrospectively. It is in this context that the cryptic orders passed by the respondents in A-1 and A-2 are likely to cause prejudice to the applicant and to create difficulties in the adjudication of the application. This is because, no indications are available regarding the basis, norms or underlying provisions to sustain the orders. Simply stated, the process of adjudication is constrained by lack of information occasioned by both the parties to this application. The applicant has not spelt out the reasons for not objecting to the seniority list produced in this O.A and there is no whisper about the other two seniority lists and his reactions thereto. The respondents on the other hand maintain that the seniority position is as per the rules and extant instructions but do not elaborate the point further. We find therefore there is no information about the cadre strength, the basis on which the applicant is given 491st position, the seniority list in which such



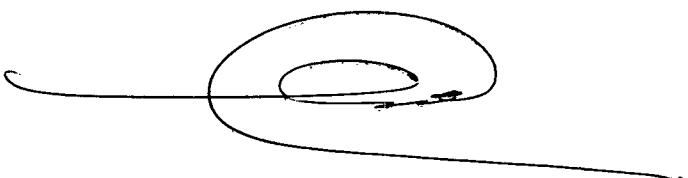
position has been conferred and the legal basis for such conferment. We also find therefore that in the interest of justice the representation should have been properly disposed of by the respondents through a well reasoned speaking order.

12. In sum, we find that the impugned orders are not speaking orders, they have caused prejudice to the applicant by their cryptic contents, and no information is available regarding the ratio in which the findings have been or could be justified.

13. Hence, we order that both the A-1 and A-2 orders be quashed. We direct that the applicant may submit a fresh representation if he so chooses, outlining his demand giving proper justification in terms of the rules, rulings and instructions within one month from the date of receipt of this order. The respondents shall consider and dispose of the same within two months of the date of receipt of such representation and they shall pass a speaking order containing their decisions on each one of the points/claims raised by the applicant quoting the underlying rules/rulings and instructions for such decisions.

14. No costs.

Dated, the 7th December, 2005.



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

K.V. SACHIDANANDAN
JUDICIAL MEMBER