

(AU)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
LUCKNOW

C. A. No. 134/90

Suraj Prakash Applicant.

vs.

U. O. I. & Ors. Respondents.

Hon'ble Mr. D.K. Agrawal, J.M.

Hon'ble Mr. K. Obayya, A.M.

(By Hon. K. Obayya, A.M.)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed challenging the orders dated 02.08.89 and 14/21.09.89 contained in Annex.A-8 & A-9 to the application rejecting extension of selection grade to the officers of Administrative and Financial Streams working in the Geological Survey of India (G.S.I.).

2. The applicant joined Geological Survey of India (G.S.I.) as Regional Administrative Officer (R.A.O.) in 1977, after selection by U.P.S.C. On the Basis of Fourth Commission's recommendation, 'Selection Grade' was introduced in G.S.I. benefitting 244 officers out of 284 at the level of Directors. However, this benefit was confined only to Scientific and Technical Streams and not to the Administrative and Financial Streams. Aggrieved by this, the applicant made representations to the authorities but his request was rejected on the ground that he was not holding the post in the 'Organised Cadre'.

3. It is stated by the applicant that he belongs to General Central Service Group 'A' and the Administrative Stream is a constituent of the cadre structure of G.S.I.

(5)

and that the order dated 13.03.1987 issued by the Ministry of Finance conveying sanction of selection grade does not mention about the 'Organized Cadre' and that all the posts in G.S.I., of the level of Junior Administrative Grade, have to be taken into consideration for working out the number of selection grade posts. There are 21 posts in the Administrative Stream and 15% of this works out to 3, as such 3 posts in the Administrative Stream should be upgraded to Selection Grade. It is further stated that the 'Stores Stream' which is also a part of administrative wing, has been considered for selection grade and one post has been created as 'Selection Grade Post'. The denial of the same to Administrative & Finance Wing amounts to discrimination.

4. The stand of the respondents is that the Administrative & Financial streams have not been included for the benefit of 'Selection Grade' because they do not constitute an 'Organized Cadre' in that the criteria of Direct Recruitment upto 50 per cent to the posts is not satisfied in these streams.

5. We have heard the counsel for the parties also perused the record. The only ground on which the Administrative & Financial streams have not been included for consideration of 'Selection Grade' is that they are not an 'Organized Group-A' service. The respondents are not satisfied for considering a service as 'Organized Cadre' since

(S)

on 'Organized Cadre'

and that the order dated 13.03.1987 issued by the Ministry of Finance conveying sanction of selection grade does not mention about the 'Organized Cadre' and that all the posts in G.S.I., of the level of Junior Administrative Grade, have to be taken into consideration for working out the number of selection grade posts. There are 21 posts in the Administrative Stream and 15% of this works out to 3, as such 3 posts in the Administrative Stream should be upgraded to Selection Grade. It is further stated that the 'Stores Stream' which is also a part of administrative wing, has been considered for selection grade and one post has been created as 'Selection Grade Post'. The denial of the same to Administrative & Finance Wing amounts to discrimination.

4. The stand of the respondents is that the Administrative & Financial streams have not been included for the benefit of 'Selection Grade' because they do not constitute an 'Organized Cadre' in that the criteria of Direct Recruitment upto 50 per cent to the posts is not satisfied in these streams.

5. We have heard the counsel for the parties and also perused the record. The only ground on which the Administrative & Financial streams have not been included for consideration of 'Selection Grade' is that this is not an 'Organized Group-A' service, since the criteria laid down for considering a service as an 'Organized Group' is not satisfied. The said ground is not found in 'the Order'.

6. We have given our careful consideration to the office memorandum dated 14.08.1987 (Annex, A-3) relied upon by both the sides. The memorandum reads as under:

" No. 19/1/86-PP
Ministry of Personnel, Public Grievances
and Pensions,
(Department of Personnel & Training)
(PP Division)

6th Floor, Nirvachan Sadan
Ashoka Road, New Delhi - 1

Dated- the 14th August, 87.

OFFICE MEMORANDUM

SUBJECT: Recommendation of the Fourth Central Pay Commission - Orders regarding Selection Grade in Group-A Services.

....

The undersigned is directed to say that pursuant to the recommendation of the Fourth Pay Commission regarding Selection Grade posts for Group 'A' Central Services, the President is pleased to decide that in all Group 'A' Central Services the number of posts in the Selection Grade shall be equal to 15% of the Senior Duty Posts (i.e. all duty posts at the level of Senior-Time-Scale and above in the cadre). However, there shall be no increase in the overall strength of the cadre. An Officer appointed to the Junior Administrative Grade will be granted Selection Grade, if he satisfies that condition prescribed in paragraph 3 and 4.

2. It has been noted that, save in few cases, the formula of 15% of Senior Duty Posts will yield figure which is less than the number of posts sanctioned in the Junior Administrative Grade. Hence, there will be no difficulty in implementing the decision. However, in a few cases, the formula yields a figure which is slightly higher than the number of posts sanctioned in the Junior Administrative Grade. It is made clear that in respect of these services, the number of posts in the Selection Grade will be limited to the number of posts sanctioned in the Junior Administrative Grade.

3. Appointing to the Selection Grade and so posts carrying pay above the Junior Administrative Grade Scale of pay in Group 'A' Central Services shall be made by selection on merit with due regard to seniority.

4. No member of the service shall be eligible for appointment to the 'selection grade' until he has entered the fourteenth year of service on the 1st July of the year calculated from the year following the year of examination on the basis of which the member was recruited.

5. Appointment to the Selection Grade shall be made by a Committee to be constituted internally and the cases relating to appointment shall continue to be sent to the E.O. Division of this Department for obtaining the prior approval of the Appointment Committee of the Cabinet. This provision shall not apply to such of the Departments as have been specifically empowered to make appointments at this level within their own competence.

6. This supersedes instructions contained in this Department's O.M. No. 5/12/79-PP-II, dated the 31st July, 1982. Accordingly, the condition regarding stagnation at maximum of Junior Administrative Grade for two years for promotion to Selection Grade contained therein, is hereby removed.

7. The orders regarding fixation of pay on appointment to Selection Grade will be issued separately.

8. These orders will take effect from 01.01.1986.

9.
.....
(Hindi version will follow) "


Sd/-
(V.P. UPPAL)
Director (PP)
Phone : 381364

7. From a reading of the above memorandum, it is evident that the recommendation of the Fourth-Pay-Commission regarding grant of selection grade, which was accepted by the President, is in respect of all Group 'A' Central Services subject to satisfaction of the conditions laid down in paras 3 & 4 of the said memo. There is no mention of 'organised service' as a pre-condition for the benefit of selection grade. Further it is noticed that in para 6, there is clear indication that these instructions supersede the earlier instructions contained in O.M. No. 5/12/79-PP/II dated 31.07.82. The conditions governing grant of selection grade as laid down in paras 3 & 4 read together with the clarification in para 6, indicate that the above memorandum is self-contained in all aspects and not to be read in continuation of any other previous instructions/orders on the subject. The learned counsel for the Respondents has not brought to our notice any instruction/order to the effect, that the previous instructions/orders on the subject continue to operate notwithstanding the above memorandum. In para 10(a) of the reply the respondents reiterated their stand that 'selection grade' is applicable only to Organised Group 'A' Central Service according to O.M. No. 5/12/79-PP-II dated 31.07.82 and further clarified in O.M. dated 06.01.1989, we have carefully examined these references. As observed by us earlier, the O.M. dated 31.07.1982 stood superseded vide para 6 of O.M. dated 14.08.1987 (Annex. A-I) and the term 'Organised Service'

no doubt appears in O.M. dated 06.01.1989, but this is by way of clarification of O.M. dated 14.08.1987, and the clarification cannot impose fresh restrictions, and to the extent, they are contrary to the main orders, they cannot be acted upon and are not valid.

8. The Department has also taken up this matter with the Ministry concerned, duly recommending the case of the applicant (Annexure A-3, A-4 & A-7). It is stated in these letters that the Administrative & Financial Streams are very much within the cadre structure of G.S.I. and G.S.I. is an 'Organised Service'. It is also mentioned that in 1982, no post of 'Selection Grade' was created in the Administrative & Financial Streams due to the fact that there was only one Junior Administrative Grade post in the stream, and consequently, the creation of Selection Grade was not considered but now the position is different, and there are number of officers eligible to be considered for 'Selection Grade'.

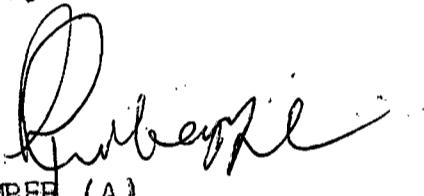
9. The learned counsel has also brought to our notice the decision of the Principal Bench of this Tribunal dated 17.05.1990 in O.A. No. 119 of 1988 (Kashmira Singh v. U.O.I.O. wherein the contention that the benefit of Selection Grade is applicable only to 'Organised Central Civil Service Group 'A'' was rejected by holding that the recommendation of Fourth-Pay-Commission, and orders issued in O.M. dated 14.08.1987 covering all General Central Services Group 'A'. We agree with this finding, and hold that the issue is settled.

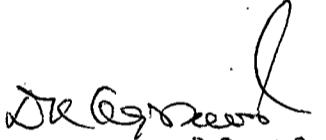
10. It is the case of the applicant which is not denied by the respondents that in the 'Stores Stream' also, there is no direct recruitment upto 50-per cent; as such it is also not an 'Organised Service', but one post has been upgraded as 'Selection-grade-post' in the Stores stream. That being the case, we see no justification, 'why the personnel in the Administrative & Financial Streams should be deprived of the benefit of Selection Grade'. There is nothing in the order

(A)

of the Department of Personnel (Annexure A-I) to suggest that the Administrative & Financial Streams are not entitled for Selection Grade. From this, it follows that orders dated 02.08.89 & 14/21.09.89 (Annexure A-8 & A-9) rejecting grant of Selection Grade to the applicant, cannot be sustained, and are accordingly quashed.

11d In the light of the discussions above, we direct that the post of 'Selection Grade' be created in the Administrative & Financial Streams. With regard to the prayer for promoting the applicant to the 'Selection Grade', that has to be considered on merit and the department may consider this, as per the rules and conditions laid down in the Govt. Order (Annexure A-I). We dispose of this application with the direction as above; in the circumstances parties to bear their costs.


MEMBER (A)


De Gyanwar
22.11.90
MEMBER (J)

November 22, 1990.

Allahabad.

(karn)