

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. No. 89/2005

This the 25th day of November, 2010

Hon'ble Shri Justice Alok Kumar Singh, Member (J)
Hon'ble Shri S.P.Singh, Member (J)

P.K. Chatterjee, son of late Tara Nath Chatterji, 123, Tagore Town, Allahabad.

Applicant

By Advocate: Sri Ram Raj

Versus

1. State of Uttar Pradesh, through the Chief Secretary, Govt. of U.P., Civil Secretariat, Lucknow.
2. Secretary, Appointment/ Personnel Department, Govt. of U.P., Civil Secretariat, Lucknow.
3. Special Secretary, Appointment Department, Govt. of U.P., Civil Secretariat, Lucknow.
4. Union of India through its Secretary, Department of Personnel and Training, New Delhi.

Respondents

By Advocate: Sri Pankaj Awasthi for Sri A.K. Chaturvedi.

ORDER

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

This O.A. is directed against the orders dated 19.6.99 and 7.2.2000 passed by the opposite parties rejecting the representation of the applicant for grant of highest selection grade in PCS cadre.

2. Briefly stated the facts are that according to the applicant, he belongs to 1971 batch of PCS. The procedure for promotion of PCS officers in the State of U.P. have been prescribed in the Rules 17 and 18 of the Rules of 1982. On 3rd March, 1978, he was given selection grade under Rule 17 by relaxing the limit of 12 years in accordance with the proviso to Rule 17. Under Rule 18, it is provided that an officer who has been given selection grade would be entitled for three scales of pay, namely, Special scale, Higher Scale and lastly Highest Scale. The applicant was given Special Scale in accordance with the Rules. Then, selection to the Higher Scale is made on the recommendations of the

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Selection Committee on the basis of merit from amongst the PCS officers of Special scale who have completed 5 years of service. The applicant ought to have been given this scale in 1991. Instead he was given this scale on 22.2.1993. [But admittedly, the applicant did not make any representation against that]. Then, under Rule 18(4), the highest scale of pay is given to those officers who have been recommended by the Selection Committee on the basis of priority subject to rejection of unfit from amongst those PCS officers of higher scale who have completed one year on the date of selection. Thus, the applicant became fully eligible for the highest scale in the year 1994. But after passing of the order dated 19.2.1997 (Annexure-2), the applicant came to know that six PCS officers were given highest scale including two officers namely Chandra Prasad and Chandra Mohan Srivastava, who were junior to the applicant. Therefore, the applicant made a representation dated 14.5.97 (Annexure -4). Since no action was taken on the representation of the applicant, therefore, he made another representation on 20.6.98. Then after passing of 19 months, the applicant sent a reminder to the opposite party No. 3 on 19.12.98 (Annexure -6). Lastly on 15.2.99, the applicant again made a representation addressed to the Chief Secretary and Secretary (Appointment) (Annexure-7). Ultimately, vide impugned order dated 7.2.2000, the Opposite Party No. 3 communicated to the applicant that his representation has been rejected on the following grounds:-

- a) for granting highest pay scale the selection committees were constituted on 10.1.1996, 15.10.1996, 27.8.1997 and 25.9.1997 and the aforesaid committees had not found the applicant fit for granting highest pay scale;
- b) in view of the decision of the selection committee the highest pay scale cannot be granted to the applicant;

c) the State Govt. had taken a policy decision that PCS officers who have been promoted to IAS cadre will not be granted highest pay scale of PCS cadre;

d) it was further communicated in the impugned order that previous representation dated 15.2.1999 had been rejected and communication had been sent to the applicant on 19.6.1999.

3. Aggrieved by the impugned order, the applicant filed a Civil Misc. Writ Petition No. 24747 of 2000 before the Hon'ble Allahabad High Court. The Hon'ble High Court dismissed the writ petition on 15.4.2004 on the ground of alternative remedy (Annexure 12). In this order, the name of the alternative forum was originally mentioned as "Uttar Pradesh Public Service Tribunal". It is told that the applicant had moved an application for amendment which was allowed on 3.12.2004 and in place of Uttar Pradesh Public Service Tribunal, the name of the forum was mentioned as "Central Administrative Tribunal". In the light of this order, the O.A. is said to have been filed on 22.5.2005.

4. The respondents No. 1,2 and 3 have filed a common Counter Affidavit. According to them, the applicant was confirmed in PCS on 1.8.76. He was granted Selection grade w.e.f. 3.3.78, and also Special scale and higher scale. He was also considered for grant of Highest Grade (18,400 to 22,400) in accordance with the U.P. Civil Services (Executive Branch) Rules, 1982 amended in 1991 read with U.P. Govt. Servants (Criteria for recruitment by promotion) Rules, 1994 and Govt. order dated 22.3.94, by a duly constituted selection committee in its meeting held on 15.10.1996 for 17 vacancies. The Selection Committee categorized the applicant as 'unfit' along with six others. Only senior most officers who were categorized as 'Very Good' by the Selection Committee were recommended for promotion. The applicant was again considered by the Selection Committee in its meeting held on 28.8.97 for

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35 vacancies. The applicant was again categorized as 'Good' along with six others. Only the senior most officers who were categorized as 'Very Good' by the Selection Committee were recommended for promotion and promotion were accordingly made. For the third time, the applicant was again considered in the meeting held on 25.9.97 for 25 vacancies. This time again, he was categorized as 'Good' along with five others. Therefore, he was not recommended for grant of highest scale. The applicant was however, appointed in the Indian Administrative Service w.e.f. 17.3.97 through notification dated 28.10.97. After his appointment to the Indian Administrative Service, he was not entitled for promotion in the PCS in the highest scale. Therefore, his representation dated 15.2.99 was considered and rejected and the decision was communicated through letter dated 19.6.99. He again preferred representation dated 22.12.99, which was again considered and rejected and it was communicated through letter dated 7.2.2010 (Annexure 9 to the O.A.). Thereafter, the applicant filed Writ Petition No. 24747/2000 before the Hon'ble High Court, Allahabad. The answering Respondents filed a Counter Affidavit, opposing the writ petition on merit saying that the applicant has failed to make out any case for interference under Article 226 of the Constitution of India. The Hon'ble High Court finally dismissed the writ petition on the ground of alternative remedy before the U.P. State Public Service Tribunal. The petitioner, thereafter, moved an application for correction on his own and on his request, the words "U.P. Public Service" were substituted by "Central Administrative" on 3.12.2004. Since the applicant is claiming relief of highest scale in the PCS, which is neither the post of All India Service nor it is a post of any Civil Service of the Central Govt., as such, the Central Administrative Tribunal created under the Central Administrative Tribunal Act 1985 has no jurisdiction.

5. I have heard the learned counsel for the applicant Sri Ram Raj and learned counsel for respondents Sri Pankaj Awasthi for Sri A.K. Chaturvedi and perused the entire material on record.

6. There is no quarrel on certain points. The applicant was appointed in the year 1972 in the Provincial Civil Services (PCS) (Executive Branch). He was confirmed in PCS on 1.8.76. He was granted selection grade in the year 1978. He was also given Special Scale and Higher Scale in PCS cadre. Thereafter, he was also considered for grant of highest grade (Rs. 18,400-22,400) in accordance with U.P. Civil Services (Executive Branch)Rules, 1982 as amended in 1991 read with U.P. Govt. Servants (Criteria for recruitment by promotion) Rules, 1994 and Govt. Order dated 22.3.94. For this purpose , a selection committee was duly constituted and as detailed below the case of the applicant was considered thrice but on all the three occasions , he was categorized as 'Good', whereas other senior most officers were categorized as 'Very Good'. As the applicant was found unfit, on all the occasions, the selection committee could not recommend his name for promotion in the highest scale of PCS cadre:-

7. The first meeting was held on 15.10.96 for 17 vacancies , the applicant was categorized as 'unfit' along with 6 others. For the second time, he was considered in the meeting held on 28.8.97 for 35 vacancies , wherein he was again categoriesed as 'unfit' along with 6 others who had earned only 'Good' entries. For the third time, the case of the applicant was considered in the meeting held on 25.9.97 for 25 vacancies. This time again, he was categorized as 'Good" along with 5 others.

8. The applicant was however promoted/appointed in the Indian Administrative Service w.e.f. 17.3.97. It is also worthwhile to mention that now the applicant has retired w.e.f. 31.1.2006.

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9. The main question before us is in respect of jurisdiction. As the perusal of O.A. reveals the applicant has based his claim for promotion under Rule 16 to 18 of U.P. Civil Services (Executive Branch)Rules, 1982 as amended in 1991 read with U.P. Govt. Servants (Criteria for recruitment by promotion) Rules, 1994. The grievance of the applicant is that he has not been given highest grade under Rule 18(4) of the aforesaid rules. These rules are in respect of PCS cadre. The matter pertaining to these rules are apparently outside the domain of this Tribunal which derives jurisdiction , powers and authority as envisaged in Section 14 of chapter III of the Administrative Tribunal Act, 1985 which is as under:-

"14. Jurisdiction, powers and authority of the Central Administrative Tribunal – (1) Save as otherwise expressly provided in this Act, the central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction , powers and authority exercisable immediately before that day by all courts (except the Supreme court (***) In Relation to –

- (a) recruitment, and matters concerning recruitment to any All India Service or to any civil Service of the Union or a civil post under the Union or to a post connected with defence or in the defence service being , in either case, a post filled by a civilian;
- (b) all service matters concerning-
 - (i) a member of any All India Service; or
 - (ii) a person (not being a member of an All India Service or a person referred to in clause (a) appointed to any civil service of the Union or any civil post under the Union ; or
 - (iii) a civilian (not being a member of an All India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence,

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And pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Govt. of India or of any corporation (or society) owned or controlled by the Govt.

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub clause (iii) of clause (b) being a person whose services have been placed by a State govt. or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Govt. for such appointment).

[Explanation- For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.]"

10. The following reliefs have been sought in this O.A.:-

- i) allow this application and quash the impugned orders dated 7.2.2000 and 19.6.99 passed by the State Govt. (Annexure 9 and 10 of the application);
- ii) direct the opposite parties to grant selection grade/ higher pay scale (Rs. 18,400-22,400), High Pay scale of PCS cadre to the applicant under rule 18(4) of the UPPCS Executive Rules, 1982 with effect from 7.2.97 or from the date of his entitlement i.e. year 1994;
- iii) direct the opposite parties to produce before the Hon'ble Tribunal the entire relevant record of the alleged meetings of the selection committee dated 10.1.1996, 15.10.1996, 27.8.1997 and 25.9.1997;
- iv) grant any other suitable order or direction as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case beside costs and expenses of this application.

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11. Under Relief (i), two impugned orders dated 7.2.2000 and 19.6.1999 have been sought to be quashed. By means of order dated 19.6.99, the representation / letter dated 15.2.99 of the applicant seeking his promotion in the highest pay scale of PCS was rejected on the ground that the practice to award notional promotion to the officers of PCS cadre who have been promoted to IAS cadre has been stopped. Similarly, by means of the order dated 7.2.2000, the representation / letter dated 22.12.99 of the applicant seeking same relief was also rejected saying that in the meetings of the relevant selection committees held on 10.1.96, 14.10.96, 27.8.97 and 25.9.97, he was not recommended for promotion in the highest pay scale and further that the practice to award notional promotion to the officers of PCS cadre who have been promoted to IAS cadre, has been stopped.

12. Similarly, under relief (ii), prayer has been made for grant selection grade/ highest pay scale (Rs. 18,400-22,400), High Pay scale of PCS cadre to the applicant under rule 18(4) of the UPPCS Executive Rules, 1982 with effect from 7.2.97 or from the date of his entitlement i.e. year 1994. Under Relief (iii), relevant record of the aforesaid meetings of the selection committee has been sought to be produced and under Relief (iv), this Tribunal has been requested to grant any other suitable order or direction as it may deem fit and proper.

13. Apparently, all the above reliefs, pertain to the grant of highest pay scale of PCS cadre under the aforesaid U.P. Civil Services (Executive Branch) rules of 1982, which are outside the jurisdiction, powers and authority of this Tribunal.

14. Learned counsel for the applicant however submitted that he has filed this O.A. in furtherance of order dated 15.4.2004/ 3.12.2004 passed by this Hon'ble High court in W.P. No. 24727 of 2000 which is as under:-

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"This is a writ petition rejecting the representation of the petitioner refusing him to grant selection grade.

The petitioner has an alternative remedy by approaching the Central Administrative Tribunal. The writ petition is dismissed on the ground of alternative remedy."

15. First of all, it goes without saying that a judgment or order cannot confer any jurisdiction on a court or Tribunal. The jurisdiction, powers and authority of this Tribunal has to be derived from Section 14 of the Administrative Tribunal Act, 1985 and as has been discussed herein before, the adjudication of the matter as contained in the present O.A. is not within the jurisdiction of this Tribunal.

16. Secondly, from the perusal of the aforesaid order (first paragraph) of Hon'ble High Court, it appears that the writ petition was filed before Hon'ble High Court by the present applicant probably on account of refusal to grant him selection grade. The applicant has not even filed the copy of the aforesaid writ petition to show it otherwise. But in the present O.A., it has been categorically stated by the applicant himself that he has already been given selection grade under Rule 17 on 3.3.78. Similarly, he was given special grade on 23.2.1986 and higher scale in the PCS cadre on 20.2.93. Though he was not given highest scale in PCS cadre, but, he was promoted in the IAS cadre on 17.3.97. Thus, according to the pleadings itself, he has already been given selection grade in the PCS cadre. In the present O.A., the original relief was sought in respect of high pay scale only but it appears that by means of an amendment, the applicant has added selection grade/ highest pay scale. It is not ascertainable as to why the word 'selection grade' was added when he has already got it in the PCS cadre. The applicant has also not challenged any order refusing him selection grade in the PCS cadre or even in the IAS cadre. Thus, the pleadings vis-à-vis the reliefs which have been sought

are ambiguous and misconceived so far it relate to the prayer for granting selection grade. Probably, the relief of selection grade has been has been added to show that this O.A. has been filed in consonance with the order of dismissal passed in the above writ petition No. 24747 of 2000 (Annexure 12) on the ground of alternative remedy and the first paragraph of the order says that the writ petition was in respect of rejecting the representation of the applicant refusing him to grant selection grant. Be that as it may. But in the present O.A., the applicant himself has pleaded that selection grade has already been granted to him. In fact, in this O.A., entire pleadings are in respect of highest scale of PCS cadre and not the selection grade. A careful perusal of the aforesaid dismissal order of the Hon'ble High Court also shows that in the second paragraph, originally the name of alternative forum was mentioned as U.P. Public Services Tribunal. But, the applicant then filed some amendment application, on the basis of which, in place of U.P. Public Services Tribunal an amendment was made and words "Central Administrative" were substituted before the word "Tribunal". The applicant has not field any copy of amendment application also to show the exact facts and circumstances under which the amendment was sought. Similarly, the order passed thereon by the Hon'ble High Court has also not been filed to show as to why this amendment was allowed. The original dismissal order was passed by the Hon'ble High Court on 15.4.2004, whereas it was amended on 3.12.2004. It is also not ascertainable as to what was the cause of delay of about eight months in the amendment of the order.

17. In the aforesaid order of the Hon'ble High Court (Annexure-12), it is also not indicated as to whether the selection grade pertains to PCS. or IAS.

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18. From the side of the respondents, it has been said that the applicant has not come before this Tribunal with clean hands. Keeping in view the aforesaid facts and circumstances, but without going into the merits of the case, we can only observe at this stage that the contention of the learned counsel for the respondents has substance. From the side of the respondents, it has been also argued that the Tribunal cannot entertain and adjudicate the claim in regard to such matters even if it has jurisdiction to entertain the application and adjudicate the same in regard to certain other reliefs which are also claimed in the application as was held in the case of **Harivansh Kumar Vs. Union of India and others reported in (1996) 34 Administrative Tribunal cases 542 (Full bench)**. This argument has also merit.

19. In view of the above, we reach to a conclusion that this Tribunal has no jurisdiction in view of Section 14 of the Administrative Tribunals Act, 1985.

20. Now we come to the point of limitation. The impugned orders are dated 19.6.1999 and 7.2.2000 whereas the O.A. has been filed in the year 2005. According to Section 21 of the Administrative Tribunal Act, 1985, broadly speaking the period of limitation for such matters is one year and in case where an appeal or representation has been made, then an additional period of 6 months would be available. The applicant had an alternative remedy but he approached a wrong forum i.e. Hon'ble High Court due to which the writ petition was dismissed. The cause of action accrued in the year 2000 whereas this O.A. was filed in the year 2005. In paragraph 3 of this O.A., dealing with limitation, it has been said that delay, if any, in filing this application has occurred on account of the fact that the applicant was under bonafide belief that the matter was cognizable by the Hon'ble High Court and therefore, writ petition was filed in the year 2000 within the prescribed period of limitation. No

separate application for condoning delay has been moved. Instead in this paragraphs itself, it has been requested that delay, if any in filing the present application may be condoned. In this regard, two factors are important: Firstly, ignorance of law is no excuse and therefore, the period of limitation as prescribed u/s 21 of the AT Act, 1985 cannot be ignored or by-passed by deliberately choosing wrong forum i.e. High Court., where the matter remained pending for about 4 years. The writ petition was dismissed on the ground of alternative remedy on 15.4.2004. The applicant did not go to the proper forum immediately thereafter. Instead he probably moved some correction application, a copy whereof has not been filed here. After about 8 months of the passing of original order on 15.4.2004, the amendment was made on 3.12.2004. The O.A. was filed on 22.2.2005. This delay has also not been properly explained. Therefore, we are bound to observe that this O.A. is also barred by limitation in view of provision of Section 21 of the AT Act, 1985. According to the learned counsel for the respondents otherwise also, this O.A. is devoid of any merit because the matter of granting highest scale to the applicant in the PCS cadre was indeed considered by a duly constituted selection committee in accordance with the relevant rules at least three times, as detailed herein before but he was found 'unfit' and therefore, his name could not be recommended. No illegality or any malice etc. has either been pleaded or substantiated by the applicant.

21. From the side of the applicant reliance has been placed on the case of **Dev Dutt Vs. Union of India and others reported in (2008) 8 Supreme Court Cases , 725.** In this case, it was held that whether an entry is adverse or not, depends upon its actual impact on employee's career and not on its terminology, therefore, even a 'good' can be adverse in the context of eligibility for promotion. The Hon'ble Apex

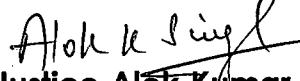
Court therefore, laid down that all grading whether 'Very Good', 'good' 'average' or 'poor' required to be communicated and this requirement flows from constitutional obligations of fairness, non-arbitrariness and natural justice. In reply to this, learned counsel for the respondents submitted that this preposition of law has been laid down in the year 2008 and therefore, it is not applicable in the present case. Otherwise also, it pertains to merit of the case.

22. Since, we have reached to a conclusion that this Tribunal lacks jurisdiction to consider the matter in question, we refrain ourselves from entering into the merits of the case.

23. As far as point of limitation is concerned, it is decided against the applicant.

24. Finally, therefore, this O.A. is dismissed without any order as to costs.


(S.P.Singh)
Member (A)


25.11.10
(Justice Alok Kumar Singh)
Member (J)

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