

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 08.09.2015.

Pronounced on 21.09.2015.

Original Application No.104/2011

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Vinayak Bhushan Pandey, aged about 69 years, son of Sri Govind Prasad Pandey, resident of Corporation Flat No.8, Behind Faizabad Road, Octroi Post, Mahanagar, Lucknow.

-Applicant.

By Advocate: Sri Surendran P.

Versus.

1. Union of India through the Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi.
2. The Under Secretary, Government of India, IIS (Section), Ministry of Information and Broadcasting (A-Wing), Shastri Bhawan, New Delhi.
3. The Principal Information Officer, Press Information Bureau, Ministry of Information and Broadcasting (A-Wing), Shastri Bhawan, New Delhi.
4. Director General, Directorate of Advertising and Vishal Publicity, Ministry of Information and Broadcasting, PTI Building, IIIrd, Floor, Sansad Marg, New Delhi.
5. Deputy Principal Information Officer, PIB, 12-A, Prem Nagar, Ashok Marg, Lucknow.

-Respondents.

By Advocate: Mohd. Kamal Khan.

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ORDER

By Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking the following relief(s):-

(a). *To quash the orders contained in Annexure NO.1 and 2 dated 05.10.2009 and 10.03.2010 and issue a direction to consider the case of the applicant for promotion to IIS Group 'A' Junior Grade w.e.f. 25.02.1987 and Senior Grade w.e.f. 19.05.1992 with all consequential benefits.*

(b). *To issue a direction to consider the case of the applicant for promotion against the year wise vacancies w.e.f. 1990 to 30.04.1994.*

(c). *Any other order which this Hon'ble Court deems just and proper be also passed.*

(d). *Allow this original application with costs."*

2. The facts of the case which are averred by the applicant are that the applicant had initially joined on the post of Field Exhibition Officer (F.E.O.) under the respondent no.2 w.e.f. 13.03.1968. He joined the Central Information Services (CIS) Group-III in March, 1984. This service has since been renamed as Indian Information Service (IIS). The department prepared a seniority list of CIS Grade-III persons reflecting the seniority of the persons upto 1986. This seniority list was challenged by Sri A.R. Venkteshan and Sri S.P. Gopakumar, who were similarly placed as the applicant on the ground of non-counting of their earlier services as FEO. The OAs so filed by them before the Madras and Ernakulum Bench of this Tribunal respectively were decided in their favour. Accordingly, the seniority list was revised reassigning the seniority of various persons including Sri A.R. Venkteshan, and Sri S.P. Gopakumar and a review DPC to consider all persons who came into the field of

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eligibility was held in 1993. The name of the applicant was not considered in this Review DPC. The applicant filed O.A.No.395/1993 challenging his own placement in the seniority list on the ground of counting of his past service from 12.08.1968 to 27.11.1986. The OA was allowed by an order dated 27.04.2001. Consequently, the respondents issued the order dated 14.05.2002 re-fixing the seniority of the applicant at Sl.No.3A below Sri P. Narayanana and above Sri S.P. Gopakumar. A second Review DPC, was held on 19.08.2002 in terms of his revised seniority but the review DPC did not recommended him for promotion. The respondents passed an order dated 22.01.2003, (Annexure No.10). The applicant was unable to understand as to how his name could not be recommended as his performance was much better than his juniors who had been so recommended. Aggrieved by such an order, the applicant filed an O.A.No.24/2004, which was decided by order dated 04.01.2009 (Annexure 11). In compliance of the order, the respondent no.2 forwarded the ACRs of the applicant for the year 1981 -1988 by means of letter dated 21.05.2009. The applicant submitted a representation on 17.06.2009 stating that a scrutiny of the ACRs reveals that there was no adverse entry or report of non-performance or non-achievement and Reporting Officer have also agreed with the self-assessment and Reviewing Officers have fully endorsed the opinions of the reporting officers. All have found the applicant fit for promotion. Therefore, he should be promoted in compliance of the order of this Tribunal passed in O.A.No.24/2004 wherein, the Tribunal had observed "... if no adverse entry or no entry of non-achievement of bench mark was there, the applicant is

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entitled for promotion ...". Further, in the impugned order dated 15.10.2009, the respondents in denying his promotion for the year 1986 onwards have ignored the provisions of Government of India, Departmental of Personnel and Training O.M. No.35035/7/97/Estt/D dated 16.02.2005. The relevant paragraph no.6.3.1 is reproduced below:-

"6.3.1. Principles to be observed and preparation of panel.

(a). Mode of Promotion-In the case of 'selection'(merit promotion, the hitherto existing distinction in the nomenclature ('Selection by merit' and 'selection-cum-seniority') is dispensed with the mode of promotion in all such cases is rechristened with reference to the relevant bench mark ("Very Good" or "Good") prescribed for promotion.

(b). Benchmark for promotion-The DPC shall determine the merit of those being assessed for promotion with reference to the prescribed benchmark and accordingly grade of the officers as 'fit' or 'unfit' only. Only those who are graded 'fit'(i.e. who meet the prescribed bench mark) by the DPC shall be included and arranged in the select panel in order to their inter-se-seniority in the feeder grade. Those officers who are graded 'unfit' (in terms of the prescribed benchmark) by the DPC shall not be included in the select panel. Thus, there shall be no supersession in promotion among those who are graded 'fit' (in terms of the prescribed benchmark) by the DPC."

3. The respondents had also not included his name in respect of vacancies of 1990 onwards on the ground of his retirement on 31.03.1994. Once again such non-inclusion on the ground of retirement is contrary to the DOPT provision dated 12.10.1998. The respondents have

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by means of the first impugned order dated 05.10.2009 have merely communicated the findings of review DPC held on 19.08.2002 having ignored the fact that the order dated 21.01.2003 has already been set-aside by this Tribunal by means of order dated 04.01.2009 passed in O.A.No.24/2004. The applicant had given his representation against his ACR's as communicated to him and without applying their mind to the points raised by him in the representation and without full examination of the legal provision in the DOPT orders dated 16.02.2005 and 12.10.1998 the respondents passed the order dated 05.06.2009 and second impugned order dated 10.03.2010. Hence this O.A.

4. The respondents have contested the claim of the applicant by filing their counter affidavit denying the averments of the applicant stating therein that the applicant's seniority was re-fixed subsequent to the filing of OA No.395/1993 and he was placed below Sri P. Narayanana and above Sri S.P. Gopakumar who had also filed their OAs before the Madras and Ernakulum Bench of this Tribunal. Consequently, the seniority position of all in CIS Grade-III officers was re-fixed. A 2nd review DPC in the case of the applicant was held in 2002 in accordance with the mode of promotion followed in all previous DPC/review DPCs. This review DPC awarded him the grading "Good" but, did not recommended his name for promotion to the post of Junior IIS Grade 'A' in view of limited vacancy for each of the year 1986-1989. His name was not considered for the vacancy of 1990 onwards as the earlier DPC for 1990 was held after his retirement as per prevailing practice. He was accordingly informed by the Ministry letter dated 21.01.2003. The

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applicant feeling aggrieved with the aforesaid order, filed O.A.No.24/2004. By the order dated 04.01.2009, the O.M. dated 22.01.2003 was set-aside and the respondents were directed to communicate the relevant entries in his service record/ACRs, which disentitled him for promotion within one month from the date of receipt of copy of this order and the applicant was directed to file his representation within one month from the date of receipt of this order and the competent authority was directed to take a decision within one month thereafter, and if the applicant was entitled for such benefit after expunction/upgradation of such entries, his case may be reconsidered again for promotion in IIS Group 'A' junior Grade w.e.f. 25.02.1987 and Senior Grade w.e.f. 19.05.1992 by holding a review DPC within one month. Accordingly, Ministry forwarded the ACRs for the year 1981 to 1988. The applicant submitted his representation, which was considered by the Ministry and rejected vide order O.M. dated 05.01.2009. Subsequently, the applicant made a representation dated 03.11.2009 for reconsideration of his claim for promotion. In this letter, he had also sought copies of proceedings of DPC convened in 2002 and ACRs of the officers, who had bypassed him. The representation has been disposed of by Ministry vide O.M. dated 10.03.2010 by which the copies of proceedings of the DPC convened in 2002 and minutes of meeting of 1993 alongwith his ACRs grading for 1981-1988 were sent to him. But the copies of ACRs of the officers, who had bypassed the applicant, were not be given to him.

5. Coming to the merits of the case, the respondents have said that as there was nothing adverse in the ACRs

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of the applicant there was no requirement of any expunction of any ACRs. Moreover, no provision of upgradation of grading of the applicant ACRs was prevalent at the time of holding of DPC. The review DPC held (as has been clarified by means of the impugned order) on 19.08.2002 had assessed the ACRs of all the persons in the eligibility list and categorized them as 'Out-standing', 'Very Good' and 'Good'. As per the original DPC held in January, 1987 and review DPC held in June, 1993 all the officers in IIS Group 'A' cadre were similarly assessed. The persons graded 'Outstanding' were ranked en block senior to those who were graded as 'Very Good' and officers graded as 'Very Good' were ranked en block senior to those who were graded as 'Good'. Officers with same grading maintained their inter-se-seniority as in the feeder post. In this mode of selection by merit, there was a provision for supersession on the basis of better assessment/grading by DPC. The officers who have benchmark grading 'Good' could and did get superseded by their juniors with 'Outstanding' and 'Very Good' grading. Thereafter, based on the number of vacancies officers from the top were selected. Thus, (as in the case of the applicant) some people did not get the benefit of promotion. As per the prescribed procedure followed by DPC, the applicant was assessed as 'Good' and his name was not included in panels for the year 1986, 1987, 1988 and 1989 for non-availability of adequate number of vacancies. The DPC for the vacancies for the year 1990 to 1994 was held in UPSC in April, 1997, after retirement of the applicant on 31.03.1994 and as per the practice prevailing at that time, officers who were not in service at the time of DPC were not to be considered for promotion. However, subsequently DOP&T vide OM dated

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12.10.1998 had clarified that retired officials who are within the zone of consideration should also be considered by the DPC and they may be included in the panel, as per procedure, such retired officials would, however, have no right for actual promotion, as promotion is always prospective even if vacancies relate to earlier year(s).

6. The applicant has filed Rejoinder Affidavit to the Counter Affidavit filed by the respondents more or less reiterating his contentions as raised in the OA.

7. We have heard the learned counsel for both the parties and perused the material available on record.

8. It is clear from the rival submission that the question of appropriate placement of the applicant in the seniority list of the feeder cadre for promotion to the Junior Grade of IIS Group 'A' (earlier known as Grade-III of CIS) for the vacancy year 1986 to 1989 was not decided till the O.A.No.395/1993 was decided on 27.04.2001. It is clear that earlier seniority disputes had affected other person such as Sri A.R. Venkteshan, Sri S.P. Gopakumar, Sri D.B. Kulkarni, Sri S.S. Solanki, Sri Ranen Bhadra, Sri P.N. Narula, Sri N. Narayanachari and Sri Raj Gopal. It is clear from the papers submitted by the applicant as Annexure-5 that a review DPC was held on 26.11.1993 and 14.12.1993 as per the revised seniority list consequent upon orders passed in the case of Sri A.R. Venkteshan and Sri S.P. Gopakumar. In this review DPC, officers were assessed as "Good", "Very Good" and "Outstanding". The case of the applicant was not considered in the review DPC. Subsequently, as a

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result of directions passed in O.A.No.395/1993 the seniority of the applicant was revised and amended by order dated 28.10.1992. Thereafter, his case was considered by the IInd review DPC held on 19.8.2002.

9. It is clear from the papers on record as submitted by the applicant as enclosures to Annexure A-5 that an earlier review DPC was held on 26.11.1993 and 14.12.1993. This review DPC was in the context of an earlier DPC meeting was held to consider the promotion of Junior Grade IIS for the vacancy in 1986. Another DPC was held on 14.6.1992 for the vacancies of 1987, 1888, 1989 the panel for 1989 further reviewed on 12.11.1991 and 13.11.1991. The review committee meeting in November/December, 1993 was consequent upon the judgment delivered in the case of Sri A.R. Venkteshan and Sri S.P. Gopakumar by the Madres and Ernakulum Bench of this Tribunal passed in O.A.No.44/1989, 514/1989 and 386/1989 respectively. The minutes of meetings further reveals that the officers in the seniority list were assessed "Good", "Very Good" and "Outstanding". Thereafter, year wise panel based on these grading was prepared and recommended for promotion. It is seen from the final selection list of 1986 that the person's right on top Sri S. Robert was at Sl.No.53 in eh eligibility panel, but was subsequently ranked above others. In view of this the review DPC of 19.08.2002 in which case of applicant was reviewed, could not have adopted any criteria/mode of selection different from these adopted earlier. The applicant has challenged the action of the respondents in not including him for such promotion in the year 1986 to 1989 on the ground of (a). the assessment given to him is

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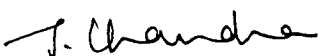
benchmark for such promotion (b). in terms of DOP&T O.M. dated 16.02.2005 (para-2 above) he could only be graded 'unfit' or 'fit'. (c). if at all he was to be graded fairly then his ACRs should have been either upgraded as per his representation. In the face of the criteria adopted in the earlier DPC/DPCs these grounds become non-applicable as the review DPC held in 2002 was in continuation of earlier DPC. ~~No~~ revised merit/procedure other than adopted in the earlier DPC could be permitted therefore, the assessment of the review DPC in holding the applicant "Good" appears to be justified. Coming to the issue of upgradation, the respondents have stated that the representation for upgradation was rejected by letter dated 05.01.2009. A scrutiny of the representation made by the applicant also demonstrates that this is a composite and generalize representation based on his ACRs. He has not quoted any provision of DOPT which allowed upgradation in the ACRs recorded in 1986. Further, the provisions of DOP&T O.M. dated 16.02.2005 are prospective and inapplicable in cases where promotion relate to earlier years.

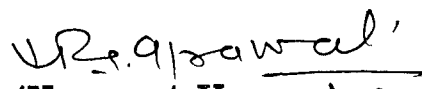
10. The applicant has also challenged his non-inclusion from 1990 onwards. It is clear from the impugned order dated 05.10.2009 that DPC for promotion to the Junior IIS Grade "A" for the vacancy year 1990-1994 was not held in time as seniority list in feeder cadre of IIS Group "B" was under revision in compliance of the judgment of Hon'ble Supreme Court and orders of various Benches of this Tribunal. The applicant has relied upon DOPT O.M. dated 12.10.1998 against his exclusion from the D.P.C. held in 1997. The respondents have categorically stated "officers who were not in service at the time of DPC were

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not to be considered for promotion” as per the practice prevailing at that time. The applicant has not demonstrated any person who had retired like him prior to holding of the DPC in April, 1997 and who was given the benefit of G.O. dated 12.10.1998. The G.O. dated 12.10.1998 as seen from the Swamy’s Annual Compendium of Orders on Service Matters, 1998, while clarifying the position for all future DPCs, does not vitiate or nullify the previous cases where retired persons had not be considered. As there was no change either in the seniority position of the applicant or in the ACRs as had been recorded and placed before the DPC held on 19.08.2002, the respondents held that there was no need to re-consider their earlier decision and therefore passed the impugned order dated 05.10.2002.

11. In view of the discussions made above, the OA is deserves to be dismissed and is accordingly dismissed. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

Amit/-