

(26)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 789/89.

Date of Decision: 5.9.1997

I. G. Meshram,

Applicant.

Shri D. V. Gangal,

Advocate for
Applicant.

Versus

Union Of India & Others.

Respondent(s)

Shri S. S. Karkera for
Shri P. M. Pradhan,

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B. S. Hegde, Member (J).

Hon'ble Shri. P.P. Srivastava, Member (A).

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(B. S. HEGDE)
MEMBER (J).

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(27)
CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 789/89.

Dated this 5/1, the 5th day of Sept., 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Shri I. G. Meshram

C/o. Shri D. V. Gangal,
Advocate,
C.A.T. Bar Association,
"Gulestan" Bldg. No. 6,
3rd Floor, Prescot Road,
Fort, Bombay - 400 001.

... Applicant

(By Advocate Shri D.V. Gangal)

VERSUS

1. Union Of India through
The Secretary,
Ministry Of Information &
Broadcasting,
Shastri Bhavan,
New Delhi - 110 001.
2. Union Public Service Commission,
Dholpur House,
Shahjehan Road,
New Delhi.
3. The Secretary,
Department Of Personnel
& Training,
Ministry Of Personnel, Public
Grievances and Pensions,
Government Of India,
New Delhi.

... Respondents.

(By Advocate Shri S.S. Karkera for
Shri P. M. Pradhan).

: ORDER :

[PER.: SHRI B. S. HEGDE, MEMBER (J)]

In this O.A., the applicant is challenging the seniority published by the respondents vide dated 15.04.1988 (Annexure-1). According to him, the respondents deliberately

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grant confirmation to the officers belonging to SC/ST in the grade-IV of Central Information Service and also the revised list of Grade-II and above, prepared by the respondents was not in confirmation with the Judgement of the Principal Bench vide dated 26.11.1987. In the amended relief, he claimed that he should be treated as Grade-II, Grade-I, Junior Administrative Grade and Senior Administrative Grade in accordance with the confirmation in the respective grade. His further contention is that, he is entitled to be confirmed against the SC quota with effect from 10th June, 1972 as Grade-IV Officer of the Central Information Service. Further, that he should be granted promotion to the post of Grade-II Officer of the Central Information Service w.e.f. 01.01.1976, Grade-I w.e.f. 01.01.1981, Junior Administrative Grade with effect from 01.01.1986 and Senior Administrative Grade with effect from 01.01.1990.

2. The applicant was initially appointed as Field Publicity Officer in the Directorate of Field Publicity, Ministry Of Information & Broadcasting on 10.04.1964 on adhoc basis. He belongs to Scheduled Caste cadre. As contained in the then existing Rules 1959, the vacancies in grade-IV are required to be filled up by direct recruitment through U.P.S.C. No post is to be filled by promotion. The U.P.S.C. examination was held in the year 1969 and the applicant was regularised in the year 1970 in the grade-IV of the Central Information Service and kept on probation for a period of two years. Pursuant to the declaration
[Signature]

: 3 :

of the result by the U.P.S.C., the applicant was given an offer of appointment, which is to be treated as a fresh appointment, alongwith other successful candidates who had appeared with him. The Central Information Service Rules 1959, in respect of Group 'B' posts comprising Grade-III and IV, have been further revised and renamed as Indian Information Service Group 'B' Rules, 1989.

3. We have heard the rival contentions of the parties and perused the pleadings. Shri D.V. Gangal appeared on behalf of the applicant and Shri S.S. Karkera for P.M. Pradhan, appeared on behalf of the respondents.

4. The D.P.C. for confirmation of officers to Grade-IV was not convened by the Ministry of Information and Broadcasting for 17 years i.e. from 1970 to 1988. However, the said contention is denied by the respondents. The respondents state that for some period, the Departmental Promotion Committee meetings could not be held for certain unavoidable administrative reasons and keeping in view the facts and circumstances of the case, the applicant's service was made quasi-permanent in 1974, thereby, no prejudice is caused to the applicant in any manner for further promotion to the higher grade. The Departmental Promotion Committee meeting was convened for confirmation in 1982 for higher grades of service. The D.P.C. considered the eligible candidates where the applicant was found not eligible.



Further, it is stated that the reservation order for confirmation is applicable at the entry period only and not thereafter. The applicant was promoted to Grade-III from Grade-IV after applying relevant provisions of reservation. Accordingly, the applicant has stolen march over his seniors in Grade-IV of Central Information Service. In this O.A., the applicant has based his claim after ante-dating his regular appointment on 10.06.1970 to 10.04.1964, whereas, the applicant till 1970 was working on adhoc basis, which cannot be considered for the purpose of regularisation or for the purpose of promotion, as the case may be.

5. The respondents further state that there was no backlog of Scheduled Caste and Scheduled Tribe vacancies for confirmation, since there was no provision to carry over vacancies as per the instructions pertaining to confirmation. In the case of the applicant, the relevant instructions regarding reservation was followed in respect of promotion/appointment to various grades in Central Information Service. The applicant retired from service in the year 1989 and thereafter, he filed this O.A. Infact, there has been no failure on the part of the department to implement the reservation orders in any manner and the applicant has been considered for promotion as and when he fell due for promotion and he has been considered in accordance with the rules. Accordingly, the applicant has been promoted thrice in his service career.

6. It is true that immediately after completion of the probation period, the applicant could not be confirmed and no one else has been confirmed till 1988. The probation period of the applicant has been terminated on 05.07.1974 and refixation of pay in the scale of Rs. 650-1200 was given w.e.f. 01.01.1973 on notional basis to the applicant and other 169 CIS Officers on notional basis as per the decision of the Supreme Court in P. Parameswaran & Others V/s. Union Of India. The applicant has been given promotion to Grade-II on 17.08.1970 pursuant to the decision of the Principal Bench, further promoted to Grade-II on 07.06.1985 and thereafter, he made representation in the year 1988, which has been considered and rejected by the respondents. Thereafter, the applicant has been promoted to the Senior Administrative Grade on 15.12.1989. His representation has been rejected on the basis of the Supreme Court decision. It is submitted that the applicant has not lost avenue of promotion in any sense due to delay in his confirmation. Promotion was given on the basis of seniority. Judgement by itself does not give any cause of action. Though the applicant has given representation as back as 1982, if he has not received any reply from the respondents and if he is aggrieved by the same, he should have approached the Tribunal within a reasonable time, which he did not do so.

7. During the course of hearing, we directed the respondents to produce the records pertaining to promotion based on reservation given to the applicant

from Grade-III to Grade-II and senior grade, for our perusal within a period of 15 days. As per the directions, the respondents have furnished the relevant records for our perusal and it is noticed that the applicant was promoted from Grade-III to Grade-II in a D.P.C. held on 10.12.1985. 102 officers were promoted from Grade-III to Grade-II on regular basis. Out of this, 16 officers belong to S.C. cadre which includes the applicant, who is shown at sl. no. 74 and 5 officers belong to Scheduled Tribe category. All the vacancies have been filled up. Secondly, the applicant was promoted to Senior Grade of I.I.S. Group 'A' on regular basis on 15.12.1989. Out of 106 officers promoted, 15 officers including the applicant, (who is shown at Sl. No. 33 of Order No. 288/95-C.I.S.) belong to the Scheduled Caste category and 6 officers belong to the Scheduled Tribe category. Therefore, it cannot be said that promotion was not given to the applicant according to the reservation policy. Infact, the applicant was given promotion after scrupulously following the relevant provisions of reservation. The respondents have enclosed the D.P.C. proceedings of both the years i.e. 1985 and 1989, for our scrutiny.

8. On perusal of the D.P.C. proceedings, we are satisfied that the contentions raised in the O.A. by the applicant has no substance. The applicant has been given due promotion in accordance with the rules and the respondents did consider and grant promotion to the reserved categories as per the roster.

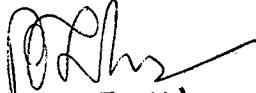
Therefore, it cannot be said that the applicant has been denied any opportunity in granting his due promotion as and when it was due. So far as the promotion to the post of Junior Administrative Grade and Senior Administrative Grade are concerned, no one has been promoted, therefore, the applicant cannot make any claim for the said post. So far as the promotion is concerned, if the applicant is otherwise found fit, can only be considered, he cannot seek promotion as a matter of right on the basis of reservation or otherwise

9. In so far as the adhoc service of the applicant is concerned, whether it should be taken into consideration for computing inter se seniority, the Apex Court in A.K. Bhatnagar & Others V/s. Union Of India & Others and in T.Kannan & Others V/s. S.K. Nayyar & Others [1991] 1 SCC 544 has held that the past adhoc service cannot be taken into account in computing inter se seniority since they remained out of their cadre until their regularisation. Length of continuous service can ordinarily be taken into account in absence of any specific rules under proviso to Article 309 of the Constitution but where rules already framed, the same must be strictly followed. In the instant case, it is not the case of the applicant that there are no rules His promotion has been considered in accordance with the rules and he cannot insist the respondents to count his adhoc services for the purpose of seniority.



(B4)

10. In the result, we do not see any merit in the
O.A. and the same is dismissed with no order as to costs.


(P.P. SRIVASTAVA)

MEMBER (A).


(B. S. HEGDE)

MEMBER (J).

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