

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI Hyderabad

O.A. No. 330 of 1987 198
Ex. No.

DATE OF DECISION

M. G. Tilani

Petitioner

K. S. R. Anjaneyulu

Advocate for the Petitioner(s)

VERSUS

Secretary & Chairman, Telecom Board
 & 3 others

Respondent

N. R. Devaraj, Addl. C.A.S.C.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. B. N. Jayashankar, Vice Chairman

The Hon'ble Mr. D. Surya Rao, Member (Full)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRNND-12 CAT/86-3-12-86-15,000

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 DSR
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Judgment of the Tribunal delivered by Hon'ble Shri B.N. Jayasimha, Vice Chairman

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The applicant herein who was working as Director of Telecommunications, Coaxial Cable Project, Hyderabad is questioning in this application the order No.315/3/ 87-STG III(ii) dated 8-1-1987.

2. The applicant was initially recruited as Assistant Divisional Engineer Telegraphs in the year 1963 through UPSC selection. He states that he had a very satisfactory record of service, that he received various promotions and that he was expecting promotion from the Junior Administrative Grade to the Senior Administrative Grade Level-II. The applicant states that the Government ignored his claim for promotion to the Senior Administrative Grade Level-II and has promoted and appointed about 40 others officers to Senior Administrative Grade Level-II vide Memo dated 8-1-1987 out of which 13 are juniors to the applicant. The above orders are in pursuance to the recommendations of the DPC held on 9th December 1985 and modified acceptance of the same by Government of India in December 1986 after a lapse of one year. The applicant understood that though

his name was recommended by a duly constituted DPC and approved by the Hon'ble Minister (Communications), the Appointment Committee of Cabinet, Government of India, did not approve his name for appointment to Senior Administrative Grade Level-II much against valid norms and without valid reasons. It is stated that the recruitment rules vide notification No.215/3/74-STA-II dated 6-1-1975 lays down that recruitment of SAG Level-II will be from JAG with not less than 3 years approved continuous service on recommendation of duly constituted DPC. The applicant has completed more than 10 years of continuous service in JAG cadre. Duly constituted DPC formed by UPSC has also recommended his promotion. Hon'ble Minister of Communications has also approved the DPC panel. It is well known that approval of the DPC list by Appointment Committee of the Cabinet is only a formal approval in case the Hon'ble Minister concerned has not differed with DPC's recommendation which is a fact in this case. The applicant submits that the orders are illegal and arbitrary. The DPC and Government of India have not followed proper procedures in issue of above order. The orders contained in Memo dated 8-1-1987

are to be quashed and the original position prior to issue of orders dated 8-1-1987 is to be restored.

3. On behalf of the respondents a counter has been filed stating that the Central Government is the Appointing Authority for appointment in Senior Administrative Grade of Indian Telecommunication Services, Group 'A'. The list prepared by the DPC, in which the UPSC is associated, is only recommendatory in nature. The approval of the appointing authority is mandatory before the recommendations of the DPC can be effective. The approval of the appointing authority is not a mere formality. The appointing authority can consider all the recommendations and take decisions in respect of these appointments. The appointing authority is not obliged to accept the recommendations of the DPC. According to the records available in the Department of Telecommunications, the select panel was returned by the Department of Personnel & Training, stating that the appointing authority has selected the officers who have got better record for promotion. When the case was sent to the UPSC, they returned the Select List saying that it has been prepared in accordance with the existing guidelines for

OPC, issued by the Department of Personnel & Training from time to time. Subsequently, the Department of Personnel & Training conveyed the approval of the Appointing Authority for appointment of 54 officers to the Department of Telecommunications. It also conveyed that the appointment of 5 offices, including the applicant, has not been approved by the appointing authority. It is reiterated that the OPC is only recommendatory body and the select panel prepared by it is subject to the approval of the appointing authority. The decision of the appointing authority on the Select List is final. The appointing authority has full powers to disagree with the recommendations of the OPC. Therefore, the contention of the applicant that the select panel prepared by the OPC is final and binding, is denied. It is within the competence of the appointing authority to approve or not to approve any name or names recommended by the OPC. In the instant case, the fact is that the appointing authority has not approved the name of the applicant for promotion. The select^{ion} of appointment to the Senior Administrative Grade of ITS Group 'A' is made by the appointing authority on the basis of the performance of the officer^{as} reflected in his CRs, taking into considera-

tion the recommendations of the DPC. Selection is made strictly on merit basis. It is therefore contended that the contention of the applicant that he should be promoted on the recommendations of DPC has no merit.

4. The Union Public Service Commission in its counter says that no relief is claimed by the applicant against it and therefore it does not proper to file a counter.

5. We have heard the learned Counsel* for the applicant Shri K.S.R.Anjaneyulu and Shri Devaraj, Addl. Standing Counsel for the Union Government. Shri Anjaneyulu relies upon the judgment in Dhamania Vs. Union of India (O.A.No.1191 of 1986 before the Principal Bench, New Delhi) wherein Shri N.P.Dhamania had questioned his non-appointment to the Senior Administrative Grade. The primary question that arose for consideration there was whether it was open to the respondent - Union of India - to ignore the recommendations of the UPSC on the basis of the select list prepared by them for promotion to Senior Administrative Grade officers. The petitioner in that case had sought a declaration that the original select list including the petitioner prepared by the DPC is the only legally binding select list and that the respondent is bound to make appointments

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to the Senior Administrative Grade strictly in the order of merit assigned to the 59 officers in the said select list. After considering the various points raised, the Bench observed "The contention of the learned counsel for the respondents, therefore, that the appointing authority is competent to ignore the recommendations of the UPSC without assigning reason whatsoever and without showing that it was doing so in public interest must be negatived" That Bench therefore concluded that "the application succeeds ~~and~~ the petitioner is granted relief of declaration that he shall be deemed to have been promoted to Senior Administrative Grade Level-II of the ITS with effect from the date of his immediate junior was promoted to the ~~shall~~ said grade and ~~he/~~ also be entitled to all consequential benefits by way of seniority, increased salary and other allowances ~~from~~ that date". Shri Anjaneyulu states that the applicant is one among the 59 officers recommended by the UPSC and he is one of 5 officers who were not approved for promotion by the appointment Committee and on the ratio of Dhamania case, he is also entitled to the same relief as given to Dhamania.

6. The case of the applicant rests on the same grounds as that of Shri Dhamania. We are in agreement with the ratio of decision arrived at by the Principal Bench. Applying the same, we direct that the applicant

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is entitled to the same relief as was given to Shri Dhamania and accordingly direct that the applicant shall be deemed to have been promoted to Senior Administrative Grade Leve-II of I.T.S., with effect from the date his immediate junior was promoted to the said Grade and he shall also be entitled to all consequential benefits by way of seniority, increased salary and other allowances from that date.

7. The application is accordingly allowed. There will be no order as to costs.

B.N.Jayasimha
(B.N.JAYASIMHA)

Vice Chairman

D.Surya Rao
(D.SURYA RAO)
Member(Judl.)

Dated: 27th July, 1988.

S. Venkateswaran
S. Venkateswaran
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Regd. No. 1619

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