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O.A. No. 38 of 1987

The applicant herein was initially appointed as an Assistant Engineer (Telegraphs) in the year 1960. He was promoted to the senior time-scale Class I in April 1963. In February, 1972, he was promoted as Director, Telecommunications in Junior Administrative cadre. In October, 1980, he was promoted as General Manager, Telecom in Senior Admn. Gr.II. At present, the applicant is working as Additional General Manager, Andhra Telecommunications, Hyderabad, having taken charge of the same in June, 1985. The applicant states that despite his meritorious record of service, Government has ignored his claim for promotion to ~~the~~ Senior Administrative Gr.I level and promoted 23 others, of whom 18 are juniors to the applicant, pursuant to Memo No. 315-2/86-STG III dated 30.7.1986 and 315-2/86-STG III dated 29.9.1986 of the Department of Telecom. It is stated that the above orders are in pursuance of the recommendations of the DPC held on 5.6.1986 and modified by the Govt. of India. The applicant contends that though his name was recommended by a duly constituted DPC and ~~recommended~~ approved by Minister (Communications), ^{the} Appointment Committee of Cabinet, Govt. of India, did not approve his name for appointment to Sr. Administrative Gr. Level I.

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The applicant submitted representations to the Communications Minister on 1.8.1986 and President of India on 5.8.1986, requesting them to review his case. The applicant understands that his application was strongly recommended for reconsideration by the Secretary and the Minister concerned, and forwarded to Department of Personnel for disposal. He was however informed that his case for appointment in Level I of Sr. Administrative Grade has been considered again by the competent authority, but it has not been found possible to change its earlier decision, vide OM No. 315-2/86 -STG III dt. 12.11.1986 of the Department of Telecommunications. The applicant contends that the orders dated 30.7.1986 and 29.9.1986 are illegal and arbitrary. The DPC and the Government have not followed proper procedure in the matter, and as such, the impugned orders dated 30.7.1986 and 29.9.1986 are liable to be quashed. The prescribed procedure given in OM No. 22011/6/75-Estt(D) dt. 30.12.1976 has not been followed, and ~~xx~~ the recommendations of DPC, consisting of ^{not} UPSC Members are/to be departed, unless in the opinion of the Minister concerned, exceptional circumstances exist, which in public interest require such departure. He further contends that non-approval by ^{the} Appointments Committee of ^{the} Cabinet for appointment of the applicant to Sr. Admn. Grade Level I after being duly selected by DPC and approved by concerned Minister, is arbitrary and violative of the rules and procedure.

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2. The applicant has raised various other contentions, which are, however, not pressed at the time of hearing the case.

3. In the counter filed by the respondents 1 to 3, it is stated that the appointment to Senior Administrative Grade level-I by selection is made/on merit basis recommended by a duly constituted DPC and which has been approved by the appointing authority. The Central Government is the appointing authority for Senior Administrative Grade level I Gr.'A'. The UPSC is a recommending body, ~~whose~~ and the appointing authority is empowered to consider the DPC's recommendations and take decisions on appointments, and that the appointing authority is not obliged to accept the recommendations of the DPC. It is further contended that the applicant was not approved for appointment by the appointing authority and as such, orders of appointment could not be issued to the applicant. Representations of the applicant were considered by the appointing authority, but did not change its earlier decision. It is, therefore, contended that the contention of the applicant that he should be promoted on the recommendations of the DPC has no merit.

4. The UPSC in its counter says that as no relief is claimed against it, it does not propose to file a counter.


5. We have heard Shri K.S.R. Anjaneyulu, learned counsel for the applicant, ^{and} Shri N. Bhasker Rao and Shri K. Satyanarayana, learned counsel for respondents 1 to 3, and 27 respectively.

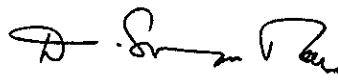
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6. The applicant's case is similar to the case of ^{one H. S.} Jilani, who has filed O.A. No. 330/87. In that case, we had observed as under:-

"6. The case of the applicant rests on the same grounds as that Sri Dhamania (DHAMANIA v. UNION OF INDIA O.A.No. 1191/86 before ~~xx~~ the Principal Bench, New Delhi). We are in agreement with the ratio of decision arrived at by the Principal Bench. Applying the same, we direct that the applicant is entitled to the same relief as was given to Sri Dhamania and accordingly, direct that the applicant shall be deemed to have been promoted to Senior Administrative Grade Level-II of I.T.S. with effect from the date his immediate junior was promoted to the said ~~xxxxx~~ grade and he shall also be entitled to all consequential benefits by way of seniority, increased salary and other allowances from that date."

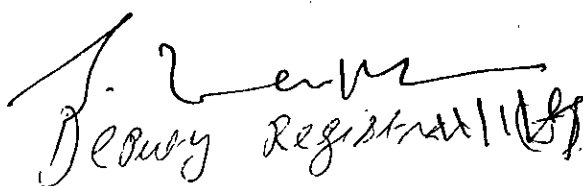
For the reasons stated in JILANI's case cited supra, we are of the view that the applicant is entitled to the same relief as was given to Sri Dhamania. We allow this application and direct that the applicant shall be deemed to have been promoted to Senior Administrative Grade Level-II of I.T.S. with effect from the date his immediate junior was promoted to the said grade and he shall also be entitled to all consequential benefits flowing therefrom. In the circumstances of the case, parties will bear their own costs.


(B.N. JAYASIMHA)
Vice Chairman


(D. SURYA RAO)
Member (J)

Dated 20th Dec., 1988
Open Court dictation.

dms.


Deputy Registrar