

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 34/2012

Reserved on: 20.02.2017
Pronounced on: 27.02.2017

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

Puran Chand S/o Late Shri Ramji Lal,
R/o Allahapur, Tehsil & Distt. Palval,
Haryana

.... Applicant

(Through Shri U. Srivastava, Advocate)

Versus

Govt. of NCT Delhi through

1. The Chief Secretary,
Govt. of NCT Delhi, Delhi Secretariat,
I.P. Estate, New Delhi
 2. The Secretary (Services)
Govt. of NCT Delhi, Services Department,
Coordination Branch, Delhi Secretariat,
7th Level, `B' Wing,
I.P. Estate, New Delhi
 3. The Deputy Secretary, Services – II
Delhi Secretariat, 5th Level, `A' Wing
New Delhi
 4. The Administrative Officer,
Govt. of NCT Delhi, Transport Department
Admin. Branch, 5/9 Under Hill Road,
Delhi
 5. Shri Neipal Singh
-Respondents
- (The copy of the notice is served to the respondent no.5
through the respondent no.3, whose name is appearing at
Sr. No.11929 in the list of eligible officials circulated on
4.08.94 (Annexure A/1))

(Through Shri Amit Anand, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant, who belongs to SC community, was appointed as Grade IV DASS, LDC with effect from 12.08.1992 and posted in the Transport Department, Government of National Capital Territory of Delhi (GNCTD). The final seniority list of Grade IV DASS officials appointed during 1.01.1991 to 1.01.1993 was published as on 1.01.1993 by the respondents vide order dated 4.08.1994 in which the name of the applicant appears at serial number 11928. The applicant was transferred on 22.12.1999 to GTB Hospital from the Transport Department and remained there upto 25.07.2004. In the meanwhile, the officials of Grade IV DASS belonging to SC category were promoted from Grade IV DASS to Grade III DASS upto seniority number 11945 vide respondents order dated 4.02.2002.

2. The applicant's grievance is that despite he being at serial number 11928, was ignored for promotion to Grade III DASS. He filed a representation dated 19.04.2002 but before he could receive any response, was transferred to Directorate of Prosecution from GTB Hospital with effect from 26.07.2004. Subsequently, the tentative seniority list in respect of officials appointed on regular basis as Grade III DASS with effect from 1.01.2000 to 1.01.2006 was circulated by the respondents vide office order dated 5.10.2006. Again the applicant filed a representation pointing out non-consideration of his case for promotion to Grade III DASS and again there was no action

taken by the respondents. Vide order dated 11.01.2007, the respondents sought objections from the employees against the tentative seniority list and without considering the applicant's representation, published the final seniority list as on 1.01.2006 vide order dated 1.08.2008.

3. On the basis of the final seniority list published by the respondents on 1.08.2008, the respondents issued an order dated 6.10.2010 by which the officials of Grade IV DASS were promoted to Grade III DASS from seniority number 14668 to 15073. The applicant's grievance is that all these officials were junior to him.

4. Again, the applicant filed representation dated 26.10.2010. The Services Department of GNCTD issued a letter to Directorate of Prosecution in case of the applicant dated 18.11.2010, stating as follows:

"Kindly refer to the letter on the subject cited above. In this regard, I am directed to inform that the promotion case of the official was not considered by the DPC held on 24.10.2000 as the complete service particulars were not made available by the administrative department concerned.

It is, therefore, requested to forward the IC/VC/TTR (alongwith pro-forma appended overleaf) and ACRs for the period 94-95 to 98-99 alongwith complete ACR folder in respect of the official, so as to enable this department to process the matter further."

5. Thereafter, there was a correspondence between the Directorate of Prosecution and Transport Department (Annexure A-8) seeking the ACRs of the applicant for the period 1994-95 to

1998-99. Finally, the respondents informed the applicant in reply to an RTI application vide letter dated 11.01.2011 that as per available records, the ACRs of Shri Puran Chand son of Shri Ramjilal (applicant) for the period 1994-1995 to 1998-1999 were not available.

6. The case of the applicant is that he is being denied promotion without any fault on his part whereas his juniors have been promoted. It is stated that this is contrary to the law laid down by this Tribunal in **M.K. Negi Vs. The Chief Secretary, GNCTD**, O.A. 1460/2011. This OA has, therefore, been filed seeking the following reliefs:

"8. (b) Directing the respondents to consider and finalize the case of the applicant for promotion to the post of Gr. III DASS from the date from which the immediate junior of the applicant namely Sh. Naipal Singh has been promoted in accordance with the relevant rules and instructions on the subject with all other consequential benefits namely the arrears of pay differences after declaring the actions of the respondents for not considering and finalizing the case of the applicant and promoting the juniors is as illegal, unjust, arbitrary, mala fide, unconstitutional, against the principles of natural justice, discriminatory, violative of articles 14 and 16 of the Constitution of India and in violation of the mandatory Provisions of law."

7. The reply of the respondents is that the case of the applicant was considered by the DPC held in the year 2000. However, he was not promoted to the post of Grade III DASS from the post of Grade IV DASS due to the fact that he was habitual in absenting himself from duty and a period of about

1630 days has been treated as Extra Ordinary Leave or dies-non due to his absence. This period comes to about 25% of the total service period. It is also stated that the applicant has adverse entries in the ACR for the period 1995-96 and decision taken with regard to these adverse entries is still awaited. Regarding M.K. Negi (supra), it is stated that there were no adverse entries available in the case of Shri Negi. It is further clarified that out of the period 1994-95 to 1998-99, ACR for the period April-94 to August-94, August-94 to March-95, 1995-96 (adverse) and April-96 to September-96 are available. The primary reason why the applicant could not be promoted was the adverse entries against his name.

8. In reply, the learned counsel for the applicant stated that in the information furnished to him on an RTI application dated 7.01.2011 (Annexure A-11), the respondents had informed that promotion of the applicant was declined due to non-availability of ACRs for the period 1994-95 to 1998-99. The applicant argued that his case is squarely covered by the orders of the Tribunal in M.K. Negi (supra), **Dinesh Jha Vs. GNCTD**, O.A. 3918/2011 decided on 14.12.2011 as well as the judgment of the Hon'ble Supreme Court in **Mohinder Singh Gill Vs. Chief Election Commissioner**, (1978) 1 SCC 405, where it has been held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons mentioned therein. It cannot be supplemented by fresh reasons placed before the Court either on affidavit or in any other way. Otherwise an order bad in the beginning may, by the time it

comes to Court on account of a challenge, gets validated by additional grounds later brought out.

9. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the orders/ judgments cited.

10. In M.K. Negi (supra), the issue was similar as due to non-availability of ACRs, promotion from Grade-III DASS to Grade-II DASS was not granted to Shri M.K. Negi. The OA was allowed based on the following reasoning:

"5. In view of the facts and circumstances of the case, we allow this OA. The applicant shall not be made to run from pillar to post any further for his legitimate right to be considered for regularization in the Grade III DASS and later for the promotion to Grade II/ DASS along with his juniors. The Respondents have actually deprived him of such valuable consideration and eventual promotion for over the last 11 years. It is just not sufficient for the Respondents to admit it as a serious lapse on their part. They have to do more than that. It is absolutely of no use one department of the Govt. of NCT of Delhi blaming the other department for not forwarding of ACRs of the applicant for placing his case before the DPC. The Respondent No.2, namely, Secretary, Services Department and the Joint Director, Directorate of Prohibition where the applicant has been working are under the same Govt. of NCT of Delhi under the supervision/ control of the Chief Secretary, Govt. of NCT of Delhi who has been arrayed as respondent No.1 in this case. Just because the ACRs are not made available by their custodian, the applicant shall not be subjected to any further loss and harassment. Admittedly, the DPC at its meeting held on 26.02.1988 has already declared him fit for promotion on regular basis to Grade III/DASS with retrospective effect from 16.06.1993 but he was not given the actual promotion only for the reason that his

ACRs were not available. We, therefore, direct the respondents to adopt appropriate procedure to consider the Applicant's case for regularization as Grade-III DASS/UDC in the absence of the availability his ACRs and thereafter for promotion as Grade-II DASS from the respective dates his junior has been considered/ promoted with all consequential benefit, without any further delay."

11. In Dinesh Jha (supra), again the issue was of non-promotion of the applicant due to non-availability of ACRs. Again, the OA was allowed with reasoning as recorded in para 7, quoted below:

"7. Considering the totality of facts and circumstances of the case, we are of considered opinion that the applicant has been prejudiced by non consideration of his promotion due to non availability of ACRs. We would only direct the respondents to consider the applicant's case by taking the equal number of ACRs available in place of the non available ACRs and find out whether the applicant is fit to be considered for promotion on ad hoc basis to DANICS. In case he is found fit by the DPC, he shall be promoted on ad hoc basis to DANICS w.e.f. the date from which his juniors have been promoted and he will be entitled for all consequential benefits including the pay and allowances. Let the above exercise, as ordained above, be completed within a period of eight weeks from the date of receipt of certified copy of this order."

12. The only issue the respondents have raised is that in the case of M.K. Negi (supra), there was no adverse entry and in the case of Dinesh Jha (supra), ACRs were not available. Since there was adverse entry in the ACR immediately preceding the date of promotion and major part of his absence period has been treated as Dies Non and the applicant was habitually absenting

himself without any permission or any prior sanction of any kind of leave, his case is different. In rejoinder, the reply to this by the applicant is as follows:

"It is submitted that it is well settled law of the land in case of UOI & anr. Vs. V.S. Arora W.P. (C) No.5042/02 decided by the Hon'ble High Court of Delhi vide its order dt. 31.05.12 that below benchmark ACRs, which have not been communicated cannot be considered by the DPC and the DPC is then to follow the procedure as prescribed in para 6.2.1 (c) which reads as under:-

"6.2.1 (c) where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the year preceding the period in question and if in any case even these are not available the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If it is not possible, all the available CRs should be taken into the account."

13. The respondents in their reply dated 7.01.2011 to an RTI application had only replied to query no.3 which was whether from 1994-95 to 1998-99 his ACRs were written, that his ACRs were not available. This does not prove that his promotion was not granted just because the ACRs were not available. So this argument of the applicant has to be rejected. There was an adverse entry in his ACR for the year 1995-96. Moreover, as is seen, these adverse entries are based on the fact that the applicant was habitual absentee and he remained absent from duty for about 1630 days (almost four years), which has been treated as Extra Ordinary Leave/ Dies-Non. In any case, the adverse entries are not in challenge here. No employer would, nor should, ignore this aspect and grant promotion to such an

employee. There is, therefore, no comparison between his case and that of M.K. Negi (supra) or Dinesh Jha (supra) as they are totally under different circumstances. The OA is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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