

**Central Administrative Tribunal
Principal Bench**

OA No. 1725/2014

New Delhi this the 5th day of September, 2016

***Hon'ble Mr. Justice Permod Kohli, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)***

S.C.Monga,
S/o Sh. A N Monga,
R/o H.No. 1073, Sector-A, Pocket-A,
Vasant Kunj,
New Delhi.

- Applicant

(By Advocate: Mr. Praveen Chaturvedi)

Versus

1. Union of India
Through its Secretary,
Ministry of Information and Broadcasting,
'A' Wing, Shastri Bhawan,
New Delhi-110001.
2. Prasar Bharti
Through its Chief Executive Officer,
PTI Building
Parliament Street,
New Delhi-110001.

- Respondents

(By Advocate: Mr. Sameer Aggarwal)

ORDER (ORAL)

Hon'ble Mr. V.N. Gaur, Member (A)

The applicant is a retired Director (Engineer) of Prasar Bharti (respondent no. 2) belonging to Indian Broadcasting (Engineering) Service [IB(E)S], selected in 1973 through Indian

Combined Engineering Services Examination conducted by UPSC.

In connection with a disciplinary proceeding the applicant was placed under suspension from 04.02.2002 to 08.10.2003. After his retirement on 31.08.2008, the respondent no. 1 vide letter dated 09.06.2010 ordered that the period of suspension was to be treated as spent on duty for all purposes with full pay and allowances.

2. The Government of India vide OM dated 24.04.2009 introduced a scheme for non-functional upgradation of officers of organised Group-A services in PB-3 and PB-4. It provided that whenever an Indian Administrative Service (IAS) Officer of the State or a joint cadre is posted at the Centre to a particular grade carrying a specific grade pay in PB-3 and PB-4, the officers belonging to batches of organised Group-A services that are senior by two years or more and have not so far been promoted to that grade, would be granted the same grade on non-functional basis from the date of posting of the IAS officer in that grade at the Centre. According to the Terms and Conditions the officers will, have to fulfil the prescribed eligibility criteria and promotional norms, including benchmark, for upgradation to the particular grade pay. It was further laid down that all instructions concerning grant of non-functional upgradation applicable to grant of NFSG to officers of Group-A services would apply in the event of penalty, disciplinary proceedings,

suspension, etc. The applicant being a member of an organised Group-A service was also entitled to consideration under the scheme.

3. To consider the suitability of JAG grade officers of IB(E)S belonging to 1971 to 1987 batches for grant of higher pay scale of SAG on non-functional basis, the respondent no.1 constituted a Screening Committee which met on 26.10.2012. The Screening committee assessed suitability of 114 JAG grade officers, both serving and retired, keeping in view the Terms and Conditions prescribed for such upgradation, and recommended 108 officers for upgradation. The applicant was among those assessed as 'unfit'. The representations of the applicant have also been rejected by the respondent no. 1.

4. The present OA has been filed by the applicant with the following prayer:

"a. Set aside the order F.No.512/26/2013-BA(E) dated 04.3.2012 passed by the Deputy Secretary, (BA-II), Ministry of Information and Broadcasting, Government of India (Annexure A/1) and set aside the order no.1601/03/2014-BA(E) dated 03.4.2014 passed by Under Secretary, Ministry of Information and Broadcasting, Govt. of India, and;

b. Direct the respondent to grant SAG of IB(E)S on non-functional basis as per the general terms and condition mentioned in DOP&T OM A.B. 14017/64/2008-Estt.(RR) dated 24.04.2009, and;

c. Pass any other order or direction as this Hon'ble Tribunal may deem fit and proper in interest of justice."

5. The learned counsel for the applicant submitted that

- (i) in the minutes of the meeting of the Screening Committee dated 26.10.2012 no reason has been assigned for assessing the applicant as unfit for non-functional SAG.
- (ii) the respondents had taken contradictory stands in their letters dated 04.03.2013 and 03.04.2013, and in the counter. In the first letter it was stated that he was assessed unfit on the basis the ACRs and suspension had nothing to do with it. But the second letter stated that it was the full discretion of the Screening Committee to make objective assessment of the suitability of candidate and declare him fit or unfit. In the counter reply the respondents have referred to his suspension from 04.02.2002 to 08.10.2003, which apparently weighed on the minds of the Screening Committee. When the respondents themselves had taken a view in order dated 09.06.2010 that the suspension was wholly unjustified, and allowed full pay and allowances for that period, this factor should not have been considered by the Screening Committee

(iii) the applicant satisfied the benchmark of 'Very Good' grading in ACRs required for upgradation to SAG.

(iv) in para 5 of the minutes the Screening Committee noted the names of the officers who were not clear from vigilance angle, but the name of applicant was not mentioned therein. There was nothing against the applicant on the date of Screening Committee meeting and the date of eligibility i.e. 03.01.2006; and, relying on **UOI Vs K.V. Jankiraman**, AIR 1991 SC 2010, the respondents could not have denied him SAG.

6. Learned counsel for the respondents denied that the screening committee had considered the fact of suspension of the applicant and submitted that while considering the officers for upgradation on non-functional basis the Screening Committee had to apply all the yardsticks applicable at the time of promotion. The para 5 of the Terms and Conditions, a copy of which has been annexed as R-2, provides that all instructions concerning grant of non-functional upgradation particularly applicable in the case of grant of NFSG to officers of Group-A services will apply in the event of penalty, dismissal etc. The applicant was chargesheeted for major penalty vide OM dated

16.01.2002. The respondents after obtaining the advice of UPSC imposed the penalty of reduction of pay by one stage in the time scale of pay till his retirement vide order dated 02.07.2008. On the date of admissibility of SAG the applicant was facing departmental proceeding for major penalty which ended in imposition of the penalty of reduction in pay by one stage till his retirement. Thus the applicant was not eligible for non-functional upgradation to SAG.

7. We have heard the learned counsel for the parties and perused the record. The contention of the applicant is that Screening Committee had wrongly assessed him as 'unfit' when his ACRs complied with the benchmark, and his past record of suspension had been accepted by the respondents as wholly unjustified and was regularised with full pay and allowances. The minutes of the Screening Committee meeting does not mention that there was anything against him from vigilance side.

8. We find that the respondents had introduced a scheme vide OM dated 24.04.2009 for non-functional upgradation of officers of organised Group-A services who are two years senior to an IAS officer who has already been given that grade in the Central Government. Undisputedly, the applicant belongs to an organised Group-A service and is covered by that Scheme. The respondents held a Screening Committee meeting to assess all the officers from

1971 to 1987 batches of IB(E)S, that included the applicant, for assessment of their suitability. The applicant, however, was graded 'unfit' without indicating any reason. We do not find any force in the argument of the learned counsel for the applicant that reasons should have been indicated by the Screening Committee for assessing the applicant as unfit. The applicant has not placed any law before us that mandates the Screening Committee that functions on the same lines as a Departmental Promotion Committee (DPC), to indicate reasons. Further, according to the Terms and Conditions, all the eligibility criteria and promotional norms including bench mark have to be followed while considering upgradation under the aforesaid scheme. Apart from the benchmark of 'Very Good' ACRs, which the applicant claims to fulfil, the facts of penalty, disciplinary proceedings, suspension etc. are also to be considered. It is an admitted fact that on the date of eligibility i.e. 03.01.2006 the applicant was facing disciplinary proceeding for major penalty, which culminated in the minor penalty of reduction in pay by one stage till his retirement. Thus from 03.01.2006 to his date of retirement i.e. 31.08.2008 he was not clear from vigilance angle. In the background of these facts **Jankiraman** (supra) will not be applicable. Further, the fact of regularisation of suspension period with full pay and allowances is not relevant as nowhere in the

record it is mentioned that the suspension in the year 2002-2003 was one of the reasons for grading the applicant as unfit.

9. We, therefore, do not find any justification for interfering in the impugned orders. OA is accordingly dismissed being devoid of merit. No costs.

(V.N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

'sd'

5th September, 2016