

**Central Administrative Tribunal
Principal Bench**

OA No.3382/2013

New Delhi, this the 5th day of September, 2016

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

D.C. Mehendiratta,
(Retired as News Editor in All India Radio,
New Delhi)
S/o Late Shri Hira Nand Mehendiratta,
R/o 29, Maitri Apartments,
A-3, Paschim Vihar,
New Dselhi-110063.

...applicant

(By Advocate : Shri Arjun J. Chaudhuri)

Versus

1. Union of India Through,
Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan,
New Delhi-1.
2. Secretary,
Department of Personnel & Training,
North Block,
New Delhi-1.
3. Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi-1.

...respondents

(By Advocate : Dr. Ch. Shamsuddin Khan for R-1&2
Shri R.N. Singh with Shri Amit Sinha for Shri R.V.
Sinha for R-3)

ORDER (ORAL)**Mr. Justice Permod Kohli, Chairman :-**

The applicant was appointed to the Indian Information Service (IIS) Group 'A' on promotion to the entry grade of the service in the Junior Time Scale (JTS) w.e.f. 17.09.1990 against the promotion quota. He later on earned promotions as Sr. Grade of IIS (STS) on 30.10.1998. The Senior Time Scale (STS) is a feeder cadre for promotion to the Junior Administrative Grade i.e. JAG. The qualifying period for promotion to JAG is five years of regular service in the STS.

2. The grievance of the applicant is that from 1987 to 2005, as many as 19 direct recruitments were made to fill up the direct recruit quota vacancies, whereas only four meetings of DPC were convened for promotion to JTS in the years 1990, 1997, 1998 and 2005. The further grievance of the applicant is that on account of non-convening of the DPC meetings, he could not be promoted to the JAG, for which he became eligible in the year 2005, and was required to be considered against the vacancies occurring in the year 2005. The applicant relies upon the Office Memorandum dated 10.04.1989, whereby, the DOP&T has laid down the consolidated instructions for convening of DPCs. The applicant has further relied upon the judgment of Hon'ble Apex Court reported as 1997 (1) SLR (SC) 751 - **Union of India Vs. N.R. Banerjee**. It is

accordingly contended that once the respondents have laid down the model calendar for holding the DPC which, *inter alia* prescribes that the DPC must be held every year, non-adherence to the OM and non-holding of DPC has caused grave prejudice to the applicant, thereby denying him consideration for promotion in violation of his fundamental right. The applicant has, accordingly, filed this OA seeking the following reliefs:-

- “(a) Direct the respondent No.1 to grant the applicant retrospective promotion to the Junior Administrative Grade (JAG) from 2005, the year of vacancy against which he was empanelled in the DPCs of 2005 and 2012 with consequential benefits as he has violated DoP&T P, dated 08.09.1998 and to modify JAG promotion order dt. 17.7.2012 at Annexure A-7 accordingly.
- (b) Quash the impugned order dt. 12.9.2012 of the respondent at Annexure A-1; being false and in violation of para 2(iii) of DoPT OM dt. 30.3.1998, para 6.2.1(c) and para 6.4.1 of OM dt. 10.4.1989;
- (c) declare all the 19 DPCs held between 1987 and 2005 after the vacancies had arisen in JTS, STS and JAG as shown at the table in para 4.15 of the application as irregular being in contravention of IIS Rules, DOPT's OMs dated 10.4.1989 and dated 8.9.1998, (but not illegal as all those DPCs had recommended the select panels yearwise) and to direct respondents to grant the applicant promotion in all the grades from the years against which he was empanelled with all consequential benefits;
- (d) Direct the respondents not to apply para 6.4.4 in the case of applicant unless the

DPC was delayed “for reasons beyond control” as stipulated in para 6.4.1 of the DOP&T OM dt. 10.4.1989.

- (e) Allow this application with costs; and
- (f) Pass such order that your Lordships may deem fit in the circumstances of this case.”

3. The claim of the applicant is, however, opposed by the respondents. Firstly, the dismissal of the OA is sought on the ground of limitation. Secondly, it is stated that on account of some litigation, the seniority of the cadre could not be fixed, which has delayed holding of the DPC.

4. This Tribunal vide order dated 18.02.2016, directed the respondent Nos.1&2 to place on record copies of the orders in the litigation referred to by the respondents. Despite opportunities, this direction has not been complied with by respondent Nos.1&2. Dr. Ch. Shamsuddin Khan, learned counsel for respondent Nos.1&2 has, however, taken us through the averments made in para 6 of the counter affidavit filed by respondent Nos. 1&2, to indicate that reference to various litigation is already made in the counter affidavit.

5. We have perused the para 6 of the counter affidavit and we find that some details of the pending litigation which might have prevented the respondents from convening the timely DPC have been given. However, the respondents were required to comply with

the direction of the Tribunal by filing affidavit. Be that as it may, the admitted fact is that no DPC was held for a number of years to consider the eligible candidates for promotion to JAG, including the applicant. The applicant retired on attaining the age of superannuation on 31.05.2005.

6. In the counter affidavit filed by the respondent No.3 Union Public Service Commission, it is stated that UPSC received the proposal for convening the meeting of DPC on 30.05.2005 and the DPC was held on 28.11.2005. The applicant was considered and recommended by the DPC for inclusion in the panel, but on account of his retirement on 31.05.2005, he could not be promoted.

7. There is no dispute to the factual aspect that the applicant was not considered for promotion on account of non-holding of DPC while he was in service. He became due for promotion in the year 2005 and retired in the same year. The applicant never approached the Tribunal seeking the relief in the year 2005 or immediately thereafter. The present OA has been filed on 11.09.2013 i.e. after a lapse of more than seven years. From the averments made in para 3 of the OA, we find that the applicant has simply said that the OA is within limitation. Even, in para which relates to the remedies exhausted, the applicant has simply stated that all the remedies have been exhausted. No reference is made to the earlier remedy having been exhausted by the applicant. There is no application for

condonation of delay also. Thus, in absence of any explanation, that too valid explanation, for the delay in filing the present OA, the same is liable to be dismissed on account of limitation alone. Learned counsel for applicant submits that in view of the judgment of Hon'ble Apex Court in case of **Union of India Vs. N.R. Banerjee** (supra), the applicant has acquired the fundamental right and for enforcement of such right, he can approach the Tribunal at any stage. We disagree with this kind of proposition as is sought to be propounded by the learned counsel for applicant.

8. Hon'ble Supreme Court in *D.C.S. Negi v. Union of India & others* (Civil Appeal No.7956 of 2011), decided on 07.03.2011, held that it is the duty of the Tribunal to first consider whether the application is within limitation, irrespective of the fact whether the plea of limitation has been raised or not.

9. The controversy has been finally set at rest by the Hon'ble Apex Court in the case of **State of UP and Ors. Vs. Arvind Kumar Srivastava & Ors.** (2015) 1 SCC 347, wherein the Hon'ble Apex Court has held that even where a particular judgment is in *rem* but the aggrieved person chooses not to challenge the wrongful action in his case and acquiesces to the same and wakes after a long delay to seek his remedy, he is disentitled to such remedy on account of delay and laches.

10. There is inordinate delay in filing this OA, same deserves to be dismissed. Ordered accordingly.

(V.N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

‘rk’