

**Central Administrative Tribunal
Principal Bench**

OA No.3122/2015

New Delhi, this the 21st day of February, 2017

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

1. Yashpal Garg
DANICS
aged 47 years,
S/o Shri Rambharosi Gupta
R/o 49, Delhi Govt. Officers Flats,
Greater Kailash-I, New Delhi 110 048.
2. Chokha Ram Garg
DANICS,
aged 49 years,
S/o Shri Hans Raj
R/o 695, New Residential Complex, Tihar Jail,
Janakpuri,
New Delhi 110 064.
3. Sanjeev Ahuja
DANICS,
Aged 48 years,
S/o Shri Chota Singh Block,
Asiad Village,
New Delhi 110 049.
4. Prashant Kumar Panda
DANICS,
aged about 48 years,
R/o 69, Delhi Govt. Officers Flats,
Greater Kailash-I,
New Delhi 110 048.
5. Sanjay Gihar
DANICS,
aged about 50 years,
A-110, Shivalik,
New Delhi 110 017.

6. Sanjay Kumar Jha
DANICS,
Aged 48 years,
R/o B-3, Delhi Govt. Officers Residential Complex,
Sector D-2, Vasant Kunj,
New Delhi 110 070.
 7. Devesh Singh
DANICS,
Aged 49 years,
S/o Shri Harish Chandra Lal
47/15, Delhi Govt. Officers Flats,
Rajpur Road,
Delhi 11054.
- Applicants.

(By Advocate : Shri M. K. Bhardwaj)

Vs.

1. Union of India
Ministry of Home Affairs,
Through its Secretary
North Block,
New Delhi.
 2. Ministry of Personnel, Public Grievance and Pensions
Department of Personnel & Training (DoP&T)
Through its Secretary
North Block,
New Delhi.
 3. Government of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat
IP Estate, New Delhi.
- Respondents.

(By Advocate : Shri N. D. Kaushik)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman:

The applicants were directly appointed to entry grade of
National Capital Territory of Delhi, Andaman and Nicobar Islands,

Lakshadweep, Daman and Diu and Dadra and Nagar Haveli, Civil Service pursuant to their selection in the Civil Services Examination conducted by the Union Public Service Commission (UPSC) in the years 1989-1990 respectively.

2. It is stated that the applicants completed eight years of continuous service as Member of the State Civil Service and became eligible for promotion to Indian Administrative Service (IAS) in 1997 and 1998 but due to non availability of vacancies, they could not be promoted/inducted to IAS. It is further stated that the applicants have been made to suffer for the last 25 years because the respondents have not conducted cadre review as required under Rule 4 (1) (b) of the Indian Administrative Service (Recruitment) Rules, 1954 and the third proviso to Section 5 (2) of the IAS (Appointment by Promotion) Regulations, 1955. According to the applicants they belong to DANICS cadre which constitute as one of the components of State Civil Service (SCS) for the purpose of filling up of the vacancies in the IAS Cadre of Arunachal Pradesh-Goa- Mizoram- Union Territories (AGMUT) under Rule 9 of the IAS (Recruitment) Rules, 1954. They have further alleged that as compared to SCS officers, officers in the states like Punjab, Jammu & Kashmir, Kerala and Tamil Nadu are getting inducted into IAS in 10 to 15 years of service whereas, SCS Officers of the States like Haryana, Gujarat, Uttarakhand, Andhra Pradesh and Telangana are getting into IAS in

15 to 20 years, but in case of Delhi it is taking 25 to 27 years. Further case of the applicants is that the cadre review is to be conducted at an interval of five years. The last cadre review was held in the year 2009, and notified in 2010. The next cadre review was due in 2014 which has not been held so far.

3. The applicants earlier filed OA No.336/2015. The said OA was disposed of by this Tribunal vide order dated 28.01.2015 with the following directions:-

“3.....we provide that if such representation along with copy of this OA is moved before the respondent No.1, the same would be examined and disposed of by the said respondent in consultation with respondent No.2 by a speaking order expeditiously preferably within a period of two months from the date of filing of such representation.”

As a consequence of the aforesaid directions, the applicants made a representation dated 23.02.2015 which was disposed of by the impugned order dated 08.06.2015 (Annexure A-1).

4. In the aforesaid order, the respondents have admitted that the cadre review of the IAS officers of AGMUT cadre was notified in March, 2010 and the next cadre review falls due only in the year 2015. The cadre review of the IAS officers of AGMUT cadre will be carried out on receipt of the cadre review proposal from the Ministry of Home Affairs. It is further stated that Ministry of Home Affairs has already sent letter dated 25.08.2014 to all segments to submit proposal for cadre review. In reply, all segments except Govt. of

National Capital Territory of Delhi (GNCTD) had submitted their proposal to the Ministry. It is accordingly mentioned that after receiving the proposal from GNCTD, consolidated proposal of cadre review of IAS Officers of AGMUT cadre shall be forwarded to the Department of Personnel and Training (DoP&T) for conducting review, and after notifying the cadre review by DoP&T, the proposal for induction into IAS of AGMUT cadre will be sent to UPSC.

5. On account of delay being caused in completion of the process of cadre review, the applicants made further representations and reminders, viz., Annexures A-5 and A-6. Having failed to persuade the respondents to complete the process of cadre review, the present OA has been filed seeking the following reliefs:-

- “(a) Direct the Respondent to complete the exercise of the pending cadre review of AGMUT cadre of IAS that was due in 2014 and issue notification in time bound manner to ensure implementation of cadre review from 2014 onwards.
- (b) Direct the Respondents that the resultant increase in posts to be treated as vacancy of the year 2014 at the time of vacancy determination which are to be filled through induction from the feeder cadre (SCS). The next DPC for induction into AGMUT cadre of IAS should include these additional encadred posts also.
- (c) Direct the Respondents that all the ex-cadre posts which exist for last more than two years should either be encadred in AGMUT cadre of IAS or in DANICS or abolished immediately in view of the settled law by the Hon’ble Supreme Court.

- (d) To direct the respondents to consider the applicants for promotion to IAS immediately from due date i.e. 2014 with all consequential benefits.
- (e) To declare the action of respondents in not holding cadre review and not encadring the ex-cadre posts for promotion of applicants to IAS as illegal arbitrary.
- (f) To quash and set aside the order dated 08.06.2015.
- (g) Any other appropriate directions as the Hon'ble CAT considers fit in the interest of justice."

6. The respondents in their detailed counter reply admitted that the last cadre review was conducted in March, 2010, and next cadre review was due in 2015. The DoP&T vide its letter dated 19.08.2014 has also requested the Ministry of Home Affairs that quinquennial cadre review of the IAS cadre of AGMUT falls due in the year 2015. The respondent Ministry vide letter dated 25.08.2014 requested all the segments of AGMUT to submit a proposal/information as sought by the DoP&T. Receiving no reply, various reminders and DO letters were sent. It is further stated that all segments, except GNCTD have sent their proposal to the Ministry. After various reminders to GNCTD and their failure to respond, the Ministry has decided to go forward with the representation/proposal received from DANICS Association, and the said proposal is under submission to the competent authority in the respondent ministry for approval. In paras 5.5 and 5.6 of the counter affidavit which was filed on 05.11.2015, it is stated that the exercise regarding next cadre review will be most likely completed within 2015 itself.

7. During the course of arguments, learned counsel for the respondents has produced copy of an Office Memorandum dated 13.01.2016 of the Ministry of Home Affairs whereby proposal for cadre review of IAS Officers of AGMUT cadre in the prescribed format with comments of the Ministry were forwarded to the DoP&T. Another communication placed on record is dated 29.03.2016 from the Department of Personnel & Training to Ministry of Home Affairs requesting them to submit a revised cadre review proposal pertaining to the IAS officers of AGMUT cadre with increase in the senior duty posts not more than 5% as per instructions of PMO.

8. Another Office Memorandum dated 05.08.2016 has also been placed on record whereby Ministry of Home Affairs has responded to various objections/queries raised by DoP&T. Based upon the aforesaid documents, it is contended on behalf of the respondents that the process for cadre review is already under consideration of the Government and the same shall be completed shortly.

9. We have heard learned counsel for the parties at length.

10. Rule 4 of the Indian Administrative Service (Recruitment) Rules, 1954 framed under Sub-section (1) of Section 3 of the All India Services Act, 1951 (LXI of 1951) prescribes the method of recruitment

to the service. Under this rule, recruitment to the service is by three methods, namely- (a) by a competitive examination; (b) by promotion of (substantive) member of a State Civil Service; and (c) by selection, in special cases from amongst persons who hold in a substantive capacity gazette posts in connection with the affairs of a State and who are not members of a State Civil Service. The applicants are claiming their right to consideration for promotion under Rule 4 (b) of the aforesaid rules.

11. Rule 4 (2) of the Indian Administrative Service (Cadre) Rules, 1954 deals with the cadre review. The same is reproduced hereunder:-

“(2) The Central Government shall ordinarily at the interval of five years re-examine the strength and composition of each such cadre in consultation with the State Government or State Government concerned and may make such alterations therein as it deems fit.”

12. It is admitted case of the parties before us that the cadre review of IAS Officers of AGMUT cadre was undertaken in the year 1994 which was due in 1999. However, on account of inordinate delay the next cadre review took place in the year 2004 for which the next cadre review was again due in the year 2009 but the cadre review was notified on 12.03.2010. The applicants’ claim that the next cadre review was required to be held in the year 2014 counting five years from 2009 when it was actually due. However, the respondents’

stand is that since the cadre review was held in March, 2010, next cadre review was to be held in 2015. Even in the counter affidavit, as noticed by us hereinabove, the respondents have undertaken that the process for cadre review shall be completed in the year 2015 itself. The respondents have attributed the delay in conducting cadre review to the stake holders who have failed to respond promptly, and particularly the delay is attributed to GNCTD whose response is still awaited. The respondents, however, specifically stated that the process has been initiated even without the response of the GNCTD.

13. It is now settled position that the right to be considered for promotion is a valuable right of a government servant. Promotion is one of the service conditions in the career of a public servant which not only provides adequate opportunity to grow it infuses to generate a spirit to perform duty. Not only denial of such a right but even inordinate delay frustrates the spirit of the government employee.

14. The Hon'ble Supreme Court in the case of *Union of India and Others vs. Hemraj Singh Chauhan and Others* [(2010) 4 SCC 290] has held as under:-

“36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.”

15. In para 40 of the said judgment, the Hon'ble Supreme Court has interpreted the expression "Ordinarily" occurring in Rule 4 (2) of the Indian Administrative Service (Cadre) Rules, 1954 to be construed as mandatory. The same reads as under:-

"40.The word "ordinarily" must be given its ordinary meaning. While construing the word the Court must not be oblivious of the context in which it has been used. In the case in hand the word "ordinarily" has been used in the context of promotional opportunities of the officers concerned. In such a situation the word "ordinarily" has to be construed in order to fulfil the statutory intent for which it has been used.

Thus, it is a statutory obligation of the employer State to provide avenues of promotion in accordance with the prescribed rules/norms to the government servant, which is not only in the interest of government servant but in the interest of government itself. The efficiency in service is an important feature. Efficiency has direct relation with the manner in which a public servant is to be treated by the employer, which *inter alia* includes fair and equitable consideration for promotion and growth in the career/service. Inaction on the part of the employer which delays the benefits to the employee is bound to have its adverse impact on the working of the government servant and consequently upon the functioning of the government. Thus, timely action must be construed as a constitutional obligation of the welfare State. This is particularly so where the rules so prescribe.

16. On the premise of the admitted facts, the cadre review was to be carried out at least in March, 2015, i.e., five years from the date of cadre review notification issued on 12.03.2010. This Application was filed in August, 2015. The respondents in their counter affidavit had undertaken to complete the process of cadre review within the year 2015 itself. It is more than one and a half year's and the process of cadre review has not been completed. Even after completion of the process of cadre review, the process for induction has to take place as it entirely involves various steps, viz., constitution of the committee, preparation of the zone of consideration, selection by the committee, consultation with UPSC, etc.. It has been experienced that the selection process itself takes quite a long time at various governmental levels. Many of the eligible candidates become ineligible due to age cap with the passage of time. It is quite possible that some of the eligible candidates who would have been considered for their induction in the year 2014/2015, had there been timely cadre review, would be rendered ineligible by the time next promotion/induction takes place.

17. In view of the above circumstances, the respondents have to act within the time bound frame. This OA is accordingly allowed with the following directions:-

- (i) The respondents are directed to complete the process of cadre review of IAS Officers of AGMUT cadre within a

period of six months from the date of receipt of copy of this order by issuing cadre review notification;

- (ii) The resultant vacancies on cadre review be filled up taking these vacancies for the year 2015 when the next cadre review was due. Such vacancies be filled up from the candidates who were eligible in the said year.
- (iii) The process of selection of such of the eligible candidates of SCS officers of AGMUT cadre shall be completed within six months from the date of notification of the cadre review.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/