

Central Administrative Tribunal Principal Bench

**OA No.383/2017
CP No.112/2018**

New Delhi, this the 25th day of May, 2018

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

Anil Kumar
Aged 57 years,
Group 'A' Officer
Assistant Director
S/o Late S. P. Singh
R/o 82/4B, Mukesh Nagar,
Shahdara, Delhi-110032. ... Applicant.

(By Advocate, Shri Devashish Bharuka, Shri A. Tirupati Rao,
Shri Avijit Singh and Shri Ravi Bharuka)

Vs.

1. Sports Authority of India
(Through DG, SAI)
Jawaharlal Nehru Stadium Complex,
East Gate, Lodhi Road,
New Delhi 110 003.
2. Sh. Naresh Kumar
Deputy Director, SAI
Through Executive Director (Academics)
SAI, NIS, Patiala
Old Motibagh Palace,
Old Motibagh, Patiala-147001.
3. Praveen Suri
Deputy Director, LDE Quota
(Through DG, SAI)
Jawaharlal Nehru Stadium Complex,
East Gate, Lodhi Road,
New Delhi 110 003.
4. Ashok Pathik
Deputy Director (Designated)
(Through DG, SAI)
Jawaharlal Nehru Stadium Complex,
East Gate, Lodhi Road,

New Delhi 110 003.

.... Respondents.

(By Advocates, Shri Anil Grover and Ms. Noopur Singhal for SAI and Shri Ajesh Luthra for respondent Nos.5 & 6).

: O R D E R (ORAL) :

Mr. K. N. Shrivastava, Member (A):

The applicant is presently working as an Assistant Director in Sports Authority of India (SAI). The respondents had undertaken an exercise for promoting Assistant Directors to the next higher grade of Deputy Director. In this regard, a DPC was to be convened by the respondents on 10.01.2017.

2. The applicant through the medium of this OA has approached this Tribunal praying for the following relief:-

“8.1 To call for the records leading to the issuance of seniority list as on 21.1.2014, 01.08.2016 & 10.01.2017, and on a consideration of the averments made and grounds set-out above, to grant the relief of placing the applicant at Sl. No.58 or above in the seniority list of Assistant Directors as on 21.11.2014 since K. S. Raju and Naresh Kumar & Others (including Shri Praveen Suri promoted as Assistant Director through LDE, though he was very junior to the applicant as he had been given the regular pay scale of Rs.1400-2300 w.e.f.12.11.1987) and for grant of promotion to the applicant to the post of Assistant Director w.e.f. 1991/92 and promotion to the post of Deputy Director w.e.f. 2007/2013 or any date prior to date on which juniors being promoted as Assistant Directors and Deputy Directors, with all consequential financial and further promotional benefits; AND for placing the promotes of LDE 1992, as well as direct recruit Asst Directors of 1993 batch, below the batch of Assistant Directors 1992; with directions to refix their seniority appropriately as per their date of joining in the year 1993 (which was correctly done by SAI in the seniority list as on 21.11.2014).”

At the admission stage itself on 02.02.2017, the Tribunal issued an interim direction whereby the operation of the order dated 10.01.2017 was stayed and thus the DPC could not be held.

3. Shri Anil Grover, learned counsel for the respondents submitted that on account of this interim order, the respondents are not able to promote the officers and the entire process has come to a grinding halt, and he has thus prayed for vacation of the stay order.

4. Shri Devashish Bharuka, learned counsel for the applicant, giving the background of the case, submitted that the applicant has challenged the seniority list of Assistant Directors published by the respondents on 21.11.2011, 01.08.2016 and 10.01.2017. He further submitted that two of the members of the Review Committee constituted for reviewing the seniority list, namely, Shri Ashok Pathik and Shri H. L. Meena, were also in the said seniority list. Giving further details, he brought to our notice that in the seniority list of 2014, Shri Ashok Pathik was at Sl. No.61, Shri Meena was at Sl. No.84 and the applicant was at Sl. No.79. In the 2016 seniority list, Shri H. L. Meena and the applicant have retained their seniority positions at 84 and 79 respectively but Shri Ashok Pathik has jumped to the seniority position 36. In 2017 seniority list, the same seniority positions have been

retained by these three persons as was indicated in the seniority list of 2016, i.e., Shri Ashok Pathik at Sl. No.36, Shri H. L. Meena at Sl. No.84 and the applicant at Sl. No.79.

5. Shri Bharuka submitted that the presence of Shri Ashok Pathik and Shri H. L. Mina in the Committee constituted for reviewing the seniority list was against the ratio of law laid down by the Apex Court in ***A. K. Kraipak and Others vs. Union of India and Others*** reported in 1969 (2) SCC 262. He particularly drew our attention to paras 9 & 15 of this judgment which are reproduced below:-

“9. Naqishbund was also one of the candidates seeking to be selected to the All India Forest Service. We were told and we take it to be correct that he did not sit in the selection board at the time his name was considered for selection but admittedly he did sit in the board and participate in its deliberations when the names of Basu, Baig and Kaul, his rivals, were considered for selection. It is further admitted that he did participate in the deliberations of the board while preparing the list of selected candidates in order of preference, as required by Regulation 5.”

“14. It is unfortunate that Naquishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most -appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All India Service is entitled to great weight. But then under the circumstances it was improper to have included Naquishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have

had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of this participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keen out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.”

6. On a query from the Bench, Mr. Bharuka could not explain as to what kind of illegitimate benefits these two officers (Shri Ashok Pathik & Shri H. L. Meena) have derived for themselves by being present in the Committee for reviewing the seniority list.

7. Shri Grover, on the other hand, submitted that if the applicant has got any grievance against the seniority list, let him submit a comprehensive representation to the respondents who would be willing to consider his representation and decide it in accordance with law. We find that this suggestion of Shri Grover is worthy of consideration.

8. Shri Ajesh Luthra, learned counsel for respondent Nos.5 & 6 stated that if the respondents are allowed to go ahead with the DPC and promote Assistant Directors to the grade of Deputy Director, respondent Nos.5 & 6 are likely to be adversely affected. He stated that these respondents became Assistant Director in the year 1992 and were promoted as Deputy Director in 2013.

9. We find that the apprehension expressed by Shri Luthra is not a subject matter of this OA. Nevertheless, if respondent Nos.5 & 6 get adversely affected on account of any action that the respondents may take, they certainly would have the liberty to take appropriate remedial measures as available to them under law.

10. In the conspectus of the above, we feel that no useful purpose would be served by keeping this OA pending. We, therefore, dispose of this OA by giving liberty to the applicant to make a comprehensive representation to the respondents within a period of two weeks from the date of receipt of certified copy of this order. The respondents in turn shall consider the representation of the applicant in accordance with law and dispose it off by passing a reasoned and speaking order within four weeks thereafter.

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11. In view of the disposal of the OA, this CP also stands disposed of.

(K. N. Shrivastava)
Member (A)

(Justice Dinesh Gupta)
Chairman

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