

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

O.A No.3156/2014
MA No.2714/2014
MA No.0784/2016

Reserved On:16.05.2018

Pronounced On: 23.07.2018

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

1. Pramod Singh Kushwah,
Aged 45 years,
S/o Shri Rajender Singh,
R/o E-9, Type IV,
New Police Lines,
New Delhi.
2. Rajeev Ranjan,
Age 42 years,
S/o Shri B.P. Singh,
Flat No.1, Type IV, Police Colony,
Vasant Kunj,
New Delhi.
3. Bhisham Singh,
Age 45 years, S/o Shri Bhoop Singh,
E-1, Police Colony, Mehram Nagar,
New Delhi-37.
4. Kumar Gyanesh,
Age 42 years, S/o Shri S.S. Singh,
House No.A-321, Sarojini Nagar,
New Delhi.
5. Sanjeev Kumar Yadav,
Age 43 years,
S/o late Shri N.I. Yadav,
F-41, Police Colony,
Mehram Nagar,
New Delhi.

.. Applicants

(By Ms. Jyoti Singh, Senior Advocate and Shri Padma Kumar S. and Shri Aman Deep Joshi, Advocates)

Versus

1. Union of India
Through Secretary,
Ministry of Home Affairs
(through its Secretary),
North Block, New Delhi.
2. Secretary, DoP&T,
North Block,
New Delhi.
3. Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
4. Chief Secretary,
GNCT Delhi,
Delhi Sectt.

.. Respondents

(By Advocate :Shri Gyanendra Singh)

ORDER

By Hon'ble K.N. Shrivastava, Member (A)

This Original Application (OA) has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:

“Quash and set aside impugned orders dated 26.2.2014, 04.03.2014 and 08.08.2014 and 08.08.2014 (ANNEXURE A-1 colly) and Order dated 23.08.2013 to the extent Applicant No.1 has not been granted the JAG I promotion wef 01.01.2012 and declare Para 2 (e) (a) of ‘ National Capital Territory of Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli (Police Service) Rules, 2003’ to the extent it fixes the date of commencement of approved service at 01 July of the year following the year of examination and ‘ Note’ below Schedule III where crucial date of determination of

eligibility being fixed is 01 January of vacancy year as unreasonable and *ultra vires*.

ii) Direct the respondents to fix the crucial date of determining approved service i.e. Para 2(e)(a) as 1st January of the year in place 1st July of the year following the year in which the examination was held in respect of an officer appointed directly to that grade. Also direct the respondents to change the crucial date for determination of eligibility for promotion to 1st July in place of 1st January of the year in which the vacancy has occurred, by amending NOTE below Schedule III of the Statutory Rule mentioned at ANNEXURE A-2 so that both are in harmony with each other.

(iii) Direct the respondents to consider the applicants for JAG I wef 01.01.2012 in the case of Applicant No.1 and wef 01.01.2015 in the case of Applicant No.2 to 5.

(iv) Direct the respondent to grant the arrears of pay consequent to the above".

2. The factual matrix of the case, as noticed from the records, is as under:

2.1 The applicants belong to Delhi Andaman and Nicobar Islands, Lakshadweep, Daman & Diu and Dadra and Nagar Haveli Police Service (DANIPS). They were recruited to DANIPS through the Civil Services Examinations (CSEs) conducted by the Union Public Service Commission (UPSC) between the years 1993-1996. Their service conditions are governed by the DANIPS Rules, 2003 (in short, 2003 Rules), notified by the Central Government vide Annexure A-2 notification dated 06.08.2003. Rule 2 (e) of the 2003 Rules, defines 'Approved Service' as under:

"(e) "Approved Service", in relation to any grade, means the period or periods of regular service rendered in that grade, including period or periods during which a member of the Service could have held a post on regular basis in that grade but for his being on leave or otherwise not being available to hold such posts, from the 1st day of July of the year – (a) following the year in which the examination was held in respect of an officer

appointed directly to that grade; (b) for which the recruitment was made on regular basis in respect of an officer appointed to that grade by promotion;”

2.2 The DANIPS Service has got the following grades:

- (a) Entry Grade (Group ‘B’) on initial appointment in the pay scale of Rs.6500-10500.
- (b) On completion of 4 years of approved service (Group ‘B’) higher scale of Rs.8000-13500.
- (c) Selection Grade (Group ‘A’) in the pay scale of Rs.10000-15200.
- (d) Junior Administrative Grade (JAG) II (Group ‘A’) in the pay scale of Rs.12000-16500.
- (e) Junior Administrative Grade I (Group ‘A’) in the pay scale of Rs.14300-18300.

*The pay scales indicated are V CPC scales, which have been revised by VI & VII CPCs.

2.3 In terms of Schedule-III of the 2003 Rules, for promotion from Entry Grade to Selection Grade, 8 years of approved service is required. Likewise for promotion from Selection Grade to JAG II, 13 years and for promotion from JAG II to JAG I, 18 years of approved service is required. Note in the foot of Schedule-I states that “*the crucial date for determining the eligibility of an officer for promotion*

shall be the 1st January of the year in which the vacancy has occurred.”

2.4 It would thus appear that promotion of the DANIPS officers is controlled by two dates, namely, 1st July of the relevant year for determination of the approved service and 1st January of the year in which the vacancy has occurred, for determining the crucial date of eligibility. It is stated that in most of the other Services where the appointments are also made through the CSEs, approved service commences from 1st January of the year following the examination but in the case of the DANIPS officers, it commences six months later, i.e., from 1st July of the year following the examination. The grievance of the applicants is that they suffer on two counts. First, the reckoning of the approved service starts six months late, i.e. from 1st July as against 1st January for other Services. Secondly and as a consequence of the first, the eligibility is determined as on 1st January of the year in which the vacancy has arisen. The applicants have thus contended that even though in terms of the 2003 Rules, the approved service of 08 years, 13 years and 18 years for Selection Grade, JAG-II and JAG-I respectively are prescribed, but in reality they get promoted to these grades about one year late due to reckoning of the approved service from 1st July and consideration of their eligibility for promotion from 1st January of the vacancy year. In the other words, they get promoted to Selection Grade, JAG-I and JAG-II after 9, 14 and 19 years

respectively. The applicants have cited cases of several Services wherein the officers are also recruited through the same CSEs but in their cases 1st January is considered crucial for determining the approved service. Some of these Services are, Indian Administrative Service (IAS), Indian Foreign Service (IFS), Indian Police Service (IPS), Indian Revenue Service (Indian Customs and Central Excise Service) (IRSC&ES), Indian Railway Personnel Service (IRPS), and Armed Forces Headquarters Civil Service (AFHQCS). The applicants have made several representations to the Central Government primarily with the following prayers:

- a) The crucial date for determination of eligibility for promotion may be changed to 1st July in place of 1st January of the year in which the vacancy has occurred or alternatively,
- b) The crucial date of determining the approved service may be changed to 1st January of the year in place of 1st July of the year following the year in which the examination was held in respect of an officer appointed directly to that grade.

2.5 The representations of the applicants have been rejected by the Central Government vide Annexure A-1 communication dated 26.02.2014, contents of which read as under:

"I am directed to refer to the representation dated 13.12.2013 from Shri Rajeev Ranjan, Addl. DCP-II/South Distt. on the captioned subject and to say that his representation has been considered in the Ministry in consultation with DoPT. A proposal in this regard was sent to DoPT. However, DoPT is not in agreement with the said proposal. Therefore, the request of Shri

Rajeev Ranjan cannot be acceded to. He may be informed accordingly.

2. *This issues with approval of the Competent Authority”*

2.6 The applicants have further contended that the Non-Functional Selection Grade (NFSG) is provided to them on completion of 4 years approved service in the pay scale of 8000-13500 with effect from the 1st July of the concerned year. An order issued in respect of two DANIPS officers granting them Selection Grade dated 04.12.2001 is placed on record as Annexure A-11.

2.7 As per the information secured by the applicants under Right to Information Act, the Ministry of Home Affairs (MHA) had mooted a proposal to Department of Personnel and Training (DoPT) in the year 2012 itself proposing therein that the crucial date for determining the eligibility may be changed to 1st July in place of 1st January of the year in which the vacancy has occurred but the DoPT vide its note dated 06.12.2012 did not approve it.

2.8 The applicants have thus contended that due to two different dates for counting of approved service (1st July) and for determination of the eligibility (1st January), the DANIPS officers are suffering and as a consequence thereof, they have approached the Tribunal through this OA praying for the reliefs as indicated in para-1 supra.

3. The applicants have pleaded the following grounds in support of the reliefs claimed:

3.1 There has to be a common date for reckoning the approved service for all employees joining services irrespective of the date of appointment and joining after a particular examination and thus for the direct recruits of a particular service, a different date for reckoning the approved service cannot be fixed as such an action would be arbitrary.

3.2 For the IPS officers appointed through the same Examination, the approved service is reckoned from 1st January and thus they score advantage over the DANIPS officers who lose six months as their approved service is counted from 1st July. Different dates for reckoning the approved service in respect of the candidates appointed to different Services through the same CSE is discriminatory and arbitrary.

3.3 There is a contradiction between the foot note to Schedule-III and Rule 2 (e) of the 2003 Rules. The foot note prescribes 1st January as the crucial date for determining the eligibility of an officer for promotion whereas Rule 2 (e) prescribes 1st July as the crucial date for determining the approved service.

3.4 The proposal of the MHA to change the crucial date for determination of the eligibility to 1st July in place of 1st January of the year has been unfairly declined by the DoPT. The Administrative Ministry (MHA) had mooted the proposal after having realized the incongruities in the fixation of two cut off dates.

4. Respondent no.1 (MHA) in its reply has broadly stated as under:-

4.1 A proposal was mooted in the year 2012 for changing the crucial date for the determination of eligibility to 1st July in place of 1st January of the year in which the vacancies has occurred. The proposal was sent to DoPT (R-2) who initially had expressed agreement with it but subsequently informed that on re-consideration and in view of the general policy of taking into account 1st January of the vacancy year for reckoning the eligibility service for promotion, the proposal was not agreed to.

4.2 The MHA is not sole agency in regard to service matters for arriving at any policy decision, inter-ministerial consultations with DoPT, Ministry of Law and UPSC are required.

5. Respondent no.2 (DoPT) in its reply has primarily averred as under:-

5.1 Promotion to a particular grade or post is made as per the Recruitment Rules (RRs)/Service Rules, which are statutory in nature. Hence, promotions of the applicants are also required to be made in terms of the 2003 Rules.

5.2 As per the 2003 Rules, 'Approved Service' in relation to any grade, means the period or periods of regular service rendered in the grade. It provides 1st July as the cut off date for reckoning the

approved service. Among the Group 'B' service where entry is made through CSE, promotions are made on the basis of approved service. Some of the services are DANIPS, DANICS AFHQCS etc. In all these services, the approved service is counted from 1st July of the year in which the examination was held in case of direct recruits and in case of promotees the recruitment year itself. However, as per AFHQCS Rules, approved service is counted from 1st January of the following year in which the examination was held in case of direct recruits and in case of promotees, the recruitment year.

5.3 The period of approved service may also partly include a period during which the officer has not actually held the post on regular basis. To elaborate, if an officer of Group 'B' service recruited through CSE-1996, after selection, actually joins on 01.10.1997. As per the DANIPS Rules, his approved service would be counted from 01.07.1997 itself even though he may not have worked from 01.07.1997 to 30.09.1997. This way, the members of DANIPS get benefitted. However, in case of Group 'A' service, the regular service is in fact counted from the actual date of appointment to the feeder grade.

6. On completion of the pleadings the case were taken up for hearing the arguments of the learned counsel for parties on 16.05.2018. Arguments of Ms. Jyoti Singh, Sr. Counsel with Shri

Padma Kumar S and Shri Amandeep Joshi, learned counsel for the applicants and that of Shri Gyanendra Singh, learned counsel for the respondents were heard.

7. We have considered the arguments of the learned counsel for the parties and have perused the records. Admittedly, there is a discrepancy in reckoning of the approved service in case of officers of Group 'A' and Group 'B' services. The applicants have made out a clear cut case that in their cases, prescription of different dates for reckoning the eligibility for promotion and for counting of the approved service for such promotion is working to their disadvantage. 1st January is the crucial date for determination of the eligibility whereas 1st July is for reckoning the approved service. As a consequence thereof, the promotions of DANIPS officers are getting delayed by almost one year. In the matter of grant of Non-Functional Selection Grade (NFSG), however, even in their cases, 1st January is being considered for both the purposes. The members of AFHQCS, which is also a Group 'B' service do not face such disadvantage as in their cases, 1st January is taken into account both for determination of eligibility as well as for counting the approved service. Such a situation also prevails in all the Group 'A' services. One fails to understand as to why two crucial dates are still being continued in the case of DANIPS and a few other Group 'B' services to which the members are also recruited through CSEs.

8. The MHA (R-1) had noted this discrepancy and had attempted to make the necessary course correction way back in the year 2012 itself. The DoPT (R-2), for no valid reasons, has turned down the proposal *albeit* initially it was in agreement with it.

9. It is crystal clear that two crucial dates in the matter of promotion of DANIPS officers are operating to their disadvantage and such an anomaly is clearly discriminatory in nature and violative of Articles 14 & 16 of the Constitution of India. The details furnished by the applicants in the OA convince us beyond any reasonable doubt that the existing 2003 Rules, are delaying their promotion by one year at every stage except in the matter of grant of NFSG. This delay also complicates their matter when they get inducted into IPS. Their seniority positions *vis-a-vis* direct recruits get adversely affected. We are not convinced with the arguments put forth on behalf of R-2 that sometimes windfall benefits arise to DANIPS officers and a hypothetical case to that effect has been elaborated in the grounds pleaded on its behalf. The service jurisprudence would require that the career progression and service benefits should be based on definite Service Rules and not on any windfall.

10. In the conspectus of the discussions in the foregoing paras, we partly allow this OA in the following terms:-

(a) The Ministry of Home Affairs (R-1) is directed to submit a comprehensive proposal with all facts and figures to the DoPT (R-2) as to why it is essential to prescribe 1st January as the sole crucial date both for determination of the eligibility for promotion as well as for reckoning the approved service. This shall be done within a period of two months from the date of receipt of a certified copy of this order.

(b) The DoPT after receipt of such a proposal shall take a decision on the proposal within two months thereafter and communicate its decision to MHA by way of a speaking and reasoned order/OM analyzing therein all the points raised by the MHA.

11. There shall be no order as to costs.

**(K.N.Shrivastava)
Member (A)**

‘San.’

**(Justice Dinesh Gupta)
Member (J)**