

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1052/2003
MA No. 927/2003

(6)

NEW DELHI, THIS THE 17/10 DAY OF OCTOBER, 2003

HON'BLE MR.JUSTICE V.S.AGGRWAL, CHAIRMAN
HON'BLE MR. S.K.NAIK, MEMBER (A)

1. Shri K.P.Singh
A-2/68, Paschim Vihar
New Delhi-63.
2. Shri B.B.Madan
BB-18D, Janak Puri
New Delhi-58.
3. Shri S.P.Chowdhury
E-863, 1st Floor
Chitranjan Park
New Delhi-19. Applicants

(BY ADVOCATE SHRI O.P.GEHLOT)

vs.

1. Govt. of NCT of Delhi through
its Chief Secretary, Players Building
I.P.Estate, New Delhi.
2. The Joint Secretary
(Union Territory)
Ministry of Home Affairs
Govt. of India, North Block
Central Secretariat,
New Delhi. ... Respondents

(BY ADVOCATE SHRI R.N.SINGH)

ORDER

JUSTICE V.S.AGGRWAL:-

MA No.927/2003

MA No.927/2003 for joining together in OA No.1052/2003
is granted.

OA No.1052/2003

Applicant No.1 was appointed to Grade I of Delhi
Administration Subordinate Service (DASS) on regular

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basis on 19.11.1979 vide the order of 31.8.1989 while applicants 2 and 3 were appointed on regular basis in this grade from 28.6.1980 vide the same order. Subsequently, they were appointed in Grade II of the Delhi and Andaman and Nicobar Islands Civil Service (DANICS) under Rule 25(3) of the Delhi and Andaman and Nicobar Islands Civil Service Rules, 1971 (for short, "the Rules"). The appointment was for six months or till further orders and the applicants continued to hold the posts. Applicant No.1 superannuated from DANICS Grade II with effect from 31.7.2000 while applicants 2 and 3 took voluntary retirement as DANICS Grade II with effect from 1.6.2001. By virtue of the present application, they seek grant of higher scale of Rs. 8000-13,500/- with effect from 1.1.1996 which is payable to DANICS officers after 4 years of residency period in the scale of Rs.2000-3500/- (unrevised) or Rs.6500-10,500/- (revised) with regularisation in Grade II of DANICS. In the alternative, they pray, the benefit of the Assured Career Progression Scheme (ACP).

2. It is not in dispute that there was restructuring of the pay and grades of the Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Civil Services with effect from 1.1.1996. Grade II of the said service is being operated in two scales i.e. 6500-10500/- on initial appointment and Rs. 8000-13,500/- on completion of 4 years' approved service in Grade II subject to vigilance and integrity clearance.

3. The applicants contend that they had served in the Grade I for more than 10 years. They are entitled to the higher grade after 4 years.

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4. It is relevant to mention that vide the order of 7.6.1990, the applicants were appointed from the feeder services against the duty post of DANICS on emergent and ad hoc basis by way of local arrangement. The relevant portion of the order reads:-

" In exercise of the powers conferred under Rule 25(3) of the Delhi Andaman Nicobar Islands Civil Service Rules, 1971, the Administrator, Delhi, is pleased to appoint the following officers of feeder services against the duty post of DANI Civil Service on emergent and ad hoc basis by way of local arrangement, with immediate effect, for a period of six months or till further orders, whichever is earlier:-

Sl. No.	Name of the officer	Name of the feeder service with post presently held
1.	S/Shri B.K.Mohan	Grade -I (AEO)
2.	K.P.Singh	Grade-I (Supdt.Edu.)
3.	SSS Narang	Grade-I (ASTO)
4.	B.B.Madan	Grade-I (Supdt.Edu.)
5.	S.P. Chaudhary	Grade-I (Supdt.Edu.)
6.	O.P.Aroga	Grade-I (Election Office)"

They had continued to work against the said posts till applicant No. 1 had superannuated and the other applicants had sought voluntary retirement.

5. On 30.10.2000 vide the letter of the Ministry of Home Affairs addressed to the Chief Secretaries of certain Union Territories, restructuring of the pay scales and grades which we have referred to above had been effected and the operative part of the same reads:-

" Sir,

I am directed to say that the Government, after careful consideration of the recommendations

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of the Fifth Pay Commission of the pay scales and grade structure of the aforesaid two Services in all their implications and other relevant factors including the functional duties and responsibilities of the Members of these services, have decided the following:

(1)- (a) Such of those Officers of the two services as have completed four years in the applicable pre-revised initial entry pay scale of Rs.2000-60-2300-75-3200-100-3500 shall be placed in the revised pay scale of Rs.8000-275-13500 with effect from January 1, 1996.

(b) Other Officers of the two Services appointed in the initial entry pay scale but have not completed four years as on January 1, 1996 shall continue only in the normal replacement pay scale of Rs.6500-200-10500 till the time they complete the prescribed total service of four years in the pay scales of Rs.2000-60-2300-75-3200-100-3500/ Rs.6500-200-10500. On completion of four years, however, they shall be extended the higher revised pay scale of Rs.8000-275-13500 from the date (s) on which they fulfill the residency requirement."

The applicants seek benefit of the said letter.

6. In the reply filed, the claim has been contested contending that under sub rule (3) to Rule 25 of the Rules where appointment to a duty post was to be made purely as a local arrangement for a period not exceeding 6 months, such appointment can be made from amongst the persons who were included in the list prepared under sub rule (4) to Rule 15 or Rule 24 or who were eligible for inclusion in such a list. The applicants had been appointed under sub rule (3) to Rule 25 of the Rules on emergent and ad hoc basis by way of local arrangement for a period of six months. The appointment had continued beyond a period of six months. A Departmental Promotion Committee meeting had been called in

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May 2001 to consider the eligible officers for regular appointment to Grade II. In accordance with the instructions of the Department of Personnel and Training dated 12.10.1998, the Departmental Promotion Committee considered not only the officials who were then in service but also those who were within prescribed zone of consideration. The applicants were also considered for promotion by the said Departmental Promotion Committee though one of them had superannuated and the others had taken voluntary retirement. The Departmental Promotion Committee recommended the inclusion of the name of applicant No.1 in the panel for promotion against the vacancies pertaining to the year 1994 and inclusion of the names of applicants 2 and 3 in the panel for promotion against the vacancies pertaining to the year 1995. However, none of the applicants could be promoted to Grade II of DANICS on regular basis as they had no right for actual promotion in terms of the Office Memorandum referred to above dated 12.10.1998 though they were brought on year-wise panels. It is in this back-drop that it is contended that the names of the applicants were not included and they were denied the scale of Rs.8000-13500/-.

7. The Office Memorandum of 12.10.1998 upon which the respondents rely reads:-

" 3. The matter has been examined in consultation with the Ministry of Law (Department of Legal Affairs). It may be pointed out in this regard that there is no specific bar in the aforesaid Office Memorandum dated April 10, 1989 or any other related instructions of the Department of Personnel and Training for consideration of retired employees, while preparing year-wise panel (s),



who were within the zone of consideration in the relevant year (s). According to legal opinion also it would not be in order if eligible employees, who were within the zone of consideration for the relevant year (s) but are not actually in service when the DPC is being held, are not considered while preparing year-wise zone of consideration/panel and, consequently, their juniors are considered (in their places) who would not have been in the zone of consideration if the DPC (s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant year (s). Names of the retired officials may also be included in panel(s). Such retired officials would, however, have no right for actual promotion. The DPC (s), may, if need be, prepare extended panel (s) following the principles prescribed in the Department of Personnel and Training Office Memorandum No.22011/8/87-Estt (D) dated April 9, 1996."

8. On basis of these facts which are not much in dispute, the learned counsel for the applicants had contended that the applicants had a right to be considered. They had worked for more than 10 years without a break. Their juniors had been given the benefit subsequently and further that when restructuring of the pay scales had been effected, at that time, the relevant instructions had been issued dated 30.10.2000. They did not prescribe that there should be completion of 4 years of regular service.

9. On the contrary, the respondents' plea was that the applicants had never been promoted to Grade II on regular basis. Therefore, they were not entitled to the benefit of the higher scale. The earlier promotion was simply on ad hoc and emergent basis. The applicants were not the members of the service. The pay and perks are only available to the members of the service and the

18 Aug

persons junior to the applicants were given the benefit only after the applicant No.1 had superannuated and applicants 2 and 3 had sought voluntary retirement.

10. So far as the principle that the applicants had a right to be considered is concerned, it is not the subject matter of controversy. Promotion is not a Fundamental Right but the person has a Fundamental Right to be considered for promotion. Such right is available, if the employee falls within the prescribed zone of consideration. In the case of SARABJIT SINGH v. EX. MAJOR B.D.GUPTA AND OTHERS, JT 2000 (9) SC 88, it was clearly held that if a person falls within the zone of consideration, he has a Fundamental Right to be considered for promotion. Similar findings had been recorded by the Supreme Court in the case of DELHI JAL BOARD v. MAHINDER SINGH, JT 2000(10) SC 158, the Supreme Court held:-

"5. The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration..."

This proposition was not disputed at either end.

11. The respondents admitted that the applicants were considered and were placed in the panels for the year 1994 and 1995. However, before they could be regularly



promoted, they were no more in service. The applicants' learned counsel in this regard contended that the fault lies with the respondents and, therefore, the benefit accruing to them cannot be denied. He referred to a decision of the Delhi High Court in the case of COL. KEHARI SINGH (RETD.) v. UNION OF INDIA, 2000 APEX DECISIONS (DELHI) 319. In the cited case, there was ~~non~~-consideration of the case of the said petitioner by the Number Three Selection Board which was held in March 1987. In fact, it had met in November 1987. The High Court recorded that the respondents had acted in an arbitrary fashion. It is in this back-drop that the Delhi High Court had allowed the claim. It is not so in the present case. As would be noticed hereinafter, no person junior to the applicants had been promoted before them and, therefore, the decision in the case of Col. Kehari Singh (supra) is entirely distinguishable.

12. In that event, the learned counsel for the applicants referred us to a decision of the Division Bench of the Delhi High Court in the case of JAWAHAR LAL CHAKRAVARTI AND ORS. v. UNION OF INDIA AND OTHERS in Civil Writ Petition No. 5351 rendered on 22.3.2002. Perusal of the cited decision reveals that Jawahar Lal Chakravarti and others had filed an Original Application in this Tribunal claiming seniority over private respondents. This Tribunal had dismissed the application. It is in this seniority dispute that a question arose about not filling up of the vacancies. The Delhi High Court had held that the seniority is a civil right, but where such seniority affects further promotion,

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and the eligible persons are not considered, therefore, in the manner laid down under the law, their right under Article 16 is violated. The Delhi High Court had set aside the order of this Tribunal and allowed the Writ Petition.

13. In the present case before us, the question of seniority is not in dispute and, therefore, the ratio deci dendi of the decision in the case of Jawahar Lal Chakravarti (supra) will also not come into play.

14. The learned counsel for the applicants had further relied upon two decisions of this Tribunal. In the case of V.K. DIKSHIT v. UNION OF INDIA AND OTHERS, 2002 (2) ATJ 100, the Mumbai Bench of this Tribunal was taking up a matter where the concerned person was aggrieved by inaction of the respondents in holding the Departmental Promotion Committee meetings despite availability of vacancies on the ground that the complete Annual Confidential Reports were not available. This Tribunal had directed the respondents therein to complete all the papers for reference to the Union Public Service Commission and to consider the case of the applicant subject to his fulfilment of the eligibility conditions. That is not the situation before us and, therefore, the said decision is of little help to the applicants.

15. Another Bench of this Tribunal in the case of C.B. NARNAULI AND ANOTHER vs. UNION OF INDIA AND OTHERS, 2002 (2) ATJ 420 had also faced a similar situation. The Tribunal

LS Ag

did hold that candidates who had been eligible for further promotions as per existing recruitment rules cannot be made to wait indefinitely so that the Government can make changes in the recruitment rules and then convene Departmental Promotion Committee meetings. This is not the situation before us because there was no change in the recruitment rules contemplated. We, therefore, hold that the decision so much thought of by the learned counsel will not help the applicants.

16. Admittedly, the applicants had never been made the members of the service to Grade II. Perusal of the record reveals that the respondents greatly relied upon the Office Memorandum of 12.10.1998, the relevant portion of which has already been reproduced above. It clearly prescribes that persons who have retired will have no right to claim actual promotion though they can be considered while preparing year-wise panels. The applicants have not cared to challenge the said Office Memorandum and once it is not so challenged and the respondents have acted upon it as a result of which once a benefit had accrued to certain persons after the applicants had superannuated or taken voluntary retirement, they have no right to actual promotion or the consequential benefits.

17. The scale of Rs.8000-13500/- had been given on 2.11.2001. By that time, applicant No.1 had superannuated and applicants

MS Agarwal

2 and 3 had taken voluntary retirement. Perusal of the said order clearly reveals that the benefit to the persons junior to the applicants had been given after the applicants were no more in service. While the applicants were in service, the benefit had not been given to any person junior to them. This question had been considered by the Supreme Court in the case of BAIJ NATH SHARMA v. HON'BLE RAJASTHAN HIGH COURT AT JODHPUR AND ANOTHER, (1998) 7 SCC 44. The Supreme Court held that a senior person can only have a grievance if his juniors had been given promotion from a date prior to his superannuation. The promoted persons were given promotion from the date of the orders and not from the date, the post fell vacant. That was held to be valid and the Supreme Court relying upon an earlier decision in the case of UNION OF INDIA v. K.K.VADERA, 1989 Supp (2) SCC 625 had held:-

"6. The appellant could certainly have a grievance if any of his juniors had been given promotion from a date prior to his superannuation. It is not the case here. From the promotional quota, four promotions were made only on 30.12.1996, i.e. after the appellant had retired. Those promoted were given promotions from the dates the orders of their promotions were issued and not from the dates the posts had fallen vacant. It is also the contention of the High Court that these four officers, who were promoted to the RHJS, were senior to the appellant as per the seniority list. The question which falls for consideration is very narrow and that is, if under the rules applicable to the appellant promotion was to be given to him from the date the post fell vacant or from the date when order for promotion is made. We have not been shown any rule which could help the appellant. No officer in the RJS has been promoted to the RHJS prior to 31.5.1996 who is junior to the appellant. Further decision by the Rajasthan High Court has been taken to restore the imbalance between the direct recruits and the promotees which, of course, as noted above, is beyond challenge.

7. In Union of India v. K.K.Vader, 1989 Supp (2) SCC 625 this Court with reference to the

18 Aug

Defence Research and Development Service Rules, 1970, held that promotion would be effective from the date of the order and not from the date when promotional posts were created. Rule 8 of those Rules did not specify any date from which the promotion would be effective. This Court said as under: (SCC pp. 626-27, para 5)

"5. There is no statutory provision that the promotion to the post of Scientist 'B' should take effect from July 1 of the year in which the promotion is granted. It may be that rightly or wrongly, for some reason or the other, the promotions were granted from July 1, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientist 'B' should be with effect from the date of the creation of these promotional posts. We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgement of the Tribunal."

In other words, the Supreme Court held that when no junior person had been given the said benefit before the applicants had superannuated or taken voluntary retirement, they can have no grievance. Identical is the position herein. Therefore, the applicants merely because of delay cannot make a grievance in the facts of the present case.

18. It is true that in the communication of 30.10.2000, referred to above, the scale of Rs.8000-13500/- is available on completion of 4 years of service when they fulfill the residency requirement. This has to be read in accordance with

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the rules applicable to the members of the DANICS.

19. The only other submission made was that the applicants should be granted the benefit of the ACP, but herein the applicants had not rendered the required number of years of service on regular basis in Grade II before they superannuated or taken voluntary retirement. Therefore, they will not be entitled to the said benefit.

20. No other plea has been raised.

21. For these reasons, the application being without merit must fail and is dismissed. No costs.

S.K.NAIK

(S.K.NAIK)
MEMBER (A)

V.S.AGARWAL

(V.S.AGARWAL)
CHAIRMAN

/sns/