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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1086/2003

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New Delhi, this the 14th day of May, 2008

**HON'BLE MR. JUSTICE V.K.BALI, CHAIRMAN
HON'BLE MR. L.K.JOSHI, VICE CHAIRMAN (A)**

Shri Sharad Kumar,
Son of Shri M.L. Khare,
R/o A-8, Neeti Bagh,
New Delhi

... Applicant

(By Advocate: Shri G.D. Gupta, Senior counsel with Shri S.K. Gupta)

Versus

1. Union of India
through the Cabinet Secretary,
New Delhi.
2. The Secretary (R),
Research & Analysis Wing,
Cabinet Secretariat,
Room No.8, Bikaner House,
New Delhi

... Respondents

(By Advocate: Shri T.C. Gupta)

ORDER

Mr. L.K. Joshi, Vice Chairman (A)

The Applicant herein is assailing not being considered for promotion to the post of Joint Secretary in the Research and Analysis Wing (R&AW), Cabinet Secretariat from the time he became eligible for the said post in December 1992 and again in January 1994 when the Departmental Promotion Committee (DPC) met to consider promotions to the above said post from among eligible officers of the cadre of the Research Analysis Service (RAS). The Applicant's grudge is that the DPC, which as per the rules should meet yearly, did not meet in the year 1993 and then in the year 1994 also, when the Applicant was eligible for promotion and within the zone of consideration, he was not considered by the DPC. The Applicant had submitted a Memorial to the President in

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which, inter alia, the above points were also mentioned and a request for holding a review DPC was made. The President did not find any merit in the representation and the aforesaid contention of the Applicant was rejected by the Prime Minister, acting on behalf of the President as Minister in-charge, which was communicated to the Applicant by an order dated 23.10.2002 issued by the Secretary (R) in the Cabinet Secretariat. Although relief on several other counts has also been sought in paragraph 8 (B) of the Original Application, yet the relief pressed before us by the learned senior counsel for the Applicant is as reproduced below :

“8 (B) i) quashing the reply dated 23rd October, 2002;

- iii) declaring the non-consideration of the applicant for promotion to the post of Joint Secretary in the D.P.C. held in January, 1994 as illegal.
- iv) directing the respondents to convene a review D.P.C. to consider the case of the applicant for promotion to the post of Joint Secretary as on January 25, 1994 when the D.P.C. was held against the vacancies which were available in the quota meant for RAS officers or which were otherwise not availed but were allowed to remain vacant and also consider the case of the applicant for promotion right from 1992 onwards as required by the Rules of 1975 which require the DPC to be held every year and promote the applicant as Joint Secretary accordingly and if selected with all consequential benefits.”

2. The factual matrix of the case would reveal that the Applicant, currently Joint Secretary in the R&AW of the Cabinet Secretariat, was initially appointed on a Class I post in the Cabinet Secretariat on 11th August 1975 on the basis of selection through open competition. The Union Government constituted a new service called RAS with effect from 21st October, 1975 by the Research and Analysis Wing (Recruitment, Cadre and Service) Rules, 1975 (Rules of 1975). The Applicant was treated as having been appointed to the junior scale of RAS at the initial constitution of the service. He was placed on three years probation,

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which he completed on 10th August 1978. He was given Senior Time Scale in June 1981 and posted as Under Secretary. He was promoted to Junior Administrative Grade in August 1984 and posted as Deputy Secretary. In December 1989, the Applicant was promoted to the post of Director. As per the Rules of 1975, the Applicant became eligible for promotion to the post of Joint Secretary in December 1992. The DPC for promotion of eligible officers of RAS and non-RAS to the post of Joint Secretary was held in January 1994 in which the Applicant was not considered. The Applicant submitted various representations including a Memorial to the President of India on 26th December 1995. On failing to get any response he approached this Tribunal in OA number 742 of 1998 in which he asked for the same relief as in this Application and in which also only the relief as reproduced in paragraph 1 above was pressed. The Tribunal by its judgement dated 7th March 2002 gave the following directions to the Respondents :

"9. In the circumstances of the case, we consider it proper to direct the applicant to submit, if he so desires, another supplementary representation to the aforesaid Memorial, within four weeks from today to Respondent No.2. If such a supplementary representation is received by Respondent No.2, he shall place the same along with Memorial dated 26.12.1995 with its enclosures before the competent authority for a decision in the matter. The respondents shall pass a reasoned and speaking order within four months from today. No order as to costs."

Following the directions given by the Tribunal, the Respondents passed the impugned order dated 23.10.2002 (Annex A-6).

3. It is seen from paragraph 5 (ii) of the impugned order dated 23.10.2002 that as on the date of DPC in 1994 there were 33 sanctioned posts of Joint Secretaries in R&AW. It is undisputed that these posts were apportioned in the ratio of 70:30 for promotion between the officers of the RAS cadre and those from non-RAS stream, the officers who are on deputation, re-employment etc. Thus there were 24 posts of Joint

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Secretaries in the RAS quota at the relevant time. It is stated in the aforesaid order that 18 posts out of the 24 posts were filled up. As a result six posts were available for promotion from RAS stream to the post of Joint Secretary at the time of DPC in 1994. Out of nine posts under non-RAS quota, five were already filled up, thus leaving four vacancies. In all, there were ten vacancies – six in the RAS quota and four in non-RAS quota. The learned senior counsel for the Applicant has stated during his submissions that the Applicant has contested the calculations of the Respondents in his supplementary representation (Annex A-5), which was given on the directions of the Tribunal in the judgement dated 7.03.2002 in OA 742 of 1998. According to the Applicant nine posts were available for RAS officers and only one post for non-RAS stream for promotion to the post of Joint Secretary at the time of DPC of 1994. However, he has contended that even if it is accepted for the sake of arguments that if only six posts are considered as available for RAS officers for promotion to the post of Joint Secretary in 1994, the Applicant would still be within the zone of consideration. We shall advert to it a little later.

4. The learned senior counsel has made threefold submissions to support his case. First, Rule 151 (1) of the Rules of 1975 enjoins the DPC to prepare a yearly Select List of candidates eligible for promotion. The argument is that the Applicant became eligible for promotion in December 1992. He could not be considered for promotion in 1993 because the DPC did not prepare any Select List for that year as per the Rule 151 (1) of the Rules of 1975. Second, the Applicant should have been considered by the DPC of 1994 as he was in the zone of consideration, even if it is accepted that only six posts were available in the quote of RAS officers. As per DoP&T's OM number 22011/1/90-

Estt.(D), dated 12.10.1990, as extracted at page 852 of Swamy's

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Complete Manual on Establishment and Administration, tenth edition, the zone of consideration for six vacancies would be 16. The Applicant would have been covered under this zone of consideration. Third, the promotion to Grade IV (Director level) and above posts are by Selection on merit as per Rule 24 (1) of the Rules of 1975. Reliance has also been placed on **Vinod Kumar Sangal Vs. Union of India & Ors.**, (1995) 4 SCC 246 in which the Honourable Supreme Court has held that disregard of the instructions regarding yearly select list would operate to the disadvantage of the appellant in the case. It has been contended that the stand of the Respondents in their counter reply that officers belonging to only the 1973 batch have been considered for promotion is wholly illegal as the Respondents cannot scuttle the zone of consideration on the basis of the year of allotment/batch of a particular candidate. Further, the DPC has to take into consideration not only the existing vacancy but the anticipated vacancies also, according to the instructions issued by the DoP&T. It is stated that in the list of Joint Secretaries in position before the DPC meeting on 25.01.1994 at Annex R-1 of the counter reply dated 5.12.2003 of the Respondents, three officers at the top of the list, namely M/S S.B. Jain, Sunder Kumar and G.B.S. Sidhu would be promoted as Additional Secretaries, thus creating nine vacancies, as mentioned in paragraph 4.16 of the OA. This would have further extended the zone of consideration.

5. The case has been contested. The learned counsel for the Respondents has argued that the instructions regarding the zone of consideration, as quoted by the Applicant, are not applicable in the case in hand. He has stated that in paragraph 4.7 of the counter affidavit of the Respondents it is clearly stated that as per the DoP&T norms officers belonging to a particular batch have to be considered together and the batch is not to be split. In view of this the Applicant who belongs to

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1975 batch could not be considered by the DPC held in January 1994. The learned counsel, however, could not show any rule or instructions issued by the competent authority to support this contention in spite of our queries. It is further contended that according to the instruction issued by the DoP&T, if sufficient number of employees are available for inclusion in the panel up to a number, which is considered sufficient against the number of vacancies, the assessment of the remaining officer may not be necessary. OM number 35034/7/97-Estt.(D) dated February 8, 2002 of the DoP&T was submitted by the learned counsel in this regard, which we have taken on record.

6. We have carefully considered the arguments of the parties' counsel and perused the entire record placed before us with their assistance.

7. The conditions of service of the officers of the RAS are governed by the Rules of 1975, which came into force on 21.10.1975. The Applicant was appointed to service under Rule 21 (2) of the said Rules, which reads thus :

"21.(2) Officers already appointed in the Research and Analysis Wing against the posts on the scale shall be appointed to the Service."

Rule 24 of the Rules of 1975 provide for maintenance of the Service, which is extracted below :

"24. All the posts in the service in Senior Scale and above shall, after initial constitution of the service, be filled by promotion. Promotions to senior scale shall be on the basis of seniority subject to rejection of the unfit and that the failure to qualify examination e.g. language proficiency, would also render a junior officer ineligible for promotion. **Promotions to Grade-IV and above shall be by selection on merit.**"

The scales are provided in the Rules of 1975 :

"12. Scale : Any post borne on the cadre of the Service shall be in one of the following time scales or grades :

- | | |
|---------------------|-------------------------------|
| (i) Junior Scale:- | Rs.2200-75-2800-EB-100-4000 |
| (ii) Senior Scale:- | Rs.3200-100-3700-125-4700 (on |

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completion of 4 years of service as a member of service):

Provided that the member of service has successfully completed the probation period as prescribed under rule 27 of these rules.

(iiA) Junior Administrative Grade :-	Rs.3950-125-4700-150-5000 (on completion of 9 years of service as a member of the service).
(iii) Grade IV :-	Rs.4800-150-5700
(iv) Grade III :-	Rs.5900-200-6700
(v) Grade II :-	Rs.7300-100-7600
(vi) Grade IIA :-	Rs.7600 (fixed)
(vii) Grade I :-	Rs.8000 (fixed)."

Rule 151 of the Rules of 1975 provide for the Select List :

"151. SELECT LIST

(1) The Departmental Promotion Committee shall prepare every year a Select List of candidates considered suitable for promotion to each grade.

(2) The number of names included in the Select List shall be based on existing vacancies and the vacancies anticipated during the year in which the Select List is prepared which are to be filled by promotion."

8. The DoP&T has issued detailed instructions for the DPCs for conduct of business vide OM number 22011/5/86-Estt.(D), dated 10.04.1989. Paragraph 6.1.1 of the above OM provides for the zone of consideration which is extracted below :

"6.1.1 Where promotions are to be made by "Selection-cum-Seniority" and "Selection by Merit" method as prescribed in the Recruitment Rules, the DPC shall, for the purpose of determining the number of officers who will be considered from out of those eligible officers in the feeder grade(s), restrict the filed of choice as under with reference to the number of clear regular vacancies proposed to be filled in the year :

No. of vacancies			No. of officers to be considered
1	5
2	8
3	10

4 ...

10 + twice the number
of vacancies in
excess of three
vacancies

STATEMENT

Vacancies	Zone of consideration	Vacancies	Zone of consideration	Vacancies	Zone of consideration
1	5	10	24	19	42
2	8	11	26	20	44
3	10	12	28	30	64
4	12	13	30	40	84
5	14	14	32	50	104
6	16	15	34	60	124
7	18	16	36	70	144
8	20	17	38	80	164
9	22	18	40	90	184
				100	204
				(x)	2x(x)+4

The existing provision relating to extension of the field of choice to five times the number of vacancies in respect of SC/ST will, however, continue."

(Source Swamy's Complete Manual on Establishment and Administration, Swamy Publishers (P) Ltd., Tenth Edition, P.852)

9. As to the contention of the learned counsel for the Respondents that as per the DoP&T's instructions, a batch should be considered as a whole and not be split, we have found no rules or instructions to support this. We had asked the learned counsel to produce the relevant rules/instructions of DoP&T in this regard, which he has been unable to produce before us. The second argument of the learned counsel that in the circumstances where sufficient number of employees have been assessed against the number of vacancies, DPC may not assess the remaining employees and put a note in the minutes that assessment of the remaining employees in the zone of consideration is not considered necessary, would also not apply in the case in hand. This stipulation has been introduced by DoP&T's OM dated 6.11.1998. This has been made applicable to grade of Rs. 12,000-16,500/- because of change in the norms of promotion introduced by DoP&T's OM dated 8.02.2002.

The method of 'selection by merit' was discontinued by this OA. The case in hand pertains to the year 1984. Therefore, this stipulation would not apply to the instant case.

10. In Vinod Kumar Sangal (cited supra), the Honourable Supreme Court has held as follows :

"8. It is not the case of the respondents that the DPC made separate selection for the vacancies for the years 1980, 1982 and 1983 and the DPC appears to have bunched together all the vacancies for the years 1980 to 1985 and has made one selection for the 6 promotional vacancies and this has resulted in enlargement of the field of choice for the purpose of selection. The grievance of the appellant is that this mode of selection in disregard of the instructions contained in the office memorandum dated 24-12-1980 operated to his prejudice appears to be justified because if separate selection had been made for the vacancies which occurred in the years 1980, 1982 and 1983 the field of choice would have been much more restricted and the appellant would have had better chances of being selected.

9. The 6 persons who were selected by the DPC in 1985 for promotion to the post of Senior Technical Assistant (Drilling) are not parties in these proceedings. Their selection cannot, therefore, be disturbed. Therefore, without disturbing the selection of the 6 officers who were selected by the DPC in 1985 for the post of Senior Technical Assistant (Drilling), the respondents are directed to convene a DPC for considering the appellant for selection for promotion to the post of Senior Technical Assistant (Drilling) against the vacancies which occurred in the years 1980, 1982 and 1983. The said DPC shall consider the appellant for such selection for the vacancies for each of these years separately as per the office memorandum dated 24-12-1980. In case the appellant is selected for such promotion against any of these vacancies, the reversion of the appellant made by order dated 18-2-1985 would stand revoked and he would be regularly promoted on the post of Senior Technical Assistant (Drilling) with all consequential benefits with effect from the date when 6 persons who were selected by the DPC in 1985 were so promoted on the post of Senior Technical Assistant (Drilling). In case the appellant is not selected by the DPC for any of the vacancies, his reversion under order dated 18-2-1985 would remain undisturbed. The DPC should be convened within a period of four months."

11. In the above conspectus, we shall briefly recapitulate the facts of the case with reference to the Rules of 1975 and DoP&T's instructions.

The Applicant was eligible for promotion to Grade III from Grade IV.

Posts above Grade IV are posts for which selection by merit is prescribed.

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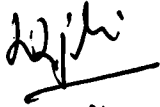
Even if we consider only six vacancies, the zone of consideration would be 16. DPC should not only consider the existing vacancies but anticipated vacancies also, which would make the available vacancies to be nine and zone of consideration 22. However, even with zone of consideration at 16, the Applicant is covered. Rules provide for Select List to be prepared every year, which would include candidates considered suitable for promotion. The Select List was not prepared in 1993. The DPC of 1994 should have considered candidates eligible for 1993 for the year 1993 separately and then for 1994, 1995 and 1996. The Applicant was promoted in 1997. From the available records it appears that there was no consideration by DPC in 1995 and 1996 also, apart from 1993.

12. We are unable to agree with the argument that first the earlier batches of 1971 and 1973 were cleared before considering 1975 batch to which the Applicant belongs. This is not in accordance with the Rules of 1975. In Selection by Merit the junior officer can supersede his senior on the basis of record. Therefore, the Applicant has been prejudiced by not being considered for promotion by the DPC of 1994 from the year he became eligible.

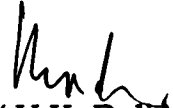
13. It is thus clear on the basis of the above discussion that the Respondents have not acted according to the rules and instructions regarding the consideration of the Applicant for promotion to the post of Joint Secretary. The action of the Respondents has been arbitrary and illegal. We, therefore, direct the Respondents to hold a review DPC for the year 1993 to consider the Applicant for promotion to the post of Joint Secretary on the basis of the rules and instructions applicable at that time. Should the Applicant not be found suitable in the review DPC of 1993, review DPCs for the years 1994, 1995 and 1996 would also be held to consider the Applicant for promotion to the post of Joint Secretary.

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The above directions may be complied with as expeditiously as possible and preferably within four months from the receipt of a certified copy of this judgement and order. There will be no order as to costs.



(L.K. Joshi)
Vice Chairman (A)



(V.K. Bali)
Chairman

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