

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1478/2003

New Delhi, this the 13th day of January, 2004

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Amar Singh,
S/o Late Shri Kalu Ram,
R/o F-286, Lado Sarai,
New Delhi - 110 086

... Applicant

(By Advocate : Shri G.D. Gupta with
Shri S.K. Sinha)

V E R S U S

1. Chief Secretary,
Govt. of NCT,
Delhi Sachivalaya,
Players Building,
I.P. Estate, New Delhi

2. Director, Education,
Govt. of N.C.T. of Delhi,
Old Secretariat, Delhi

... Respondents

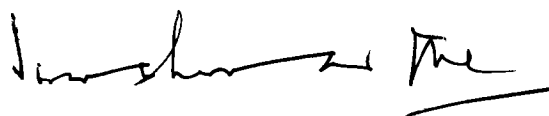
(By Advocate : Shri Ajesh Luthra)

O R D E R

BY SARWESHWAR JHA, MEMBER (A) :

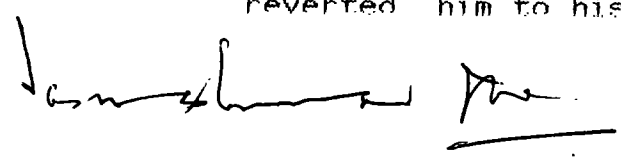
The applicant has impugned the order of the Government of National Capital Territory of Delhi issued vide No.F-30/114/90/S.1 dated 8.5.2003 (Annexure A-1) whereby his promotion to Grade-II of Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Civil Service (DANICS) in the pay scale of Rs.8,000-13,500/- w.e.f. 21.8.2001 has been cancelled and, further, whereby he has been reverted to Grade-I of Delhi Administration Subordinate Service and posted as Superintendent/Grade-I (DASS) in Education Department of the said Government.

2. Substantively, he belongs to Grade-I of the DASS and



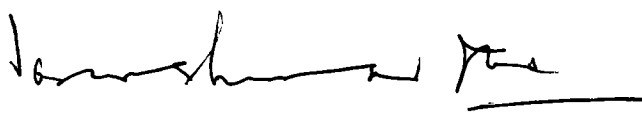
has held a number of ex-cadre posts in the DANICS since 1990 when he was placed in the DANICS ex-cadre post. The details of the ex-cadre posts that he has held in DANICS are given in the opening portion of paragraph 1 of the application. It was in November 2001 that he, along with other eligible officers of DASS Grade-I, were promoted to the DANICS Grade-II in the pay scale of Rs.8,000-13,500/- and, on such promotion, he was transferred to Lakshadweep Administration vide Ministry of Home Affairs, Government of India order dated 9.5.2002. However, he could not accept the said offer of promotion for the reason that he was undergoing treatment for acute heart problem at the All India Institute of Medical Science, New Delhi, and for further reason that health facilities for such treatment were not available at Lakshadweep. Consequently, he expressed his willingness to forgo his promotion to Grade-II of the DANICS. It is observed that the applicant also approached this Tribunal in the matter earlier vide OA No.1879/2002 which was disposed of vide the Tribunal's order dated 9.4.2003 with a direction that his representation be decided by the respondents. The Ministry of Home Affairs accordingly considered his representation and decided the same in compliance with the orders of the Tribunal in the said OA vide their impugned order. The applicant has submitted that the said order was served on him while he was on medical leave.

3. It is observed that while the applicant had submitted his inability to accept his promotion to Grade-II of the DANICS in the event of his having been transferred to Lakshadweep on such promotion, the respondents have not only reverted him to his substantive service and Grade in DASS,



but have also divested him of his posting to the ex-cadre/duty post of the DANICS which he has been holding since 1990, thereby putting the applicant to severe dis-advantage particularly when a large number of Officers of the DASS, junior to the applicant, have been holding ex-cadre/duty posts of DANICS. The reversion of the applicant to Grade-I of DASS will be putting him to a position whereunder he will have to serve under Officers junior to him in the said service and who will be acting as his reporting officers in the matter of writing Confidential Reports. In his opinion, the impugned order at Annexure A-1 is a wrong implementation of the orders of the Tribunal dated 9.4.2003. He has inferred that, according to the said orders of the Tribunal, he should have been placed in the position as obtaining immediately before 21.8.2001, without disturbing his pre-21.8.2001 position, i.e., his position in the ex-cadre/duty post of DANICS which he had been holding since 1990. He has further inferred that, while he had forgone his promotion to Grade-II, he had not forgone his posting in the ex-cadre DANICS post on ad-hoc basis and further that he is entitled to continue in the said ex-cadre DANICS post, with higher duties and responsibilities, as his juniors have been continuing in such ex-cadre posts in DANICS on ad-hoc basis. His seniority in the DASS Grade-I being what it is, he is entitled for consideration for promotion to the DANICS post on regular basis in the next DPC.

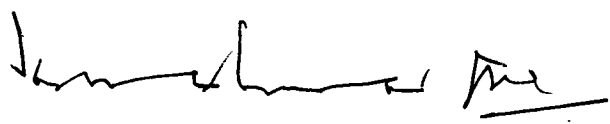
4. In view of the fact that the applicant has not received any adverse remarks in regard to his performance, which he claims, has been to the entire satisfaction of his



superiors, he considers the action of the respondents in reverting him to DASS Grade-I as punitive, highly arbitrary and against the principles of natural justice. Accordingly, he has prayed for the said impugned order dated 8.5.2003 (Annexure A-1) being quashed and directions being given to the respondents to continue him in the ex-cadre post of DANICS as long as his juniors in DASS Grade-I are allowed to hold such posts.

5. The respondents, however, do not consider themselves responsible for issuing the impugned orders, as the same have been issued on the basis of the orders passed by the Ministry of Home Affairs, Government of India, who have not been made a party to this OA. They have, therefore, submitted that the present OA is bad for non-joinder of necessary parties.

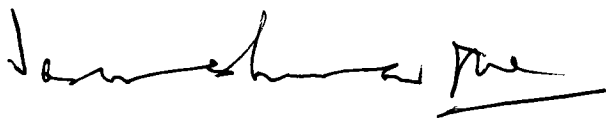
6. Looking at the facts of the case as submitted by the respondents, it is found that the applicant was promoted to the duty post of DANICS on emergent and ad-hoc basis in the year 1990 under Rule 25 (3) of Delhi Andaman Nicobar Islands Civil Services Rules, 1971 with a stipulation that this would not entitle him to any right for regular appointment or seniority in an equivalent post under Delhi Administration. He was subsequently appointed to Grade-II of DANICS by the Ministry of Home Affairs, Government of India, on 21.8.2001, as already mentioned in the foregoing paragraphs. This entailed an all-India transfer liability for him and accordingly, on his appointment to the DANICS by the Government of India, he was transferred to Lakshadweep Administration vide their order dated 9.5.2002. This was



represented against by the applicant twice, seeking cancellation of the said transfer order followed up by his OA (OA 1879/2002) filed in the Principal Bench of the Tribunal. The said OA was disposed of by the Tribunal on 7.11.2002 with a direction to the respondents to consider his request for retaining him in Delhi subject to his forgoing promotion to DANICS and pass a detailed and speaking order within two months from the date of receipt of a copy of the said order. In compliance, the Ministry of Home Affairs, Government of India, issued an order dated 26.12.2002 cancelling the transfer of the applicant to Lakshadweep. However, in the same order they incorporated an order regarding reversion of the applicant to Grade-I of DASS from which he had been promoted to Grade-II of DANICS. This order of the Ministry of Home Affairs was followed up with the impugned order issued by the NCT of Delhi dated 8.5.2003, which was essentially a repeat of the orders of the Ministry of Home Affairs.

7. The applicant has raised broadly the same issues in his rejoinder. He has submitted that appointment to the ex-cadre posts of DANICS is made by the Lt. Governor of NCT of Delhi and while doing so, the NCT of Delhi does not have to consult the Ministry of Home Affairs. It was, therefore, not proper on the part of the Ministry of Home Affairs to give a direction in respect of the applicant being reverted to Grade-I of DASS, ignoring the fact that he was eligible for being appointed to the ex-cadre duty posts of DANICS.

8. The respondents have, however, not denied that the ex-cadre posts of DANICS carry higher duties and



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responsibilities and reversion therefrom is punitive in nature, as claimed by the applicant. The applicant has averred that while he has lost seniority vis-a-vis those who have been promoted to Grade-II of DANICS vide order dated 21.8.2001 of the Ministry of Home Affairs, Govt. of India, his seniority vis-a-vis those who are holding ex-cadre posts of DANICS in the Govt. of NCT of Delhi and who are junior to him as Grade-I Officers of DASS, remains unaffected. In other words, he has claimed that he should not be deprived of the benefit of working against the ex-cadre posts of DANICS, as several junior officers continue to hold duty posts/ex-cadre posts of DANICS.

9. Both the sides have submitted additional points/affidavits subsequent to the OA having been heard on 29.12.2003 along with MA No. 2706/2003 and the same are placed on record. The applicant has submitted that while the appointment to Grades-I and II of DANICS are made by the MHA, appointment to ex-cadre posts of DANICS are made by the Lt. Governor of Delhi/Chief Secretary, Government of NCT of Delhi on the basis of seniority-cum-fitness of the DASS Grade-I Officers. As the ex-cadre DANICS posts carry higher duties and responsibilities, reversion from these posts to DASS Grade-I post would put the applicant below several persons junior to him in terms of duties and responsibilities and attendant positions. He has, therefore, contended that as the Ministry of Home Affairs had cancelled his promotion made to Grade II of DANICS and not to ex-cadre post of DANICS in the year 1990, he is entitled to have been continued in the ex-cadre post of DANICS. He has claimed that he is the senior-most DASS



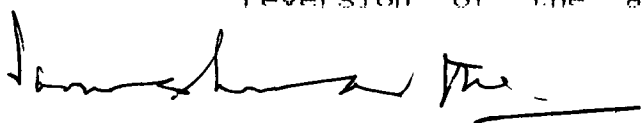
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Grade-I Officer and hundreds of officers junior to him are holding the ex-cadre posts in DANICS. These points have been broadly admitted by the respondents, as most of these have not been refuted by them. Though they have admitted that the applicant belongs to the substantive post of Grade-I of DASS until he is appointed in DANICS on regular basis, they have not commented on as to why he has not been continued in the ex-cadre post of DANICS when his juniors have been continuing in the said posts.

10. On examination of the submissions and arguments put forward by both the sides, it is thus observed that while the applicant had personal difficulty in accepting his promotion to Grade-II of DANICS when he was, on such promotion, posted out of Delhi, the respondents do not seem to have given due consideration to the fact that the Tribunal, while disposing of OA No.1879/2002 on 7.11.2002, had directed the respondents to consider his request to be retained in Delhi subject to his forgoing promotion to Grade-II of DANICS, and not necessarily his reversion to Grade-I of DASS. It appears that the respondents, while complying with the orders of the Tribunal, took the matter to an extreme conclusion, literally reverting the applicant back to his substantive grade on their own, without there being any specific direction to that effect from the Tribunal, ignoring the fact that the applicant had been holding the ex-cadre post of DANICS which hundreds of his juniors had been holding on the date on which the applicant had been holding one of such posts, exercising higher duties and responsibilities and also attendant positions. We do not find any reason for the respondents not having kept this




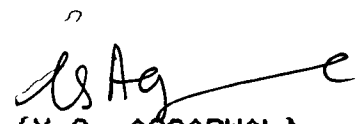
aspect of the matter in view while rushing to incorporate his reversion to Grade-I of DASS in their impugned order of 8.5.2003. There is no doubt that the impugned order has been passed on the orders of the Ministry of Home Affairs, Govt. of India, dated 26.12.2002 (Annexure R-1 to the reply filed on behalf of the respondents), the fact remains that the MHA had virtually no obvious reason to interfere with the arrangements of ad-hoc appointments to the ex-cadre posts of DANICS which had been made within the powers of the Lt. Governor of Delhi/Govt. of NCT of Delhi. Moreover, the MHA being not a party to the OA, it was expected of the respondents to have applied their mind to this aspect of the matter in consultation with the Ministry of Home Affairs in order to see that the compliance of the orders of the Tribunal as given on 7.11.2002 was strictly within the frame-work of the said orders and also in order to ensure that the applicant was not confronted with any more dis-advantage than what he himself had merited by foregoing the promotion to Grade-II of DANICS on health ground. While the respondents have correctly and expectedly cancelled the order of appointment of the applicant to Grade-II of the DANICS which involved his transfer to Lakshadweep, allowing the applicant, in the process, to remain in Delhi, which the applicant had prayed for, enabling him to avail himself of the treatment facility from All India Medical Institute of Sciences as prayed for by him, he had certainly not envisaged that a simple request for foregoing appointment to Grade-II of DANICS would also entail further disadvantage in the shape of being denied the benefit of holding ex-cadre post of DANICS. The action of the respondents involving reversion of the applicant to Grade-I of DASS and his



posting as Superintendent/Grade-I (DASS) in Education Department vide order dated 8.5.2003 and subsequently as Superintendent/Grade-I (DASS), Directorate of Home Guards and Civil Defence vide order dated 9.6.2003 is thus uncalled for and unmerited. We are, therefore, of the opinion that if these orders are not quashed, the applicant will be subjected to un-intended hardship and injustice.

11. Having regard to the facts and circumstances of the case, we allow this OA, setting aside the impugned order and the other consequential orders, with no order as to costs.


(SARWESHWAR JHA)
MEMBER (A)


(V.S. AGGARWAL.)
CHAIRMAN

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