

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

OA NO.2180/2003

New Delhi this the 27 th June, 2005

**HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)**

Shri A.R.Bhardwaj,Assistant Director,
Aviation Research Centre,Sarsawa, Saharanpur, (U.P.)
Resident of 33 Vasudha Apartments,Plot 41, Sector-9,
Rohini, New Delhi.

...Applicant.

(By Advocate: Ms. Arti Mahajan)

Versus

1. Union of India
Through Cabinet Secretary,
Cabinet Secretariat,North Block, New Delhi.
2. The Director General (Security)
Aviation Research Centre,Block V, East,R.K. Puram, New Delhi.
3. The Special Secretary,
Aviation Research Centre,Block V, East,R.K. Puram, New Delhi.
4. The Secretary,
Department of Personnel & Training,
North Block, New Delhi.
5. Shri Bhagat Ram, Assistant Director
Aviation Research Centre, Saraswa, Saharanpur (U.P.)
Resident of 315/D-16, Sector 3, Rohini, New Delhi.
6. Shri J.K. Jain, Assistant Director,
Aviation Research Centre,Block V, East,R.K. Puram, New Delhi.
Resident of CIII/188, Sector-31,NOIDA.
7. Shri V.K. Naithani,Assistant Director,
Aviation Research Centre,Block V, East,R.K. Puram, New Delhi.
Resident of 52-B, Kanchanjunga Aptt,Sector – 53, NOIDA.
8. Shri A.K. Garg, Assistant Director,
Aviation Research Centre,Charbatia, Cuttack, Orissa,
Resident of H-146, Ashok Vihar, Phase – I, New Delhi.

... Respondents.

By Advocate: Shri N.K. Aggarwal for Respondents no. 1 to 4)
None for respondents no. 5 to 8)

ORDER

By Shri S.A.Singh, Member (A)

The applicant is an Assistant Director with the Aviation Research Center and is aggrieved by the respondents' Memorandum dated

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24.9.2002 rejecting his representation for promotion to Assistant Director.

He seeks the following reliefs:

- i) To quash the Memo No.ARC/Estdt. /26980-II dated 6.11.2002 summarily rejecting the representation of the applicant;
- ii) Quash the order dated 6.11.2002 rejecting the representation of the applicant;
- iii) Quash the review DPC convened in May 2002 to review the original DPC held on 3.12.99;
- iv) Quash the order dated 7.6.2002 issued pursuant to review DPC convened in May 2002;
- v) Quash the provisional seniority list of Assistant Directors published in April 2003 in pursuance to the order dated 7.6.2002;
- vi) Direct the respondents 3 and 2 to hold a fresh review DPC in pursuance to the judgment of Hon'ble Central Administrative Tribunal in OA 726/2000 as per the law, guidelines and instructions of DoPT regarding holding of review DPC;
- vii) Direct the respondents to restore the due seniority of the applicant vis-à-vis respondents No. 5,6 and 7.

2. The applicant was promoted to the post of Assistant Director vide respondents' order dated 18.4.2000. One Shri V K Naithani, respondent No. 7 filed OA No.726/2000 praying that there were two posts still available of Assistant Director and these should be filled on promotion and not on deputation basis, because according to 'vacancy based roster' no vacancy for filling by deputation exists in the roster at present. This OA was allowed with the following directions:

"7. After hearing the learned counsel for the parties and perusing the records, we find force in the contention of the applicant that six vacancies in the grade of AD are required to be filled up in accordance with the vacancy-based roster. As per this roster, the vacancies falling at point Nos. 39, 41,43, 45 and 47 are of promotion quota and one vacancy falling at point No.46 is for deputation quota. It is an admitted position that two vacancies had already been diverted from deputation quota to promotion quota. Therefore, all the six vacancies are required to be filled by way of promotion by convening the Review DPC to review the proceedings of the DPC held in the year 1999. As regards the seniority of the applicant is concerned, this is required to be refixed in terms of Hon'ble Supreme Court's judgment in Ajit Singh's case

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(supra), which provides that in case a person belonging to SC and ST community is appointed to a higher grade earlier by way of accelerated promotion, the general category person although promoted on a later date will regain his seniority of the feeder grade and will rank senior to the person belonging to SC/ST community. Therefore, the applicant's seniority is required to be refixed in the grade of SFO by holding a review DPC.

8. For the reasons stated above, we allow this OA and direct the respondents to refix the seniority of the applicant in the grade of SFO in pursuance of the judgment of the Hon'ble Supreme Court in Ajit Singh's case (supra) and thereafter convene a meeting of review DPC to review the proceedings of the DPC held in the year 1999 and fill up all the six vacancies of AD by way of promotion within a period of three months from the date of receipt of a copy of this order. No costs."

3. In pursuance of these directions the respondents convened a Review DPC and fresh promotion orders were issued on 07.6.2002 superseding the earlier order of 18.4.2000. In these revised promotion orders the seniority position of the applicant was changed and the applicant was shown at Sr. No. 4 whereas in the earlier order he was at Sr No. 2. Two individuals namely S/Shri J K Jain and Bhagat Ram respondents No.5 and 6 were placed above the applicant. The applicant aggrieved by this change has filed the present OA seeking the reliefs indicated above.

4. The respondents have pleaded that while implementing the judgment of the Tribunal in OA 726/2000 they were directed to fill up 6 vacancies by way of promotion according to vacancy based roster by identifying the roster points. Scrutiny of the vacancy based roster reveal that roster point 39, 41 and 43 pertains to year 1997 and roster point 45, 47 and 49 pertains to the year 1999. For roster points 39, 41 and 43 Recruitment Rules applicable in the year 1997 had to be followed and for the three roster points pertaining to the year 1999, the new recruitment rules had to be followed as the RRs were changed in 1999. In 1997 the post of Assistant Directors were in Group 'A' and the feeder grade of senior Field Officer was in Group 'B'. Promotions from Sr. Field Officer to Assistant Director was then through a merit cum selection by arranging

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the officers according to the grading obtained by them in the relevant period i.e. Officers overall grading 'Outstanding' were placed above to those with 'Very Good' followed by 'Good'. However, by 1999 Senior Field Officers had been placed in Group 'A'. Hence, for vacancies of the year 1999 the changed Recruitment Rules were followed. As the feeder grade was in Group 'A' the selection was now from a Group 'A' post to a Group 'A' post were the method of selection had been changed to suitability cum seniority and benchmark was Good. For the vacancies of 1999, all officers who made the benchmark were placed in the panel in the order of their seniority, in the grade of Senior Field Officer.

5. The applicant was considered for promotion against the three vacancies of the year 1997 but could not be promoted, as his merit was lower in the select list. On the basis of his merit position, respondents No. 7 was placed at Sr. No.1 and respondents No. 5, who was senior to the applicant, maintain his seniority and thus placed at Sr No.2. Respondents No. 6 was given the benefit of being SC candidate and placed at Sr No. 3. The applicant was then considered for the 3 vacancies pertaining to the year 1999 and this time he was promoted as he made the benchmark. As decided by the government, all the officers who were promoted against 3 vacancies pertaining to the year 1997 and 3 vacancies of the year 1999 have been given notional promotion from back date. The benefit of was given on the assumption that the promotion would have been from that date of notional promotion if the DPC had been held for the relevant period per availability of vacancies.

6. The applicant has pleaded that as per DoPT's guidelines year - wise panel can only be made by the main DPC and not by the review DPC. According to DOPT guidelines, in case of non-reporting of vacancies due to error or omissions (i.e. though the vacancies were there at the time of holding DPC, but they were not reported to it) resulting in injustice to the officers concerned by artificially restricting the zone of consideration, then in such cases the wrong done cannot be rectified by



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holding a second DPC for preparing a year- wise panel. In all such cases, a Review DPC should be held keeping in mind "the total vacancies of the year". The present cases was a case of non reporting of vacancies due to an error as there were six vacancies to be filled by promotion, but the original DPC was held for filling up of four vacancies. Therefore, according to DoPT's instructions there was no scope for considering the year - wise panel in the instant case and the review DPC should have been held keeping in mind the total vacancies of the year and the review DPC was not empowered to make out the year - wise panel.

7. Moreover the promotions can only have prospective effect even if the vacancies relate to earlier years. According to DOPT guidelines Para 17.11 notional promotions cannot be given retrospectively i.e. w.e.f. 31.12.1997 as promotions can only be from the date of the original DPC held on 31.12.99. Hence, granting notional promotion to respondents No. 5,6 and 7 from 31.12.97 is illegal. Further, as on 31.12.97 there was no vacancy in the grade of Assistant Director, notional promotion could not be granted from this date.

8. The respondents have contested the above pleas made by the applicant. In 1999, a DPC for promotion to the post of Assistant Director was held in accordance with the post-based roster. Incompliance with Tribunal's judgment that six vacancies in the grade of AD are required to be filled up in accordance with the vacancy-based roster, a review DPC was held. The review DPC made its recommendations as per guidelines applicable to vacancy based roster. Panels of eligible officers were separately prepared for the years 1997 and 1999, in accordance with para 6.4.1 Chapter 3 of Swamy's Compilation in Seniority and promotion. The review DPC also recommended notional promotion from the year the posts actually fell vacant.

9. The respondents pointed out that there was no force in the argument of the applicant that there was no vacancy in the year 1997 because five vacancies in the grade of Asstt. Director occurred in 1997.

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 10. According to the apex court in the case of Y.B. Ranggaiha & Others Vs. State of Andhra Pradesh (AIR 1983 SC 8520) it has been held that vacancies prior to amended rules would have to be governed by the old rules and not by the new rules. For the vacancies of the year 1997 pre revised rules applied. In 1997 Sr. Field Officers were Group 'B'. These posts were re-classified to Group 'A' in the pay scale of Rs. 8000 – 13500/- only from May 1998, by respondents' order dated 12.6.1998.

11. We heard the counsel for the parties and perused the documents brought on record. The basic facts are not in dispute. The question before the Tribunal is whether in Review DPC of May 2002 the DPC should have confined itself to the two posts or reviews the complete proceedings and prepared lists year- wise. It is the averment of the applicant that it was a case of non reporting of vacancies and according to the DoPT's guidelines Review DPC should be held keeping in mind the total vacancies of the year, because a wrong cannot be rectified by holding a second DPC for preparing year-wise panel. However, we cannot agree with this argument of the applicant as the present problem has not arisen because the vacancies were not intimated to the DPC but for the reason that the promotions, as per Tribunals order in OA 726/2000, had to be made according to vacancy based roster and not according to post based roster. The respondents were therefore bound to follow the directions of the Tribunal and hold a Review DPC according to the rules applicable to 'vacancy based rosters'. In the process it came about that the first three specified roster points pertained to vacancies of the year 1997 and the remaining three roster point pertained to the year 1999. According to law laid down by the Apex court in the case of Y B Ranggiah & Others Vs. State of Andhra Pradesh (supra) the DPC had to follow the pre-revised rules for the vacancy of 1997 and for 1999 the revised rules. It is not contested that in the year 1997 the feeder grade posts of SFO were group 'B' and the Recruitment rules ~~for~~ stipulated promotion through selection. For the vacancies of year 1999 the feeder grade of Sr. Field Officers had

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been declared Group 'A' and the recruitment rules specified 'selection cum seniority'. The bench- mark was also changed. The result of this has been that the applicant could not make grade in the list of 1997 as he was lower in the merit but made it for the vacancies of the year 1999. We can see no infirmity in this.

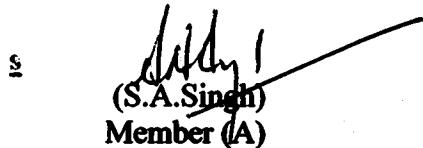
12. We also cannot accept the contention of the applicant that the vacancies had already been filled through deputation because the Tribunal in OA 726/2000 has specified the roster points to be filled up by promotion. Finally, the applicant has raised the argument that the review DPC was not empowered to prepare year-wise panel for the vacancies of the year 1997 and 1999. We cannot agree with this as the review had been carried out according to the directions of the Tribunal were promotions were to be made according to vacancies based roster and not post based roster. In view of these directions the DPC had no alternative but to review the complete process following the rules for vacancy based roster. Hence changes in the promotion orders are a concomitant outcome of the directions of the Tribunal.

13. With regard to the question of notional promotion from back date the DoPT instructions read as under:

" 6.4.4 *Promotions only prospective* – While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s)."

14. From reading of these instructions it is apparent that even for vacancies of earlier years promotions will become effective prospectively. The respondents should review the date of notional promotion keeping these instructions in view.

15. With these directions the OA is disposed off. No costs.


S
(S.A.Singh)
Member (A)


18 Aug
(V.S. Aggarwal)
Chairman

Patwal/