

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

O.A. 178 of 2014

**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

Akhilesh Kumar,
Son of Sh. M. L. Pal,
Aged about 48 years,
Working as Director (QA), DGS&D,
"Nizam Palace" 234/4 A.J.C. Bose Road,
Kolkata – 700 020

Residing at: Qtr No. 76,
Block – 13, Belvedere Estate, Alipore,
Kolkata – 700 027

... Applicant.

VERSUS

1. Union of India
Service through – Secretary,
Department of Commerce
Ministry of Commerce,
Udyog Bhavan,
New Delhi – 110 011

2. The Director General Supplies & Disposals,
Jeevan Tara Building,
5, Sansad Marg,
New Delhi – 110 001.

3. Dy. Director General (Q.A.),
DGS&D, Nizam Palace,
234/4, A.J.C. Bose Road,
Kolkata – 700 020.

4. Shri Ashishan Tirkey,
Director (QA), DGS&D, HQ,
Jeevan Tara Building,
5, Sansad Marg,

New Delhi - 110 001.

..... Respondents.

For the applicant : Mr. S. Bhattacharya, Counsel

For the respondents : Mr. L.K. Chatterjee, Counsel
Mr. T.K. Chatterjee, Counsel

Reserved on : 18.09.2019

Date of Order : 8.11.19.

ORDER

Per : Bidisha Banerjee, Judicial Member

This application has been filed to seek the following reliefs:

"8. (a) Declaration that the impugned order dated 23.09.2013 (Annexure A-9) promotion order dated 14.05.1996 (Annexure A-4) as also policy of reservation underlying therein giving promotion to the private respondent in the grade of Dy. Director Inspection (Engg.) as a ~~S1~~ candidate, notwithstanding the fact that there was no provision for such reservation in the Recruitment Rules of 1994 and thereby superseding the applicant as the case may be is arbitrary, unlawful and void ab initio and is therefore liable to be quashed and set aside and applicant's promotion as Dy. Director Inspection (Engg.) is liable to be considered against appropriate vacancy and it be ante dated to the date prior to the date of promotion of the private respondent and the applicant be assigned appropriate seniority over the private respondent by recasting the impugned seniority list of Dy. Director inspection (Engg.) (Annexure A-6) to that extent and all consequential benefits accruing there from be accorded to the applicant.

(b) Consequential order upon the respondents more particularly the respondent No. 2, not to give any effect or further effect to the order dated 23.09.2013 (Annexure A-9) and promotion order of the private respondent dated 14.05.1996 (Annexure "A-4") and the Seniority List of Deputy Director Inspection (Engg.) as on 01.04.1998 to that extent and to hold Review DPC to antedate the applicant's promotion in the grade of Deputy Director Inspection (Engg.) prior to the date of promotion of the Private Respondent and to assign seniority to the applicant showing him senior to the Private Respondent by recasting the Seniority list of Dy. Director Inspection (Engg.) (Annexure- A-6) to that extent and to give all consequential benefits accruing from such antedated promotion and recast seniority;

(c) Any other order (s) as deemed fit and proper."

The applicant seems to be aggrieved as one Ashishan Tirkey (ST) has been allowed to steal a march over and above him in the posts of Dy Director & Director. The seniority position of the two being as under:

A- 23018/03/2014/A-II
DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS
(ADMINISTRATION SECTION - III)

Final Seniority List of DIRECTORS of Quality Assurance, Junior Administrative Grade of Indian Inspection Service (Group 'A') as on 01.04.2016.

Scale of Pay : PB-4 Rs. 37400/- + 10000/- (Grade Pay)

Sl. No.	Name (S/Shri)	Date of Birth	Date of Regular Appointment in the Grade/ UPSC reference No.	Year of Exam/ Advt.	Date of Entry in Govt. Service	Educational Qualification
1.	R.S. Pandey	01.01.1959	28.12.2007 F.1/10(2)/2007-AP-2	ESE, 1984	30.03.1987	B. Tech. (Electronics)
2.	R.D. Shivsharan	28.03.1961	31.01.2008 F.1/10(6)/2009-AP-2	ESE, 1985	16.10.1987	B.Sc. (Elect. Engg.)
3.	A. Saleem	19.05.1963	23.09.2009 F.1/10(6)/2009-AP-2	ESE, 1985	19.10.1987	B.Sc. (Electronics & Telecom)
4.	D.S. Martolia	12.06.1961	15.09.2009 F.1/10(6)/2009-AP-2	UPSC Advt., 1989	02.03.1990	B. Tech.
5.	Ashishan Tirkey	03.01.1967	14.09.2009 F.1/10(6)/2009-AP-2	ESE, 1989	28.10.1991	B.Sc. (Mech.)
6.	Akhilesh Kumar	02.07.1965	14.09.2009 F.1/10(6)/2009-AP-2	ESE, 1988	29.11.1990	B. Tech. (Elect.)

2. On 1.2.16 this Tribunal had issued the following directions:

1/2/2016 (C-I)(DB):

L/Counsel for both sides are present & heard.

It has been pointed out by the L/Counsel for the petition that this matter will require some time to be finally decided. The department is directed to consider the applicant's case for promotion to the post of Dy Director General under DGS&D.

The promotion will be subject to outcome of this OA.

List on 15/4/16"

3. It is learnt that during pendency of the O.A., the following decision was taken by the appropriate competent authority, the press briefing where of stands as under:

Press Information Bureau

Government of India

Ministry of Commerce & Industry

12-April-2017 18:09 IST

Cabinet approves setting up of a Special Purpose Vehicle to be called Government e-Marketplace (GeM-SPV)

The Union Cabinet chaired by the Prime Minister Shri Narendra Modi has given its approval for the following:

1. Setting up of a Special Purpose Vehicle to be called Government e-Marketplace (GeM-SPV) as the National Public Procurement Portal as Section 8 Company registered under the Companies Act, 2013, for providing procurement of goods & services required by Central & State Government organizations. GeM-SPV shall provide an end-to-end online Marketplace for Central and State Government Ministries / Departments, Central & State Public Sector Undertakings (CPSUs & SPSUs), Autonomous institutions and Local bodies, for procurement of common use goods & services in a transparent and efficient manner.
2. DGS&D shall be wound up and cease its functions by 31st October, 2017. In case it is not possible to wind up DGS&D by 31st October, 2017, the Department may extend the date of closure with proper justification latest upto 31st March, 2018.

4. Pursuant thereto a meeting was held "on 27.07.2017 in the chamber of DG(S&D) by CED-GeM and Director (Admin) to provide clarification on the issues related to providing consent by Group A and B officers of Indian Supply and Indian Inspection Services to be considered for Selection on GeM-SPV."

The Minutes of the meeting were as under; as circulated on

8.8.17:

- Upon query on redeployment plan for Inspection and Supply Service Officers further to decision to wind up DGS&D, it has been informed that the file for redeployment of manpower of DGS&D is under process and will take further action as per the prevailing norms.
- Upon query on "Dying cadre", it has been clarified that stopping of further recruitment to the cadre would mean the cadre becoming Dying Cadre and the promotional avenues of those officers of the cadre will be determined as per the RR of the cadre.
- It has been clarified that the mode of engagement of Officers of Inspection and Supply services to GeM-SPV is on deputation, as per prevailing guidelines of GoI in the matter. The Committee would take a call on selecting the willing IIS and IIS officers to suitable positions on GeM-SPV.
- Regarding query on whether any officer can opt out of GeM-SPV at a later stage, it was clarified that the appointment of these officers to GeM-SPV would be governed as per applicable guidelines of Deputation of officers of GoI.
- Regarding the promotion channel on getting absorbed in GeM-SPV, it was clarified that as of now, Government officials shall be taken on deputation to GeM & not on Permanent absorption basis.
- Regarding retaining of Central Government accommodation by those who are selected for GeM-SPV, it has been clarified that as per norms, it is not permissible to retain Government accommodation, however, if a request is made, efforts will be made to explore possibility of letting the officer retaining Government accommodation, but assuring the same at this stage would be difficult.
- Upon observing that some of the officers indicated their option along with conditions, all are requested to indicate their clear option without any conditions and the date of receipt of willingness to be considered for GeM-SPV has been extended by 31st July 2017.

5. 29 officers including the present applicant (Srl. No. 15) belonging to the Indian Supply Service, Gr A, Indian Inspection Service, Gr A, and Indian Inspection Service Grade II were brought to GEMSPV for 3 years extendable by 2 years.

The order goes as under:

No. 10011/1/2017-GeM-LES-II
 Ministry of Commerce & Industry
 (Department of Commerce)
 (Supply Division)

New Delhi, the 13th September, 2017

OFFICE ORDER NO. 02/2017-ES-II

The Competent Authority has approved the deputation of the 29 officers belonging to the Indian Supply Service, Gr. A, Indian Inspection Service, Gr. A, and Indian Inspection Service Grade II, to GeM SPV for a period of 03 years (extendable by 02 years) from the date of their joining. Accordingly, the services of the following 29 officers are hereby placed at the disposal of the GeM SPV with immediate effect:

S. No.	Name and Designation S/Shri
1	A.K. Kamra, DDG(S)
2	K.C. Jha, DDG(QA)
3	P. Singhvi, DDG(QA)
4	H.R. Sharma, DDG(QA)
5	A.V. Muralidharan, Director (S)
6	Mrs. Manju Sharma, Director (S)
7	Dharmidhar Jha, Director (S)
8	Y.K. Pathak, Director (S)
9	Rajesh Jain, Director (S)
10	Gaurav Sharma, Director (S)
11	Nirmal Kumar, Director (S)
12	S.K. Gupta, Director (S)
13	A.K. Rai, Director (QA)
14	Adish Kumar Jain, Director (QA)
15	Akhilesh Kumar, Director (QA)
16	Senjeet Kumar, Director (QA)
17	Sarvendra Kumar Jain, Director (QA)
18	K.V. Ajith, Dy. Director (S)
19	Lakshman Rao A., Dy. Director (S)
20	Deepesh Gehlot, Dy. Director (S)
21	Jaya Chaudhary, Dy. Director (QA)
22	G.R.K. Pillai, AD (QA) Gr.II
23	N.K. Malhotra, AD (QA) Gr.II
24	S.K. Shukla, AD (QA) Gr.II
25	Prem Prakash, AD (QA) Gr.II
26	Ms. Gita Pandey, AD (QA) Gr.II
27	A. Kesava Rao, AD (QA) Gr.II
28	Ms. Alka Chauhan, AD (QA) Gr.II
29	V. Manivannan, AD (QA) Gr.II

2. The designation of the above-mentioned officers, while on deputation to GeM-SPV shall be decided by CEO GeM SPV.

3. The detailed terms and conditions of the deputation shall be issued by GeM-SPV in due course. Till such time, the above-mentioned officers shall continue to draw their pay, allowances, avail leave etc as per existing GoI regulations.

4. DGS&D is directed to immediately relieve these 29 officers with direction to join GeM SPV in accordance with GoI regulations regarding joining time.

(Akhilesh Kumar)
(Ajay Kumar)

Under Secretary to the Government of India

6. On 22.1.19 the applicant requested as under:

Dated 22/01/2019
By Speed Post

To,

The Secretary
M/o Commerce & Industry
Govt. of India
Room No. 143
Udyog Bhawan,
New Delhi- 110011

Subject:- Matters relating to career progression.

Respected Sir,

I am Gr. 'A' officer of Indian Inspection Service (ESE: 1988) at JAG level and presently posted on deputation as Dy. CEO at Govt. eMarketplace (GeM-SPV) at Jeevan Bharati, Janpath, New Delhi.

Sir, I requested your good self vide my application Dt. 12/11/2018 and 17/12/2018 regarding my promotion from Director(JAG) level to Dy. Director General(SAG) level. I had also requested for forwarding of my application for consideration to Joint Secretary level under Central Staffing Scheme(CSS) for the year 2018 and disclosing of my APARs for the period 2016-17 and 2017-18. Sir, I am not aware about the updated position of my submissions.

In view of the above, it is most humbly requested that:-

1. My APARs for the period 2016-17 and 2017-18 may be disclosed.
2. DPC may be conducted at the earliest for my promotion from JAG to SAG.
3. My application for the consideration at JS level under CSS may be forwarded to DoPT & copy of forwarding letter may be provided to me for the reference & records.

Thanking you.

Yours faithfully,

(Akhilesh Kumar)
(Akhilesh Kumar)
Dy. CEO, GeM-SPV
M/o Commerce & Industry
Govt. of India
New Delhi-110001.

7. Vide letter dated 18.2.19 he has been communicated as under:

F. No. A-35013/1/2018/ES-I
 Government of India
 Ministry of Commerce & Industry
 Department of Commerce
 Supply Division

326-C, Supply Division,
 Nirmal Bhawan, New Delhi
 Dated: 18th February, 2019

To,

Shri Akhilesh Kumar,
 Deputy CEO,
 GeM SPV,
 Jeevan Bharti Building,
 Parliament Street,
 New Delhi - 110001

Subject: Forwarding of application to DoPT for JS level posts under Central Staffing Scheme and matters related to career progression - reg.

Sir,

I am directed to refer to your applications dated 12/11/2018 and 22/01/2019 addressed to Commerce Secretary on the subject(s) cited above and to say that:

- i. Promotion to Senior Administrative Grade is a prerequisite for being considered for empanelment to hold Joint Secretary level posts under the Central Staffing Scheme. As you are yet to be granted promotion to the Senior Administrative Grade (Deputy Director General level), your application cannot be forwarded to DoPT. This is based on the clarification given by DoPT in a similar case;
- ii. Further, consequent upon the winding up of DGS&D on 31/10/2017, no meeting of the Departmental Promotion Committees have been convened for granting promotions. This action is also based on a clarification given by DoPT. However, some officers of Indian Supply Service and Indian Inspection Service have filed W. P. (C) No. 1340/2018 & 5160/2018 before the Hon'ble High Court of Delhi regarding their career protection and suitable redeployment. As soon as a decision in the matter, the same shall be conveyed to you;
- iii. For disclosing your APAR/ACRs for the years 2016-17 & 2017-18, Confidential Section has been requested.

2. This issues with the approval of S. (Supply).

(A. K. Nandy)

Under Secretary to the Govt. of India
 Phone: 011-23061376

8. In view of above position having inferred that possessing SAG grade as sine quo non for promotion to Joint Secretary level and the applicant, vide representation dt. 22.1.19 (supra) prayed for consideration as such, we dispose of the O.A. with a direction upon the respondents to consider the grievance of the applicant, including his promotion to SAG grade on par with his juniors in the DGS&D (if any) and issue appropriate orders disposing of his grievance as in representation dated 22.1.19 within 6 months.

O.A. accordingly stands disposed of. No costs.

(Dr. N. Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

drh