
(2011) 09 DEL CK 0432

In the Delhi High Court

Case No : Writ Petition (Civil) No. 443 and 405 of 2011

Vimal Chandra Pandey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Constitution of India, 1950 — Article 311
Delhi and Andaman and Nicobar Civil Service (Amendment) Rules, 1989 — Rule 31
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (2011) 09 DEL CK 0432

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, for the Appellant; R.V. Sinha, R.N. Singh for R-1 and 2 and Naresh Kaushik, for UPSC, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—This common order will dispose of the two writ petitions filed by the Petitioner Vimal Chandra Pandey assailing the order dated 11th January, 2011 passed by the Central Administrative Tribunal, Principal Bench, Delhi (for short "the tribunal") dismissing OA No. 2612/2008 and OA No. 157/2010.

2. In OA No. 2612/2008, the Petitioner had prayed that direction should be issued to hold a Review Departmental Promotion Committee (for short, DPC) meeting after revising the eligibility list. He had challenged the eligibility list of Delhi and Andaman and Nicobar Islands Civil Services (for short "DANICS") for officers eligible for promotion to Indian Administrative Services (for short "IAS") against all the vacancies for the year 2005 onwards. In the said list the Petitioner was shown at serial No. 18 and he claims that he should be placed at serial No. 6, senior to G.C.Joshi his junior at the time when he was inducted into DANICS.

3. In OA No. 157/2010 the Petitioner had prayed for issue direction to the Respondent to consider his case for promotion to Junior Administrative Grade

(for short "JAG") by holding Review DPCs against the vacancies for the year 1989-91 and direct the Respondent to promote the Petitioner from the date G.C.Joshi, who was his junior, and Ors. were promoted. Directions for holding review DPC to promote the Petitioner to the post of JAG from due date with all consequential benefits was also prayed for.

4. As certain facts have to be stated and noticed, we will first discuss the facts relevant and relating to writ petition No. 443/2011 in which the decision deciding OA No. 157/2010 is under challenge. Decision in O.A. No. 2612/2008 is challenged in W.P. (C) No. 405/2011.

Writ Petition No. 443/2011.

5. The Petitioner was appointed to Grade - II in DANICS on 25th June, 1979. G.C.Joshi was his immediate junior. The period of probation of two years expired on 24th June, 1981 but the Petitioner continued to work thereafter without any communication or confirmation.

6. On 26th February, 1982 a case u/s 5(2)/47 of the Prevention of Corruption Act and Section 161 of the Indian Penal Code was registered against the Petitioner. The Respondent passed an order in August, 1982 extending the period of probation up to 24th June, 1983. The Petitioner was dismissed from service vide letter dated 13th September, 1982. The order of dismissal was challenged in the Writ Petition No. 3480/82, which was subsequently transferred to the tribunal and was registered as TA No. 838/1985. By a decision dated 5th May, 1989 the tribunal quashed the order of termination and directed that the Petitioner should be reinstated as the order of termination of services was punitive without holding departmental enquiry, and violative of Article 311 of the Constitution. In the meanwhile, the Petitioner was acquitted in criminal case.

7. The Petitioner was reinstated in service with effect from 12th July, 1989. On reinstatement the Petitioner made a claim for arrears of pay, allowances and consequential benefit of crossing the efficiency bar as well as notional appointment in selection grade as well as JAG benefit from the date his junior G.C.Joshi was granted/promoted.

8. JAG was introduced in DANICS in 1986. The Petitioner had not been considered for promotion for JAG in the years 1986 to 1989 as he was not in service on the dates when the meeting for DPC was convened.

9. Departmental proceedings were initiated against the Petitioner and he was awarded minor penalty of censure in May, 1992. The DPC or Selection Committee in August, 1993 considered case of eligible officers to promotion against the vacancies pertaining to the years 1990-93. The Petitioner was not promoted as he was graded "Good" with reference to the years 1990 and 1991. He was declared "not fit" for the years 1992 and 1993 obviously on the ground that he had been awarded minor penalty of censure in May, 1992.

10. The review DPC/Selection Committee meeting was held in July, 1996 for

promotion to JAG grade against vacancies pertaining to the years 1989 to 1993. The Petitioner was graded as "Good" for the years 1989 to 1991 and graded as "not fit" with reference to the years 1992 and 1993. Grading of "not fit" was because of the punishment of censure awarded to the Petitioner in May, 1992.

11. The penalty of censure was set aside by the tribunal vide order dated 21st July, 1999. After the penalty of censure was revoked, another review DPC was convened in the year 2000 and the Petitioner was graded "Very Good" against the vacancies pertaining to the year 1994. The Petitioner was promoted to JAG with effect from 14th June, 2000.

12. The matter was re-examined vide detailed note dated 27th August, 2001 with reference to the factum that the Petitioner was superseded for promotion to JAG for the years 1989-1993. It was noticed that for the years 1992 and 1993 Petitioner was assessed as "unfit" apparently due to penalty of censure which had been subsequently deleted.

13. A review DPC was held and vide order dated 18th March, 2002 the Petitioner was appointed to JAG with effect from 10th November, 1993. Thus the review DPC held that the Petitioner's name should be included in the panel for the year 1992.

14. Another review DPC was held on 5th May, 2005 to reconsider the recommendation of the review DPC held in July, 1996. It is important to note here that this review DPC was not held because of any protest or order passed in any legal proceedings by the Petitioner. The Petitioner had accepted the order dated 18th March, 2002 by which he was appointed to JAG with effect from 10th November, 1993. He did not question and challenge the said order by filing an OA before the tribunal. The review DPC on 5th May, 2005 was held in the wake of decision of the tribunal in OA No. 581/1997 which was filed by Mr A.K.Chaturvedi and three others on the ground that two Respondents namely U.K. Worah and R.Raghuraman had been wrongly granted JAG over and above them on 30th November, 1987 and 1st June, 1988 respectively. The Respondents were directed to consider the claim of the four applicants in OA No. 581/1997 in view of the fact that U.K.Worah was not eligible for promotion to JAG in 1987 as he had not completed 12 years of service.

15. Pursuant to the review DPC held in May, 2005, notification dated 22nd December, 2005 was issued. The Petitioner being in service was shown at serial No. 27 of the list of officers assessed in the year 1989 and against the heading Assessment he was graded as "Good".

16. At this stage, after noticing the relevant facts it is necessary to record and deal with the contention of the Petitioner that the review DPC held on 5th May, 2005 had wrongly assessed the Petitioner as "Good" and not granted him promotion with effect from 1989. The said contention has No. merit. The review DPC held on 5th May, 2005 was for a limited purpose to consider the directions given in OA No. 581/1997 filed by the four other officers. It had No. concern and

was not required to consider promotion of the Petitioner in JAG with effect from 1989. The said aspect, as noticed above, was already decided in the review DPC held pursuant to file notings dated 27th August, 2001 by which the Petitioner was appointed to JAG with effect from 10th November, 1993 by order dated 18th March, 2002, which had remained unchallenged and was accepted by the Petitioner.

17. One V.P. Rao filed OA No. 23/2006 which was decided on 18th August, 2006 by the tribunal. In this original application reference was made to the decision in O.A. No. 581/1997 filed by A.K. Chaturvedi and the review DPC held on 5th May, 2005. It was held that the O.A. No. 581/1997 and the decision rendered therein, was applicable in the case of four applicants, who had filed the said original application. The benefit would not be available to any other person and the contention that there were other ineligible persons like U.K. Worah was rejected. In the decision dated 18th August, 2006, discrepancies were noticed in the review DPC, which was held on 5th May, 2005, culminating in notification dated 22nd December, 2005. It was noticed that the members of the review DPC were not as per the Rules and officers from Lakshadweep Civil Services, who were not part of DANICS till 1996, were also considered. Accordingly, the impugned notification dated 22nd December, 2005 was quashed and it was directed that if V.P. Rao comes in the zone of consideration for induction into IAS for which Screening Committee meeting was held on 12th January, 2006, he would be considered after holding a review DPC.

18. The Petitioner had also filed O.A. No. 2241/2005, which was disposed of on 24th April, 2007. The Petitioner relied upon decision in the case of V.P. Rao, O.A. No. 23/2006, which was decided vide order dated 18th August, 2006. It was observed that the Petitioner was senior to V.P. Rao and the decision would be accordingly applicable in his case also and the Respondents were directed to take steps for his promotion to IAS. The operative portion of the order in the case of the Petitioner reads as follows:

3. These aspects remain uncontroverted. Therefore, we have No. hesitation to observe that applicant being senior to Sh. V.P. Rao, said judgment would be applicable to him (sic) case and OA is accordingly disposed of with direction to Respondents to take appropriate steps and consider applicant for promotion to IAS. This exercise should be completed within a period of three months from the date of receipt of a copy of this order. We may note that we have not examined the merits and contentions raised in the present OA, and it remain open to applicant to agitate, if he is so aggrieved.

(emphasis supplied)

19. It is clear that the tribunal had not examined the merits of the case and did not follow or refer to the unique and singular career record and the factual matrix pertaining to the case of the Petitioner. The decision refers to promotion to IAS and not anti dating of promotion to JAG. The tribunal had specifically

recorded that they were not examining the merits and the contentions raised in the OA, which were left open to be agitated, if so required.

20. The Respondent filed a Review Application No. 161/2007 in O.A. No. 2241/2005, which was dismissed by the tribunal making the following observations:

.....this Tribunal has not recorded any finding of fact as to whether applicant indeed is senior to Shri V.P. Rao or otherwise. We have only noticed the contention raised and accordingly disposed of the OA without touching the merits and contentions raised.. In our considered view, the order dated 24.4.2007 in OA No. 2241/2005 has not been passed merely based on the statement regarding seniority. There is not even a word in the present application as to whether applicant in the OA would be the beneficiary of judgment dated 18.8.2006 or not. As long as the judgment dated 18.8.2006, which has been implemented, as noticed vide order dated 24.4.2007 remains in operation and in position, we find No. justification in recalling and reviewing the said order dated 24.4.2007. In any case, Respondents were directed to take appropriate steps and consider the applicant for promotion/induction to IAS. Respondents (Applicant in RA) ought to have undertaken such exercise and if they are of the view that applicant in OA was not senior to V.P. Rao, rather junior to him, they could have taken an appropriate stand in the matter. Thus, finding No. error on the face of the record, RA is dismissed in circulation.

21. It is, therefore, clear that the tribunal had not given any specific direction. It may be noted that as per the list dated 22nd December, 2005, the Petitioner was at serial No. 18, G.C. Joshi was at serial No. 6 and V.P. Rao was at serial No. 15. Thus, V.P. Rao was senior to the Petitioner. It may be noted that the decision of the tribunal dated 18th August, 2006 in the case of V.P. Rao is subject matter of challenge in W.P.(C) 19044/2006 filed by the UPSC and the said writ petition is still pending before the Court, but there is No. stay.

22. A review DPC was held on 23rd March, 2007. The entire set of circumstances leading to calling of review DPC, the fallacies and mistakes pointed out by the tribunal in its order dated 18th August, 2006 in O.A. No. 23/2006 were noticed. The officers within the zone of consideration were also examined and assessment for years 1987 onwards was made.

23. We do not think that the Petitioner can challenge and question the review DPC held on 23rd March, 2007 and the findings recorded therein in spite of the order dated 24th April, 2007 passed in O.A. No. 2241/2005. As noticed above, the said order was clarified in R.A. No. 161/2007, which has been quoted above. As far as the Petitioner is concerned, his case for promotion to JAG was decided in the review DPC, which was held on 19th February, 2002 and his case for the years 1989 onwards was considered and rejected. It may be relevant to reproduce a portion of the minutes of the review DPC held on 19th February, 2002:

The Review Selection Committee were informed that consequent upon revision of seniority of DANICS officers w.e.f. 01-01-1984, a Review Selection Committee Meeting was held on 3rd and 4th July, 1996 to review panels for promotion to JAG of DANICS for the year 1986 to 1993 prepared on 2.5.1989 and 10.8.1993. The name of Shri V.C. Pandey was outside the zone of consideration for the years 1986 to 1988, so he was considered by the said Review Selection Committee for the years 1989 to 1993 only. As per his revised seniority position, the name of Shri. V.C. Pandey was considered at Sr. No. 25 in the eligibility list of 1989 and at Sr. No. 2 in each of the eligibility lists of the years 1990 to 1993. The Review Selection Committee of July, 1996 adopted the assessment of the original Selection Committees in respect of officers considered in the same year with revised seniority position. Taking into consideration the assessment made by the original Selection Committee of 10.8.1993, Sh. V.C. Pandey was graded as "Good" for the years 1989, 1990 and 1991 and "Not fit" for the years 1992 and 1993. On the basis of this grading, his name was not included in any of the panels for promotion to JAG for the years 1989 to 1993 as the Bench March in this case is "Very Good".

2. X X X X X X

3. X X X X X X

4. The Review Selection Committee first considered the case of Shri v. C. Pandey for the year 1992. The Committee noted that Shri Pandey was considered at Sr. No. 2 of the eligibility list by the previous Review. Committee of 3rd-4th July, 1996. The Committee also noted that the original Selection Committee of 10.8.1993 (whose assessment was adopted by Review Selection Committee of July, 1996) had considered his available ACRs upto the years 1991-92 as his ACRs for the period of his suspension were not available. He was, however, assessed as "Unfit" as a penalty of "Censure" had been imposed on him. The Review Committee ignored the penalty of "Censure" awarded to Sh. Pandey on 21-05-1992 while assessing his ACRs. On the basis of overall assessment of his available ACRs, the Review Committee assessed Shri Pandey as "Very Good". On the basis of this assessment, the Committee recommends that the name of Shri V.C. Pandey be included in the panel of 1992 at Sr. No. 3-A below the name of Shri Ramesh Tiwari (SI. No. 3) and abnove the name of Shri S.S. Bhatnagar (SI No. 4) for promotion to JAG of DANICS. The Review Committee observed that since Sh. V.C. Pandey is likely to get appointment to JAG from the panel of 1992, there is No. need to consider him for the year 1993.

24. It is clear from the aforesaid paragraphs that the Petitioner's case for promotion to JAG was considered for the years 1989 to 1993. The bench mark for promotion to JAG grade in said years was "Very Good". In the years 1989-1990 the Petitioner was graded as "Good" and not "Very Good". In these circumstances, the Petitioner was not promoted to JAG for the years 1989-1990. For the year 1992, the Petitioner was assessed as "Unfit" as a result of penalty of Censure, which was reviewed and the Petitioner was assessed at "Very Good".

This was because penalty of Censure had been quashed in 1999. Accordingly, the Petitioner was granted promotion to JAG in the panel of 1992.

25. As noticed above, the Petitioner did not challenge the promotion given to him after the review DPC held on 19th February, 2002, pursuant to which Petitioner was promoted to JAG from 10th November, 1993 vide order dated 18th March, 2002.

26. In view of the aforesaid, we entirely agree with the reasons given by the tribunal and hold that the tribunal was right and justified in dismissing O.A. No. 157/2010. It may be also noticed by us here that the review DPC was held way back on 23rd March, 2007 and thereafter notification was taken out after it was approved by the UPSC on 14th December, 2007. The OA in question as recorded above was filed in 2010. Accordingly, W.P.(C) 443/2011 has to be dismissed and accordingly it is so ordered.

W.P.(C) No. 405/2011

27. The Petitioner claims that he has been wrongly ignored and denied promotion under the IAS (Appointment by Promotion) Regulations, 1955. The tribunal in the impugned decision has referred to Rule 29 of Delhi and Andaman and Nicobar Island Civil Services Rules, 1971, which relates to seniority. Reference is also made Rule 31. It has been held that once G.C. Joshi and V.P. Rao were promoted ahead of the Petitioner as JAG, they became senior to the Petitioner regardless of the initial seniority list.

28. We have examined Rule 29 of the Delhi and Andaman and Nicobar Islands Civil Service Rules, 1971, which reads as follows:

29. Seniority

The Central Government shall prepare a list of members of the Service arranged in order of seniority as determined in the manner specified below:

(i) Members of the Services appointed at the initial constitution under Rule 17 shall be ranked inter-se in the order of their relative seniority in the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Civil Service:

Provided that if the seniority of any such officer had not been specifically determined before the commencement of these rules, it shall be as determined by the Central Government.

(ii) Seniority of person appointed to the Service under Clauses (a) and (b) of Sub-rule (1) of Rule 5 after the initial constitution under Rule 17, shall be determined as follows:

(a) Persons recruited on the results of the competitive examination in any year shall be ranked inter-se in the order of the merit in which they are placed at the competitive examination on the resulting of which they are recruited, those recruited on the basis of an earlier examination, being ranked senior to those

recruited on the basis of later examination.

(b) The seniority inter-se of persons recruited by selection shall be determined on the basis of the order in which their names are arranged in the list prepared under Rule 14, those recruited on the basis of an earlier selection being ranked senior to those recruited on the basis of a later selection.

(c) The relative seniority of direct recruits and of Promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion under Rule 5.

29. After referring to the said Rule and Rule 31, the tribunal has recorded:

Advertence has also been made to Rule 31 *ibid*, which, it was stated, only provided for promotion to Selection Grade. Subsequently, on the amendment of the aforesaid Rules in 1989, Rule 31 included promotion to JAG also. However, the learned Counsel for the Applicant would contend, seniority was always determined by the date of entry into service and not by grant of JAG. It was argued that it was for this reason that the Civil List included the names of members of service on the basis of their dates of joining the service and not on the basis of their getting JAG. Reliance has also been placed on the judgement of this Tribunal in OA number 3484/2010, Pradeep Kanshi v. Union of India and Ors. decided on 20.12.2010. It was pointed out that the applicant in the OA cited was considered to have become eligible for promotion to the IAS on completion of eight years of service in the State Civil Service. Summing up, the argument of the learned Counsel for the Applicant was that he had completed more than eight years of service in the DANICS, was below the age of 54 years and was senior to both GC Joshi and v. P Rao by virtue of his being above them in the initial seniority list and in the Civil List.

30. The contention has been rejected by the tribunal recording the following reasons:

We are, therefore, of considered opinion that there is No. force in the contention of the Applicant that direction should be given to the Respondents to hold review DPC for consideration of his name for promotion to JAG in the years 1989 to 1991. Furthermore, once the persons junior to the Applicant have been promoted to JAG ahead of him, they would become his seniors. Initial seniority, based on merit in the Civil Services Examinations will not last for the life time. A person junior in the initial seniority list will overtake his senior if the latter does not get promoted, while the former is promoted. Once G.C. Joshi and V.P. Rao are promoted ahead of the Applicant, they have become senior to him, regardless of initial merit list. They have, therefore, been rightly shown as senior to the Applicant in the eligibility list. In so far as the effect of the judgment of V. P Rao (*supra*) is concerned, the Tribunal itself has clarified in the Review Application that it had not given any directions regarding seniority of any individual above the other. The relevant portion of the order in Review has already been quoted

above.

31. The aforesaid Rule 29 certainly refers to initial merit list. However, the question is whether a separate and new seniority list is to be prepared after promotion of DANICS officers to JAG. The Petitioner, in this regard, has submitted that DANICS officer are eligible for appointment by promotion to IAS after eight years of service. Promotion is not dependent upon whether or not the person is granted JAG. It is further submitted that for promotion to JAG, at present, the minimum eligibility requirement is 13 years of service, which is more than service required for induction by way of promotion into IAS. The Petitioner has also drawn distinction between eligibility norms/conditions and the seniority list and in the written submissions has referred to several judgments.

32. We may also note that in the writ petition the Petitioner has placed reliance on the seniority list and has drawn our attention to the list of officers eligible to be appointed to IAS and has stated that the columns do even mention the date of grant of JAG.

33. This aspect requires greater and deeper consideration. In these circumstances, we set aside the order passed by the tribunal in O.A. No. 2612/2008 and allow W.P.(C) 405/2011 and the matter is remitted to the tribunal for fresh adjudication. In the facts and circumstances of the case, there will be not order as to costs.