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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON: 05.12.2014

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W.P. (C) 8494/2014

MANPREET SINGH POONAM Petitioner
versus
UOI AND ORS Respondents

W.P. (C) 8516/2014

SURESH GUPTA Petitioner
versus
UNION OF INDIA & ORS Respondents

Present: Mrs. Avnish Ahlwat, Advocate for petitioners in both cases.
Mr. Rajesh Gogna, CGSC for UOI with Mr. Arnab,
Advocate in both cases.
Mr. Naresh Kaushik, Advocate for UPSC in both cases.
Ms. Ferida Satarawala, Advocate for R-3/GNCTD in
item no.14.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

S.RAVINDRA BHAT, J. (OPEN COURT)

1. Issue notice in both the matters. Mr. Rajesh Gogna, Mr. Naresh Kaushik, and Ms. Ferida Satarawala, Advocates accept notice on behalf of the respective respondents they are representing. With consent of counsel for parties both writ petitions were heard finally since the pleadings of the

Central Administrative Tribunal and relevant materials are part of the record in these cases.

2. The petitioners are aggrieved by the order dated 5.8.2014 in OA 604/2013 passed by the Central Administrative Tribunal (hereafter referred to as 'CAT') in the case of petitioner Mr. Suresh Gupta (in W.P.(C)8516/2014), and also the order dated 7.8.2014 in OA 896/2013 in the case of Shri Manpreet Singh Poonam (in W.P.(C) 8494/2014). They had approached the CAT with the limited grievance that the respondents did not heed their request to treat the date of their promotion to Junior Administrative Grade (JAG) Grade-I as 1.1.2009, instead of 1.7.2011 - which was actually granted to them.

3. The brief facts are that the petitioners joined the DANICS in 1988 - which was their year of appointment. Subsequently, they were confirmed in the service and later appointed to selection grade on *ad hoc* basis which was regularized sometime in 1998. In terms of the prevailing rules, both of them were promoted to the Junior Administrative Grade-II (JAG-II) in the year 2002, and subsequently regularized in 2003. The erstwhile DANICS Civil Services Rules, 1996 was replaced by the National Capital Territory of Delhi, Andaman & Nicobar Islands, Lakshwadeep, Daman & Diu and Dadra and Nagar Haveli Civil Service Rules, 2003 (hereafter called the Rules of 2003). The sanctioned strength of service was increased to 472 on 1.10.2009. The petitioners were appointed to JAG-I of the service on *ad hoc* basis on 27.1.2011, and thereafter regularized w.e.f. 1.7.2011. Under the 2003 Rules, all vacancies in JAG-I are to be filled from amongst the officers in the immediate respective lower grade with minimum qualifying service as specified in Schedule-III (of the Rules); JAG-II officers with 18 years

approved service by seniority fit the description. The rules further mandated that the promotion, though not based on selection, could also not entirely be characterized as unlinked with any other consideration - as in the case of mere financial upgradation. Such promotion is to be based on rejection of the 'unfit'.

4. Apparently, for considerable period of time, i.e., about 16 years, review for the purposes of promotion to JAG-I had been held up. Sometime, in October, 2011, the Ministry of Home Affairs (MHA) Central Government issued a letter to the Government of NCT of Delhi enclosing the list of officers eligible for promotion to JAG-I as on different dates. These lists reveal that in different years, the numbers of vacancies vary (in the year 2004-2; 2005-3; 2006-7; 2007-8, 2009-7, 2010-1 and 2011-28). The relative lists showed *inter alia* that the petitioners were placed at Sl.No.1 and 2 amongst those eligible for consideration for the year 2009. For that year, there were 7 clear vacancies and in terms of the Rules, 18 officers were to be considered for promotion. The list itself contained all the 18 eligible officers. In this background, the DPC met and considered the cases of the petitioners and recommended their promotion sometime in December, 2012. The promotion orders eventually issued to the petitioners were such that their appointments to the JAG-I were made effective from 1.7.2011. They represented to the appropriate authorities, contending that promotion had to be given effect, at least, from the date when the clear vacancies existed. This was turned down, however, on the basis that consideration of their claims was sometime in 2012, and that the posts had been occupied by service officers who could vacate it upon their appointment on promotion to the Indian Administrative Services only in

2011. They approached the CAT which recognized their rights but accepted the respondents' contentions that since the DPC met and considered the cases for promotion only in 2012, they could not claim ante dating of their promotions to JAG-I.

5. The petitioners contend that though their grievance before the CAT was in fact recognized, relief was denied on an extremely narrow ground that the respondents held the DPC in 2012 and, therefore, were unwilling to grant them promotion with effect from the dates the vacancies actually arose. Arguing that the material before the CAT clearly disclosed that as of 2009, the petitioners were eligible and in fact were placed at serial numbers 1 and 2, learned counsel contended that there was no logic in the respondents' contentions because if, in fact, the promotions were to be made prospectively, it had to be after DPC was held in 2012. The fact that the respondents conceded the petitioner's claim is evident from the circumstance that deemed date of appointments in their cases was 1.7.2011, instead of some day in 2012.

6. Learned counsel for the respondents urged that the CAT's order ought not to be interfered with and promotions cannot be given with retrospective effect. Learned counsel relied upon the averments in the counter affidavit filed before the CAT to the following effect: -

“2. That the applicant had earlier represented his case for changing the effective date of promotion of JAG-I according to the select list years of the JAG-I officers who have been inducted into the IAC. His representation was examined in the Ministry and found to be devoid of merit on the following grounds:-

During the year 2011, there were 30 vacancies in JAG-I

of DANICS out of which 3 (three) were due to retirement of officers of JAG-I in 2011 and 27 vacancies were created because equal number of JAG-I officers were inducted in IAS for the select years of 2007, 2008, 2009 & 2010 vide DOP&T Notification dated 28th April, 2011 and 24th November, 2011. At the time of screening committee meeting held during the year 2011, these officers were holding the posts of Junior Administrative Grade of DANICS and because of this the vacancies in the JAG-I cannot be counted as per the select list years of IAS. Promotion in DANICS are subject to DANICS Rules only.

The applicant has represented that FR 17 does not debar grant of benefits of promotion from JAG-II to JAG-I from retrospective dates in such cases. In this connection, it is submitted that the promotions, from the post of Junior Administrative Grade II to the posts of Junior Administrative Grade-I, are on the basis of the vacancies of the respective years and in this case FR 17 cannot be made applicable for grant of retrospective promotion.

Further, it is also submitted that the officers, inducted in IAS from JAG-I, get the seniority/batch according to the seniority of their service in the feeder grade, i.e., DANICS as per the IAS induction rules, whereas the promotions in JAG-I DANICS are subject to DANIC Rules.

3. In the DPC meeting held on 4th April, 2012 under the aegis of UPSC, it was decided to promote 91 Junior Administrative Grade II officers to the post of Junior Administrative Grade I on the basis of the vacancies of the respective years w.e.f. 1996 to 2011 and a notification was issued accordingly vide No.14016/23/2011-UTS-II dated 17th April, 2012. The DPC after assessing the suitability of each officer and number of vacancies in any year, had recommended year-wise panels for promotion to JAG-I, in accordance with

DANICS Rules.”

7. The narrow controversy which the Court is called upon to decide is whether the petitioner’s claim for promotion with effect from the date or dates the vacancies arose respectively in different years should have been acceded to. It is uncontroverted that by the letter dated 19.10.2011 No.14016/21/2011-UTS.II, the MHA notified the number of vacancies available for different years commencing from 2004. It is also a conceded fact that for 16 years, the exercise had not been undertaken by the MHA or the GNCTD. In these circumstances, the denial of the limited request of the petitioners that they be granted promotions from the date they declared eligible in view of the conceded position that 7 clear vacancies existed as in 2009, in our opinion was indefensible.

8. The denial of ante-dating was clearly arbitrary, considering that there were 7 vacancies in the year 2009 and the petitioners were placed at serial numbers 1 and 2. The mere formality that the MHA or the GNCTD found it convenient to constitute the DPC much later, ought not to have prejudiced the petitioners or - for that matter, other eligible officers whose cases ought to have been considered time to time, on periodical basis. The respondents are in fact urging that their inability to carry out this period exercise should be held against the petitioner - an argument flawed in logic and utterly unreasonable. If the justification offered by the respondents were to be accepted, the ante-dating of promotion of the petitioners to 1.7.2011 - when the DPC met only at the end of 2012 cannot be explained. The CAT, in fact, relied upon and has cited the decisions of the Supreme Court in *P.N. Premchandran v. State of Kerala*, 2004 (1) SCC 245, *Union of India & Anr.*

v. Hemraj Singh Chauhan & Ors., 2010 (4) SCC 290 and *Union of India v. Vipinchandra Hiralal Shah*, 1996 (6) SCC 721 to the effect that directions can be issued in given circumstances to accord retrospective or ante-dated promotions. Having considered these cases, it is clear that the Court had a normative basis for deciding the question of prospectivity, and also appreciated the relevant surrounding circumstances. In the present circumstances, the CAT in our opinion fell into error in refusing relief that the petitioners sought from it.

9. The records reveal that one of the petitioners Mr. M.S. Poonam had sought voluntary retirement sometimes in 2010. It is urged that this development should not come in the way of the Court granting relief since this impediment was not set up by the respondents and that, in any event, the matter is covered by a Department of Personnel and Training (DOPT's) Circular No.AB.14017/47/2011 - EST (DR) dated 1.8.2012, which clarifies in response to a query as follows: -

“Query - Whether retired employees are eligible for the benefit of NFU?”

A - Retired officers who are otherwise eligible as on due date shall be considered for the benefits of pay upgradation.”

10. In the light of the above discussion, the impugned orders of the CAT passed in OA 896/2013 dated 7.8.2014 and in OA 604/2013 dated 5.8.2014 are set aside. The respondents are directed to grant the relief claimed by the petitioner in the case of Mr. M.S. Poonam granted in terms of the Circular No.AB.14017/47/2011-EST (DR) dated 1.8.2012 of the DOPT. Consequential orders fixing the concerned date or dates of promotion in 2009 shall be issued within six weeks from today with all other attendant

benefits such as notional fixation of pay and differential salary. The writ petitions are allowed in these terms.

S. RAVINDRA BHAT, J

DECEMBER 05, 2014
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VIPIN SANGHI, J